



**Snohomish County**

Purchasing Division

(425) 388-3344

[purchasing@co.snohomish.wa.us](mailto:purchasing@co.snohomish.wa.us)

Exelis

## INVITATION TO BID

ITB Number:

**075-13**

Advertised Date:

**August 28, 2013**

### INVITATION TO BID (ITB) TITLE:

## **Noise & Operations Monitoring System (NOMS)**

Due Date: September 17, 2013 -11:00 a.m. Exactly, Pacific Local Time

Buyer: Kathy Jones, [kathy.jones@snoco.org](mailto:kathy.jones@snoco.org), (425) 388-3780

Alternate Buyer: Don Wolfe, [dwolfe@snoco.org](mailto:dwolfe@snoco.org), (425) 388-3453

Furnish NOMS as requested by Snohomish County personnel in accordance with the attached instructions, requirements and specifications.

#### **Pre-Bid Conference:**

*There will be no pre-bid conference for this ITB.*

**Sealed Bids are hereby solicited and will only be received by:**

Snohomish County Purchasing Division  
Robert J. Drewel Building, 6<sup>th</sup> Floor  
3000 Rockefeller Avenue, M/S 507  
Everett, WA 98201  
Office Hours: 8:00 a.m. – 5:00 p.m.  
Monday - Friday

COPY

## **SECTION 1 Instructions to Bidders**

### **1.1 Introduction**

The purpose of this Invitation to Bid is to establish a contract to provide goods or services on an as needed basis. Any quantities listed herein are for bidding purposes only and represent Snohomish County's estimated annual requirements. The County will be neither obligated nor restricted to the quantities or locations indicated.

### **1.2 Bid Submittal Procedure**

The **original and (1) copy(s)** of this solicitation document is to be completed, signed and submitted. Failure to return the solicitation document may result in disqualification of the Bidder. The original shall be noted or stamped "original". Bids and modifications thereof shall be enclosed in a sealed envelope, with the "Bid Opening Label" completed and affixed.

Bidders are encouraged to use recycled paper in the preparation of additional documents submitted with this solicitation, and shall use both sides of paper sheets where practicable.

The bidder shall show the title and number, the due date specified, and the name and address of the bidder on the face of the envelope. Bidders are cautioned that failure to comply may result in non-acceptance of the bid. Bids properly and timely submitted will be publicly opened.

Sealed bids shall contain all required attachments and information and be submitted to Snohomish County (hereinafter "County") no later than the date, time and place stated on the front of this ITB or as amended. The Bidder accepts all risks of late delivery of mailed bids or of misdelivery regardless of fault. Pursuant to SCC 3.04.130(4) late bids will not be accepted.

Bids will only be accepted from Contractors able to complete the delivery of goods or services described in the specifications. Joint ventures shall submit one bid for the team, with accompanying proof of the joint venture agreement.

If a company chooses not to submit a bid, the County requests the company advise the Buyer by email if they desire to remain listed for the subject of this ITB and state reason they did not submit a bid.

### **1.3 Electronic Commerce and Correspondence**

Snohomish County is committed to reducing costs and facilitating quicker communication to the vendor community by using electronic means to convey information. As such, most Invitations to Bid, Requests for Proposal, and Requests for Qualifications as well as related exhibits, appendices, and issued addenda can be found on the Snohomish County Internet Web Site, located at

<http://www1.co.snohomish.wa.us/Departments/Finance/Divisions/Purchasing/>

Current bidding opportunities and information are available by clicking on "View all Current Opportunities for Snohomish County Business".

You may also request bids that are not downloadable by contacting the Purchasing Division at [purchasing@co.snohomish.wa.us](mailto:purchasing@co.snohomish.wa.us) or 425-388-3344.

Snohomish County Purchasing Division features an Online Vendor Reference List program that permits vendors, consultants and contractors to register their business with the County. This

program allows interested parties to directly register their firm to receive information regarding bid documents.

#### **1.4 Alterations to Document**

Any addition, limitation or provision made or attached to the bid may render it non-responsive and/or irregular and be cause for its rejection.

Bidders may be required to submit additional documents as part of the bid package. Any alteration of such documents by erasure or interlineations shall be explained or noted and initialed by the Bidder.

#### **1.5 Late Bids**

Pursuant to SCC 3.04.130(4), bids, modifications of bids, and withdrawal of bids received at the office designated in the solicitation after the exact time and date specified for receipt will not be accepted.

#### **1.6 Cancellation of ITB or Postponement of Bid Opening**

The County reserves the right to cancel the ITB at any time.

The County may change the date and time for submitting bids prior to the date and time established for submittal.

#### **1.7 Addenda**

If at any time, the County changes, revises, deletes, clarifies, increases, or otherwise modifies the ITB, the County will issue a written Addendum to the ITB. Bidders must register as plan holders to be notified of addendum and new documents on this bid. It is the bidder's responsibility to check for addenda and other new documents on-line.

#### **1.8 Questions and Interpretation of the ITB**

No oral interpretations of the ITB will be made to any Bidder. All questions and any explanations must be requested in writing and directed to the Buyer no later than seven (7) days prior to the due date specified in the solicitation. Oral explanations or instructions are not binding. Any information modifying a solicitation will be furnished to all bidders by an addendum.

Days, as referenced in this document, are calendar days unless otherwise specified.

Communications concerning this bid, with other than the listed Buyer may cause the Bidder to be disqualified.

#### **1.9 Examination of Bid Documents**

Any supplier planning to submit a bid response must obtain a complete, original copy of the bid documents directly from Snohomish County Purchasing Division (Purchasing) rather than a second party. If you did not receive this bid directly from Purchasing or download it from our website, please do so now from the link below under "View All Current Opportunities for Snohomish County Business".

<http://www1.co.snohomish.wa.us/Departments/Finance/Divisions/Purchasing/>

The submission of a bid shall constitute an acknowledgement upon which the County may rely that the Bidder has thoroughly examined and is familiar with the ITB, including any work site identified

in the ITB, and has reviewed and inspected all applicable statutes, regulations, ordinances and resolutions addressing or relating to the goods or services to be provided hereunder.

The failure of a Bidder to comply with above requirement shall in no way relieve the Bidder from any obligations with respect to its bid or to any Contract awarded pursuant to this ITB. No claim for additional compensation shall be allowed which is based upon a lack of knowledge or misunderstanding of this ITB.

#### **1.10 Modifications of Bid or Withdrawal of Bid Prior to Bid Due Date**

At any time before the time and date set for submittal of bids, a Bidder may submit a modification of a bid previously submitted to the County. All bid modifications shall be made in writing, executed and submitted in the same form and manner as the original bid.

Bids may be withdrawn by written notice received prior to the exact hour and date specified for receipt of bids. A bid also may be withdrawn in person by a Bidder or authorized representative provided their identity is made known and they sign a receipt for the bid, but only if the withdrawal is made prior to the exact hour and date set for receipt of bids. All requests for modification or withdrawal of bids, whether in person or written, shall not reveal the amount of the original bid.

#### **1.11 Bid Withdrawal After Public Opening**

Except for claims of error granted by the County, no Bidder may withdraw a bid after the date and time established for submitting bids, or before the award and execution of a Contract pursuant to this ITB, unless the award is delayed for a period exceeding the period for bid effectiveness.

A Bidder who wishes to claim error after the bids have been publicly opened and read aloud shall promptly notify the Buyer that an error has occurred by 5:00 p.m., Pacific local time, the next business day after the bid opening. The Bidder shall submit a written request to withdraw a bid due to error along with supporting evidence for such claim for review by the County. Evidence must be delivered to the County within two (2) business days after request to withdraw. The County reserves the right to require additional records or information to evaluate the request. Any review by the County of a bid and/or any review of such a claim of error, including supporting evidence, creates no duty or liability on the County to discover any other bid error or mistake, and the sole liability for any bid error or mistake rests with the Bidder.

#### **1.12 Cost of Bid and Samples**

The County is not liable for any costs incurred by Bidder in the preparation and evaluation of bids submitted. Samples of items required must be submitted to the location and by the time specified. Unless otherwise specified, samples shall be submitted with no expense to the County. If not destroyed by testing, samples may be returned at the bidder's request and expense.

#### **1.13 Collusion**

By signing this bid, the Bidder certifies that they have not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding. If the County determines that collusion has occurred among Bidders, none of the bids from the participants of such collusion will be considered. The County's determination will be final.

#### 1.14 Bid Effective Date

All bids submitted shall be a firm bid for a minimum period of 90 days after the bid opening date, unless otherwise stated in writing in the bid. The County may request a Bidder grant an extension of the bid effective period.

#### 1.15 Bid Price and Tax

The bid price shall include everything necessary for the prosecution and completion of the Contract, except as may be provided otherwise in this ITB.

Bid Prices shall include all freight charges, FOB to the designated delivery point(s).

Taxes: The County may choose to not include sales tax as part of the bid. The County shall pay any Washington State sales/use taxes applicable to the Contract price or tender an appropriate amount to the Contractor for payment to Washington State. The Bidder is cautioned that taxes may be a factor in evaluating the total cost of bid.

The County is exempt from Federal excise taxes. When requested, an exemption certificate will be furnished.

#### 1.16 Protest

**A. Form of Protest.** In order to be considered, a Protest shall be in writing, addressed to the Purchasing Manager of Snohomish County, and include:

1. The name, address, and phone number of the Bidder protesting, or the authorized representative of the Bidder;
2. The Invitation to Bid (ITB) Number and Title under which the Protest is submitted;
3. A detailed description of the specific grounds for protest and any supporting documentation. It is the responsibility of the Protesting Bidder to supplement its Protest with any subsequently discovered documents prior to the Manager's decision;
4. The specific ruling or relief requested; and
5. Evidence that all persons with a financial interest in the procurement have been given notice of the Protest or if such persons are unknown, a statement to that effect.

#### **B. Who May Protest.**

1. Protests based on specifications/scope of work. Any prospective Bidder.
2. Protests following submittal. Any Bidder submitting a response to an ITB showing a substantial financial interest in the solicitation or award of any Contract.

**C. Time to Protest.**

1. Protests based on specifications/scope of work or other terms in the ITB documents which are apparent on the face of said documents must be received by the County no later than five calendar days prior to the date established for submittal of Bids.
2. Protests based on other circumstances must be received by the County within five calendar days after the protesting Bidder knows or should have known of the facts and circumstances upon which the Protest is based. In no event shall a Protest be considered if all submittals are rejected or after award of the Contract.

**D. Determination of Protest.**

1. Upon receipt of a timely written Protest, the Manager shall investigate the Protest and shall respond in writing to the Protest prior to the award of contract.

## **SECTION 2 Bid Evaluation and Contract Award**

### **2.1 Evaluation of Bids**

Bids will be evaluated by the County to determine which bid, if any, may be deemed to be the low responsive bid from a responsible bidder, and should be accepted in the best interest of the County.

Snohomish County may use prompt payment discount terms in evaluation of this ITB; however, discounts terms of less the twenty (20) days will not be considered. Minimum acceptable payment terms by the County without benefit of twenty (20) day discount will be net 30 days.

In the event of a discrepancy between the unit price and the extended amount for a bid item, the unit price will govern.

### **2.2 Responsive and Responsible**

#### **Responsive**

The County will consider all the material submitted by the Bidder, and other evidence it may obtain otherwise, to determine whether the Bidder is in compliance with the terms and conditions set forth in this ITB.

#### **Responsible**

In determining the responsibility of the bidder, the County may consider the ability, capacity and skill to perform the Contract or provide the service required (inspection of the bidder's facility may be required prior to award); the character, integrity, reputation, judgment and efficiency; financial resources to perform the Contract properly and within the times specified; the quality and timeliness of performance on previous contracts with the County and other agencies, including, but not limited to, the effort necessarily expended by the County and other agencies in securing satisfactory performance and resolving claims; compliance with federal, state and local laws and ordinances relating to public contracts; other information having a bearing on the decision to award the Contract.

Failure of a bidder to be deemed responsible or responsive may result in the rejection of a bid.

### **2.3 Financial Resources and Auditing**

If requested by the County, prior to the award of a contract, the bidder shall submit proof of adequate financial resources available to carry out the execution and completion of work required by this contract.

Snohomish County reserves the right to audit the Contractor throughout the term of this contract to assure the Contractor's financial fitness to perform and comply with all terms and conditions contained within this contract. Snohomish County will be the sole judge in determining the Contractor's financial fitness in carrying out the terms of this contract.

### **2.4 Substitutions**

When specific brands, materials, design, style or size are named, such specifications may be construed to be shown solely for the purpose of indicating the standard of quality, performance or intended use.

Where indicated, brands of equal quality, performance and use may be considered by the county, provided the bidder submits with their bid the brand, model, product number and other data necessary for comparison. The county retains the sole right to accept or reject substitutions.

## **2.5 Forms Required Before Contract Award**

The Bidder shall submit, within ten (10) days of notification from the County, the applicable documents, insurance, bonds, sworn statements, and other requirements prior to award. Failure by the Bidder to submit required documents may result in rejection of the bid.

- **Internal Revenue Service Form W-9**

## **2.6 Rejection of Bids**

The County reserves the right to reject any bid for any reason or to waive informalities and irregularities in bids.

In consideration for the County's review and evaluation of its bid, the Bidder waives and releases any claims against the County arising from any rejection of any or all bids, including any claim for costs incurred by Bidders in the preparation and presentation of bids submitted in response to this ITB. In addition, Bidders waive the costs of providing additional information requested.

## **2.7 Single Bid Receipt**

If the County receives a single responsive, responsible bid, the County may request an extension of the bid acceptance period and/or conduct a price or cost analysis on such bid. The Bidder shall promptly provide all cost or pricing data, documentation and explanation requested by the County to assist in such analysis. By conducting such analysis, the County shall not be obligated to accept the single bid; the County reserves the right to reject such bid or any portion thereof.

## **2.8 Public Disclosure of Bids**

Submittals received by Snohomish County in response to this bid become public records and are subject to Chapter 42.56 RCW, the Public Records Act. The Bidder should clearly identify in its submittal any specific information that it claims to be confidential or proprietary. If Snohomish County receives a Public Records Act request to view the information so marked in the Bidder's submittal following a bid award, its sole obligations shall be to notify the bidder (1) of the request and (2) of the date that such information will be released to the requester unless the bidder obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540.

## **2.9 Contract Award**

Contract award, if any, will be made by the County to the low, responsive, responsible Bidder. The County will have no obligations until an award is made and an order placed with the Contractor. The County reserves the right to award one or more contracts as determined to be in the County's best interest. The County may accept any individual item, or group of items, or schedules of any bid, unless otherwise stated herein.



A written award mailed or otherwise furnished to a Contractor within the time for acceptance shall be a binding contract.

## **SECTION 3 Standard Contractual Terms and Conditions**

### **3.1 Administration**

This Contract is between the County and the Contractor who shall be responsible for providing the goods or services described herein. The County is not party to defining the division of work between the Contractor and its Subcontractors. The Contractor represents that it has or shall obtain all duly licensed or qualified personnel, materials and equipment required to perform work hereunder.

The Contractor's performance under this Contract may be monitored and reviewed by a Project Manager appointed by the County. Reports and data required to be provided by the Contractor shall be delivered to the Project Manager or Buyer. Questions by the Contractor regarding interpretation of the terms, provisions and requirements of this Contract shall be addressed to the Buyer or Project Manager for response.

### **3.2 Contract Amendments**

No oral order or conduct by the County shall constitute a Contract Amendment. Contract Amendments shall only be effective upon written notification by the County. The County reserves the right to amend the contract to add or delete goods or services within the intended scope of this contract. This may include, but is not limited to approval of replacements for discontinued items, add items of like function, or similar in nature or purpose to the originally listed products; the provision of ancillary services in response to minor changes in County needs; extend the contract to include optional terms.

Cost or Price Analysis may be required by the County for the evaluation of contract modifications, terminations, revision to contract requirements or other circumstances as determined by the County.

### **3.3 Invoices**

The Contractor shall submit properly certified invoices to Snohomish County. The invoice(s) shall contain the following information: The purchase order/contract number, item numbers, description of supplies or services, quantities, unit prices, extended totals, and discounts, if applicable. For services, identify specific deliverables, and/or hourly rates, hours worked, total hours or related fees.

The Contractor shall bill to the address on the purchase order. The County will take advantage of any prompt payment discount terms bid. Discount periods shall be extended if the invoice is returned for credit or correction.

When a purchase order is issued against this Contract that has the potential for multiple or partial deliveries, a separate invoice shall be generated for each completed delivery accepted by the County.

Failure to comply with these requirements or to provide an invoice in conformance with the contract may delay payment.

Snohomish County will not be bound by prices contained in an invoice that are higher than those in the currently approved price list. If a price increase has not been accepted in writing by Snohomish County, the invoice may be rejected and returned to the Contractor for a correction.

### **3.4 Payment**

The County's preferred method of payment under this contract is electronic using the County's "e-Payable" system with Bank of America. The Contractor is highly encouraged to take advantage of the electronic payment method.

In order to utilize the electronic payment method, the Contractor shall email [SnocoEpaybles@snoco.org](mailto:SnocoEpaybles@snoco.org) and indicate it was awarded a contract with Snohomish County and will be receiving payment through the County's e-Payable process. The Contractor needs to provide contact information (name, phone number and email address). The Contractor will be contacted by a person in the Finance Accounts Payable group and assisted with the enrollment process. This should be done as soon as feasible after County award of a contract or purchase order, but not exceeding ten (10) business days.

Department approved invoices received in Finance will be processed for payment within seven calendar days for e-Payable contractors. Invoices are processed for payment by Finance two times a week for contractors who have selected the e-Payable payment option.

In the alternative, if the Contractor does not enroll in the electronic ("e-Payable") payment method described above, contract payments will be processed by Finance with the issuance of paper checks or, if available, an alternative electronic method. Alternative payment methods, other than e-Payables, will be processed not more than 30 days from receipt of department approved invoices to Finance.

THE COUNTY MAY MAKE PAYMENTS FOR PURCHASES UNDER THIS CONTRACT USING THE COUNTY'S VISA PURCHASING CARD (PCARD).

Upon acceptance of payment, the Contractor waives any claims for the goods or services covered by the Invoice. No advance payment shall be made for the goods or services furnished by Contractor pursuant to this Contract.

### **3.5 Rejection of Goods Or Services**

After award, the Buyer or authorized County representative shall have the option of rejecting or refusing delivery of any and all goods or services which are not in strict conformity with the requirements of the specification and the bid. All rejected goods or services shall be promptly replaced or re-performed and be subject to approval by the County. All replacement goods and services shall be provided at the Contractor's own expense.

### **3.6 Re-procurement Costs**

When a Contractor fails to furnish goods or services in accordance with the terms of this Contract, and the County must purchase at a price greater than the contract price, the difference may be charged to the Contractor. The County may exercise this charge as a credit against invoices due the Contractor.

### **3.7 Termination For Convenience/Default/Non-appropriation**

#### **A. Termination for Convenience**

The County for its convenience may terminate this Contract, in whole or in part, at any time by written notice sent certified mail, return receipt requested, to the Contractor. After receipt of a Notice of Termination ("Notice"), and except as directed by the County, the Contractor shall immediately stop work as directed in the Notice, and comply with all other requirements in the Notice. The Contractor will be paid its costs, including necessary and reasonable Contract close-out costs and profit on that portion of the work satisfactorily performed up to the date of termination as specified in the notice. The Contractor shall promptly submit its request for the termination payment, together with detailed supporting documentation. If the Contractor has any property in its possession belonging to the County, the Contractor shall account for the same and dispose of it in the manner the County directs. All termination payment requests may be subject to Cost or Price Analysis to determine reasonableness and compliance with the Contract and applicable laws and regulations.

#### **B. Termination for Default**

If the Contractor does not deliver work in accordance with the Contract, or the Contractor fails to perform in the manner called for in the Contract, or the Contractor fails to comply with any material provisions of the Contract, the County may terminate this Contract, in whole or in part, for default as follows:

A Notice to Cure will be served on the Contractor by certified mail (return receipt requested) or a delivery service capable of providing a receipt. The Contractor shall have ten (10) Days from the date the Notice to Cure was served to cure the default or provide the County with a detailed written plan, which indicates the time and methods needed to bring the work into compliance and cure the default.

If the Contractor has not cured the default or the plan to cure the default is not acceptable to the County, the County may terminate the Contract. Termination shall occur by serving a Notice of Termination by certified mail (return receipt requested) or delivery service capable of providing a receipt on the Contractor setting forth the manner in which the Contractor is in default and the effective date of termination.

The Contractor will only be paid for work delivered and Accepted, or work performed in accordance with the manner of performance set forth in the Contract less any charges to the County caused by or arising from such default. All termination payment requests are subject to Cost or Price Analysis to verify compliance with the Contract and applicable laws and regulations.

The termination of this Contract shall in no way relieve the Contractor from any of its obligations under this Contract nor limit the rights and remedies of the County hereunder in any manner.

#### **C. Termination for Non-Appropriation**

If expected or actual funding is withdrawn, reduced, or limited in any way prior to the termination date set forth in this Contract or in any amendment hereto, the County may, upon written notice to the Contractor, terminate this Contract in whole or in part.

Payment shall not exceed the appropriation for the year in which termination is effected. If this Contract is terminated for non-appropriation, the County shall be liable only for payment in accordance with the terms of this Contract for performance rendered prior to the effective date of termination; and, the Contractor shall be released from any obligation under this contract or a related Purchase Order to provide further work pursuant to the Contract as are affected by the termination.

Funding under this Contract beyond the current appropriation year is conditional upon the appropriation by the County Council of sufficient funds to support the activities described in this Contract. Should such an appropriation not be approved, the Contract shall terminate at the close of the current appropriation year. The appropriation year ends on December 31 of each year.

### **3.8 Force Majeure**

The term force majeure shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, fire, accidents, shutdowns for purpose of emergency repairs, industrial, civil or public disturbances, causing the inability to perform the requirements of this Contract. If any party is unable, wholly or in part, by a force majeure event or any event cause not within such party's control, to perform or comply with any obligation or condition of this Contract, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. Both parties agree to use their best efforts to minimize the effects of such failures or delays. In the event the Contractor ceases to be excused pursuant to this provision, then the County shall be entitled to exercise any remedies otherwise provided for in this Contract, including Termination for Default.

Whenever a force majeure event causes the Contractor to allocate limited resources between or among the Contractor's customers, the County shall receive no less priority in respect to such allocation than any of the Contractor's other customers.

### **3.9 Taxes, Licenses, and Certificate Requirements**

This Contract and any of the work provided hereunder is contingent and expressly conditioned upon the ability of the Contractor to provide the specified goods or services consistent with applicable federal, state or local laws and regulations. If, for any reason, the Contractor's required compliances are terminated, suspended, revoked or in any manner modified from their status at the time this Contract becomes effective, the Contractor shall notify the County immediately of such condition in writing.

The Contractor and subcontractor(s) shall maintain and be liable for all taxes (except sales/use taxes), fees, licenses, permits and costs as may be required by applicable federal, state or local laws and regulations as applicable to the work under this Contract.

### **3.10 Assignment**

Neither party shall assign any interest, obligation or benefit under or in this Contract or transfer any interest in the same, whether by assignment or novation, without prior written consent of the other party. If assignment is approved, this Contract shall be binding upon and inure to the benefit of the

successors of the assigning party. If assignment is approved, it shall be accepted by either party upon the posting of all required bonds, securities and the like by the assignee and the written agreement by assignee to assume and be responsible for the obligations and liabilities of the Contract, known and unknown, and applicable law.

### **3.11 Indemnification and Hold Harmless**

To the maximum extent permitted by law and except to the extent caused by the sole negligence of the County and, if any funds for this Agreement are provided by the State, the Contractor shall indemnify and hold harmless the County and the State, their officers, officials, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature arising out of, in connection with, or incident to the goods and/or services provided by or on behalf of the Contractor. In addition, the Contractor shall assume the defense of the County and, if applicable, the State and their officers and employees in all legal or claim proceedings arising out of, in connection with, or incidental to such goods and/or services and shall pay all defense expenses, including reasonable attorney's fees, expert fees and costs incurred by the County and, if applicable, the State, on account of such litigation or claims.

The above indemnification obligations shall include, but is not limited to, all claims against the County and, if applicable, the State by an employee or former employee of the Contractor or its subcontractors, and the Contractor, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects only the County, and if applicable, the State, under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.

In the event the County incurs attorney fees and/or costs in the defense of claims under this provision such attorney fees and costs shall be recoverable from the Contractor. In addition Snohomish County shall be entitled to recover from the Contractor its attorney fees, and costs incurred to enforce the provisions of this section.

The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Contract.

Nothing contained within this provision shall affect or alter the application of any other provision contained within this Contract.

### **3.12 Applicable Law Forum**

This Contract shall be governed by the laws of the State of Washington. Any claim or suit arising out of this Contract shall only be filed the Superior Court of the State of Washington, in and for Snohomish County.

### **3.13 Conflicts of Interest and Non-Competitive Practices**

By entering into this Contract to perform work, the Contractor represents that it has no direct or indirect pecuniary or proprietary interest, and that it shall not require any interest that conflicts in any manner or degree with the work required to be performed under this Contract. The Contractor shall not employ any Person or agent having any conflict of interest. In the event that the Contractor or its agents, employees or representatives hereafter acquires such a conflict of

interest, it shall immediately disclose such conflict to the County. The County shall require that the Contractor take immediate action to eliminate the conflict up to and including termination for default.

By entering into this Contract to perform work, the Contractor represents that no Persons except as designated by Contractor shall be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and no gratuities, in the form of entertainment, gifts or otherwise, were bided or given by the Contractor or any of its agents; employees or representatives, to any official, member or employee of the County or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.

### **3.14 Employment of County Employees**

SCC 2.50.075, "restrictions on future employment of County employees," imposes certain restrictions on the subsequent employment and compensation of County employees. The Contractor represents and warrants to the County that it does not at the time of execution of this Contract, and that it shall not during the term of this Contract, employ a former or current County employee in violation of SCC 2.50.075. For breach or violation of these representations and warranties, the County shall have the right to terminate this Contract without liability.

### **3.15 Disputes, Claims and Appeals**

The Contractor shall address questions or claims regarding the Contract in writing to the Buyer and Project Manager, within ten (10) Days of the date on which the Contractor knows or should know of the question or claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. No claim shall be allowed for any costs incurred more than ten (10) Days before the Contractor gives written notice, as required in this section. The Buyer and Project Manager shall ordinarily respond to the Contractor in writing with a decision, but absent such written response, the question or claim shall be deemed denied upon the tenth (10th) Day following receipt by the Buyer and Project Manager.

In the event the Contractor disagrees with the determination of the Buyer and Project Manager, the Contractor shall within five (5) Days of the date of such determination, appeal the determination in writing to the Purchasing Manager. Such written notice of appeal shall include all information necessary to substantiate the appeal. The Purchasing Manager shall review the appeal and make a determination in writing, which shall be final. Appeal to the Purchasing Manager shall be a condition precedent to alternative dispute resolution or litigation.

Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the direction of the Buyer or Project Manager. Failure to comply precisely with the time deadlines under this subsection as to any claim shall operate as a waiver and release of that claim and an acknowledgement of prejudice to the County.

### **3.16 Maintenance of Records/Audits**

The Contractor shall maintain, and shall require any sub-contractor to maintain, accounts and records, including personnel, property, financial, and programmatic records and such other records

as may be deemed necessary by the County to ensure proper accounting for all contract funds and compliance with this Contract. All such records shall sufficiently and properly reflect all direct and indirect costs of any nature expended and services provided in the performance of this Contract. The Contractor shall make such documents available to the County for inspection, copying, and auditing upon request.

All records referenced in this section shall be maintained for a period of seven (7) years after completion of work or termination hereof unless permission to destroy them is granted by the Office of the Archivist in accordance with RCW Chapter 40.14, or unless a longer retention period is required by law.

The Contractor shall provide access to its facilities, including those of any sub-contractor, to the County, the State and/or federal agencies or officials at all reasonable times in order to monitor and evaluate the services provided under this Contract.

The Contractor agrees to cooperate with County or its designee in the evaluation of the services provided under this Contract and to make available all information reasonably required by any such evaluation process. The results and records of said evaluation shall be maintained and disclosed in accordance with RCW Chapter 42.56.

If the Contractor expended a total of \$500,000.00 or more in federal awards during its fiscal year, and is a non-profit organization, and is, under this Contract, carrying out or administering a program or portion of a program, it shall have an independent audit conducted in accordance with OMB Circular A-133, which shall comply with the requirements of GAAS (generally accepted auditing standards), GAO's Government Audit Standards and OMB Circular A-133, as amended and as applicable. Contractors expending federal awards from more than one source shall be responsible for determining if the combined financial awards are equal to or greater than \$500,000.00. The Contractor shall provide one copy of the audit report to each County division providing federal awards to the Contractor no later than nine (9) months subsequent to the end of the Contractor's fiscal year.

### **3.17 Other Public Agency Orders**

The Washington State Interlocal Cooperative Act RCW 39.34 provides that other governmental agencies may purchase goods or services on this solicitation or contract in accordance with the terms and prices indicated therein if all parties agree. The County does not accept any responsibility or involvement in the purchase orders or contracts issued by other public agencies.

### **3.18 Environmental Purchasing Policy**

Bidders able to supply products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals.

The Bidder and Contractor shall use recycled paper for all printed and photocopied documents related to the submission of this solicitation and fulfillment of the contract and shall, whenever practicable, use both sides of the paper.



### **3.19 Industrial and Hazardous Waste**

The Contractor shall comply with all applicable local ordinances, state and federal statutes, and supporting rules and regulations governing the discharge of industrial waste to public sewer, private sewer, or side sewer tributary to the metropolitan sewer system.

Contractor shall handle and dispose of all hazardous wastes in compliance with all applicable local, state and federal laws and regulations, including the Resource Conservation and Recovery Act, the Washington Hazardous Waste Management Act, and applicable rules and regulations of the Environmental Protection Agency and the Department of Ecology governing the generation, storage, treatment, transportation or disposal of hazardous wastes.

### **3.20 Patents and Royalties**

The Contractor is responsible for paying all license fees, royalties or the costs of defending claims for the infringement of any intellectual property that may be used in performing this Contract.

### **3.21 Nondiscrimination**

A. Title VI (Federal) Non-discrimination – Snohomish County assures that no person shall on the grounds of race, color, national origin, or sex as provided by Title VI of the Civil Rights Act of 1964, as amended, and the Civil Rights Restoration Act 1987 (P.L. 100.259), be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any County sponsored program or activity. Snohomish County further assures every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

B. County Non-discrimination - By signing and submitting a response to this competitive bid, the Contractor (firm or individual) certifies that, in the event it is awarded a contract under this competitive bid (i.e., becomes the "successful contractor"), and as of the date of contract award, it shall comply with the "Non-discrimination Clause" provided below:

It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington's Law against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.

The Contractor shall comply with the substantive requirements of Chapter 2.460 SCC, which are incorporated herein by this reference. Execution of this Agreement constitutes a certification by the Contractor of the Contractor's compliance with the requirements of Chapter 2.460 SCC. If the Contractor is found to have violated this provision, or to have furnished false or misleading information in an investigation or proceeding conducted pursuant to this Agreement or Chapter 2.460 SCC, this Agreement may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect the Contractor's obligations under federal, state, or local laws against discrimination.

**C. Small Businesses and Suppliers and Minority and Women Business Enterprises Opportunities.**

Snohomish County encourages the Contractor to utilize small businesses, and suppliers and minority-owned and women-owned business enterprises certified by the Washington state Office of Minority and Women's Business Enterprises (OMWBE) in County contracts. The County encourages the Contractor to promote open competitive opportunities for small businesses and minority-owned and women-owned business enterprises.

**3.22 Non-Waiver of Breach**

No action or failure to act by the County shall constitute a waiver of any right or duty afforded to the County under the Contract; nor shall any such action or failure to act by the County constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by the County in writing.

**3.23 Severability**

Whenever possible, each provision of this Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal, or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid, and enforceable and have the intent and economic effect as close as possible to the invalid, illegal, and unenforceable provision. If it is not possible to modify the provision to render it legal, valid and enforceable, then the provision shall be severed from the rest of this Contract. The invalidity, illegality or unenforceability of any provision shall not affect the validity, legality or enforceability of any other provision of this Contract, which shall remain valid and binding.

**3.24 Certification Regarding Debarment, Suspension and Other Responsibility Matters**

If this Contract is a covered transaction for purposes of 49 CFR Part 29, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting this Contract, the Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by Snohomish County. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to Snohomish County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 49 CFR 29, Subpart C while performing this Contract and further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**3.25 Incorporation of Documents**

The contract between the awarded bidder and Snohomish County shall include all documents mutually entered into at the time of contract award, specifically including the contract document, the solicitation, and the response to the solicitation. The contract must include, and be consistent with, the specifications and provisions stated in this solicitation. Snohomish County shall not be bound nor obligated to enter into or sign additional agreements and or documents other than those required by law.

## **SECTION 4 Specific Contractual Terms & Conditions**

### **4.1 Contract Value**

The estimated annual value of this contract is approximately \$55,000. Snohomish County will not be limited, restricted or bound by this dollar value, nor shall the County be obligated to purchase any items contained in this ITB.

### **4.2 Contract Term**

The term of this Contract will be five (5) years, subject to the termination clauses contained herein. Snohomish County reserves the right to extend the term if determined to be in the best interest of the County.

Contracts or purchase orders will be issued by the County. Contract amendments or change orders issued by the County may reflect modification(s) of contract terms, funding or other matters.

Snohomish County reserves the right to purchase the goods or services described herein from other sources. The Contractor does not have the exclusive right to fill all of the County's requirements for the goods or services awarded nor will the County be obligated to purchase the estimated annual quantity, or any quantity contained in this Contract.

### **4.3 Price Revisions**

Prices shall remain firm for the duration of the Contract period. The Contractor may request price changes, and shall supply documentation satisfactory to Snohomish County such as changes to the Producers Price Index for the commodity, the Consumer Price Index for the Seattle-Bellevue-Everett area, or a manufacturer's published notification of price change(s). Reasonable price changes based on market conditions and price/cost analysis may be approved by Snohomish County.

Snohomish County will evaluate this information to determine if revising the pricing is considered fair and reasonable to the satisfaction of Snohomish County. Requests for any such change are to be made in writing to the Buyer in the Purchasing Division office. A written change order issued by the County will institute the price adjustment, provide the new prices and establish the effective date for the new prices.

The Contractor shall endeavor to give the Snohomish County Purchasing Division thirty (30) days but not less than fourteen (14) days written notice prior to the effective date of the price increase. The County may cancel the contract if the price increase request is not approved.

All price reductions at the manufacturer's or distributor's level shall be reflected in a reduction of the contract price(s) to Snohomish County retroactive to the effective date of the price reductions.

### **4.4 Use Report**

The Contractor shall, if requested, submit to the Buyer a report of sales made to Snohomish County under this Contract. The report, in a format acceptable to Snohomish County, shall identify the detail required by the Buyer, which may include but is not limited to, delivery location, the item description, whether it's a Contract or non-Contract item, quantity, price and discount.

#### **4.5 Warranty**

The Contractor warrants that the work performed under this Contract shall be free from defects in material and workmanship, and shall conform to all requirements of this Contract, for a period of at least twelve (12) months from date of acceptance of such work by the County. Any work corrected shall be subject to this subsection to the same extent as the work initially provided.

The bidder shall provide, upon request by the County, their standard warranty. The warranty shall be specific for all components of the equipment regardless of whether these components were built by the original equipment manufacturer or outside suppliers. Snohomish County may avail itself of the bidder or manufacturer's standard warranty if more beneficial to the County.

Conducting of tests or inspections, acceptance, or the processing of payment(s) by the County shall not constitute a waiver of any rights under this Contract or in law. The termination of this Contract shall in no way relieve the Contractor from its warranty responsibility.

The Contractor shall ensure that the warranty requirements of this Contract are enforceable through and against the Contractor's suppliers, vendors, distributors and Subcontractors. The Contractor shall cooperate with the County in facilitating warranty related work by such suppliers, vendors, distributors and Subcontractors.

Contractor warrants that the Services shall in all material respects conform to the requirements of this Contract. Contractor warrants that qualified professional personnel with in-depth knowledge shall perform the Services in a timely and professional manner; and that the Services shall conform to the standards generally observed in the industry for similar Services. Contractor warrants that the Services shall be in compliance with all applicable laws, rules and regulations.

#### **4.6 Warranty Remedies**

Whenever possible, the contractor shall provide "on the spot" settlement of warranty claims or disputes, and authorize local representatives to act on the equipment manufacturer's behalf.

If at any time during the twelve (12) month period immediately following acceptance of any work covered by this Contract, Contractor or the County discovers one or more material defects or errors in the work or any other aspect in which the work materially fails to meet the provisions of the warranty requirements herein Contractor shall, at its own expense and within thirty (30) days of notification of the defect by the County, correct the defect, error or nonconformity.

The County shall give written notice of any defect to the Contractor. If the Contractor has not corrected defect within thirty (30) days after receiving the written notice, the County, in its sole discretion, may correct the defect itself. In the case of an emergency where the County believes delay could cause serious injury, loss or damage, the County may waive the written notice and correct the defect. In either case the County shall charge-back the cost for such warranty repair to the Contractor.

The Contractor is responsible for all costs of repair or replacement in order to restore the work to the applicable Contract requirements, including shipping charges, for work found defective within the warranty period, regardless of who actually corrects the defect.

**4.7 Compliance with Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) and the American with Disabilities Act of 1990 as amended (ADA)**

Pursuant to Title II of the ADA, and Section 504, Snohomish County must not discriminate against people with disabilities in providing services, programs or activities even if those services, programs or activities are carried out by contractors. The Contractor agrees that it shall provide all programs, services, and activities to County employees or members of the public under this Contract in the same manner as Snohomish County is obligated to under Title II of the ADA, and Section 504 and shall not deny participation or the benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with this section shall be a material breach of, and grounds for the immediate termination of, this Contract.

The Contractor agrees to provide to persons with disabilities access to programs, activities and services provided under the Contract or agreement, as required by the disability access laws as defined by SCC 2.460; and:

The Contractor shall not discriminate against persons with disabilities in providing the work under the Contract. In any subcontracts for the programs, activities and services under their Contract or agreement with the County, the Contractor shall include the requirement that the subcontract provide to persons with disabilities access to programs, activities and services provided under the Contract or agreement, as required by the disability access laws as defined by SCC 2.460, that the subcontractor shall not discriminate against persons with disabilities in providing the work under the Contract and that the subcontractor shall provide that the County is a third party beneficiary to that required provision.

**4.8 Independent Status of Contractor**

The Contractor agrees that Contractor will perform the services under this Contract as an independent contractor and not as an agent, employee, or servant of the County. This Contract neither constitutes nor creates an employer-employee relationship. The Contractor specifically has the right to direct and control Contractor's own activities in providing the agreed services in accordance with the specifications set out in the Contract. The County shall only have the right to ensure performance. Nothing in the Contract shall be construed to render the parties partners or joint venturers. The parties agree that the Contractor is not entitled to any benefits or rights enjoyed by employees of the County. Contractor shall not make any claim of right, privilege or benefit, which would accrue, to an employee under chapter 41.06 RCW or Title 51 RCW.

**4.9 Non-Disclosure Obligation**

Data provided by the County either before or after Contract award shall only be used for its intended purpose. Contractors and Subcontractors shall not utilize nor distribute the County data in any form without the express written approval of the County.

While performing the work under this Contract, the Contractor may encounter personal information, licensed technology, Software, Documentation, drawings, schematics, manuals, data and other materials described as "Confidential", "Proprietary" or "Business Secret". The Contractor shall not disclose or publish the information and material received or used in performance of this Contract.

This obligation is perpetual. The Contract imposes no obligation upon the Contractor with respect to confidential information which the Contractor can establish that: a) was in the possession of, or was rightfully known by the Contractor without an obligation to maintain its confidentiality prior to receipt from the County or a third (3rd) party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by the Contractor in good faith from a third (3rd) party having the right to disclose it without an obligation of confidentiality; or, d) is independently developed by the Contractor without the participation of individuals who have had access to the County's or the third (3rd) party's confidential information. If the Contractor is required by law to disclose confidential information the Contractor shall notify the County of such requirement prior to disclosure.

## **SECTION 5 Technical Specifications**

### **5.1 Introduction of Specifications**

It is the intent of these specifications to describe the minimum acceptable performance standards , installation and maintenance of a Noise and Operations Monitoring System (NOMS) at the Snohomish County Airport, Paine Field (Airport).

### **5.2 Background**

The Airport currently uses an ITT Exelis NOMS system that is utilizing exiting Larson Davis noise monitors.

The Airport uses for the NOMS include:

- A. Monitoring compliance with the Airports noise abatement arrival and departure procedures;
- B. Monitoring runway use percentages (nighttime and daytime);
- C. Collecting information for use in responding to noise complaints;
- D. Defining accurate representative aircraft departure and approach tracks for input into the FAA's Integrated Noise Model (INM) for generation of updated Noise Exposure Maps (NEMs) for the Airport;
- E. Tracking fleet mix by aircraft type; and Monitoring aircraft noise in the areas around the Airport (aircraft flight tracking within 25 miles of Paine Field).

### **5.3 Contractor Qualifications**

To be eligible for award, Bidder shall have five (5) consecutive years' experience providing, installing and maintaining NOMS software to airports throughout the United States and Europe and staff necessary to perform and/or carry out the requirements of this Invitation to Bid.

### **5.4 Name of the Product**

Noise and Operations Monitoring System (NOMS)

### **5.5 Technical Specifications**

- A. General Capabilities. The NOMS shall provide capabilities that can be categorized as follows:
  - 1. Data Retrieval, Extraction, and Archiving Capabilities;
  - 2. Noise and Operations Reporting and Analysis Capabilities;
  - 3. Aircraft Altitude Reporting and Analysis Capabilities;
  - 4. Graphical Presentation Capabilities; and Operations Inventory Capabilities.
- B. The system will require a FAA STARS feed for aircraft noise and operations from the ground (or an altitude low enough to accurately determine the runway used) to an altitude of at least 10,000 feet above Mean Sea Level and a distance of at least 15 nautical mile radius from the Airport. The noise and operations data source must be proven reliable (assumed to be commercial available STARS/radar data feed), meet the altitude and distance requirements,



and be accompanied by the required level of overall system reporting and analysis capability. The system must be able to identify the actual runway and flight track used by each aircraft originating or terminating on a runway at the Airport.

- C. The NOMS shall have the capability to obtain 4-dimensional (X, Y, Z, Time) flight path trajectories and corresponding identifying parameters (aircraft type, airline flight ID, tail number, and transponder code, etc.).
- D. The NOMS shall contain a model of the Paine Field's runways and property boundary and be able to correctly place and display the flight path trajectories in a proper relationship to those airports features. This capability requires that the NOMS be able to correctly identify the actual runway used by each flight trajectory, including taking each flight path trajectory down to its origin or termination on an Airport runway.
- E. The background display for the mapping portion shall be a GIS data feed. The map must be centered around Paine Field and tracks must reach 25 miles.
- F. The NOMS shall generate files for each calendar day that can be archived onto CD-R, DVD-R, or other archival media exported to or extracted for use in other software tools. The Airport requires access to this data indefinitely.
- G. The NOMS system shall consist of one workstation, and the number of users requiring training will not exceed five. In addition, the web based/hosted system must have the capability to have three concurrent logins.
- H. For use in monitoring compliance with Paine Field's noise abatement arrival and departure procedures, the NOMS shall provide the Airport with the ability to analyze the penetrations of the four dimensional flight trajectories through a vertical boundary in space. This capability will be used to check flight trajectories for compliance with standard departure flight corridors, and to flag each flight trajectory's compliance with or exceeding of the boundaries of that corridor for future analysis or reporting. This capability will also be used to monitor flight trajectories for arriving aircraft for compliance with established noise abatement procedures.
- I. The NOMS shall be capable of generating three-dimensional views of aircraft activity, and shall allow manipulation of the views by users. The NOMS shall be capable of reporting and analyzing a minimum of 365 days of data at one time.
- J. The NOMS shall be capable of reporting on aircraft traffic, or user specified subsets of aircraft traffic (such as only turbojet aircraft types), traversing user-specified airspace defined by a radius, geographic location, and altitude limit, and by "gates" entered by users as lines in views including reporting individual and average aircraft altitudes within that airspace.
- K. The NOMS shall be capable of providing a summary runway use breakdown of all aircraft utilizing the Airport, for a given user-specified time period. Additionally, the NOMS shall be capable of providing a summary on the runway use breakdown unique to the subset of aircraft traversing the user-specified airspace.
- L. The NOMS shall be capable of allowing printing of a complete list of the information for each of the aircraft being analyzed in a given time period. The complete listing shall include a separate

line for each aircraft and indicate the time, aircraft type, airline and flight number, tail number for GA operations, arrival or departure, runway used, etc.

- M. The NOMS shall give the user the ability to generate aircraft ground track plots (aircraft flight tracks) and output a plot file to paper and/or computer screen at any user-selected scale for different sizes of paper output media. The range of plotting scales shall be 2,000 ft. /in. to 10,000 ft. /in. The NOMS shall provide street map, GIS and/or aerial photography underlay of the flight track graphics. The NOMS shall have the capability to export plots to geographic databases such as Google Earth. The plot file output to paper or computer screen shall show the airport runways and property line as well as the individual aircraft flight tracks.
- N. As flight tracks will originate or terminate at the airport, a method shall be provided to adjust the position of the airport on the plot such that the geographic area in question can be shown as well as the airport and the associated photographic or map underlay. Arrival flight tracks shall be easily distinguishable from departure flight tracks. The NOMS shall provide the capability of creating and maintaining a database of flight trajectory identification information that allows the user to sort, select, group, and report the aircraft activity using a variety of selection parameters including airline, aircraft type, time period and runway.
- O. The NOMS database functionality shall allow reporting on a full year or more of aircraft activity at the airport in one run, enabling the Airport to monitor runway use and overall aircraft fleet mix for both daytime and nighttime periods and make comparisons between time periods.
- P. The NOMS must provide all information and reports required by this section for both civilian and military aircraft.
- Q. Additional Noise Monitoring Capabilities
  - 1. The NOMS shall provide the following noise monitoring components and Software:
    - a. The Software required to analyze and report noise measurements from up to 4 existing noise monitors (Larson Davis model number 831) and to correlate the noise measurements with operations data from the FAA STARS or other operations data system.
  - 2. The analysis Software shall correlate flight operations data with measured noise data and provide the following information about each flight event (takeoff, landing, or flyby):
    - a. Date;
    - b. Monitor Number;
    - c. Monitor Location (Site Number );
    - d. Local Time;
    - e. Airline or GA Identifier (e.g., N number);
    - f. Aircraft Type;
    - g. Flight Number;
    - h. Type of Event (takeoff, landing or flyby);
    - i. Runway;
    - j. Ground Speed (knots);
    - k. Elevation (AGL);
    - l. SEL (decibels to 0.1);

- m. Maximum A-Level (decibels to 0.1);
- n. Duration (seconds within 10 decibels of the maximum A Level); and any features that the Contractor suggests would make the system more useful such as portal features etc.

**R. Public Access to Data and Reports.**

1. All Software and Documentation provided by the Contractor or its subcontractors will have sufficient information and capabilities to enable the Airport to permit public inspection and examination and to provide electronic copies of public records stored, manipulated or retrieved by the System.
2. All Software and Documentation provided by the Contractor or its subcontractors will also have sufficient information to enable the Airport to create an index containing the following information with respect to each database used by the System without extraordinary commitments of staff or resources: (i) annotated list of data fields: name, description, and restricted field indicator; (ii) description of the format or record layout; (iii) frequency with which the database is updated; (iv) list of any data fields to which public access is restricted; (v) description of each form in which the database can be copied or reproduced; (vi) title of the database; (vii) owner of the data; (viii) narrative description of the database; (ix) person creating the index; and (x) purpose of the database. The information set forth in the preceding sentence constitutes a public record and may be disclosed by the Airport without the Contractor's consent.

**S. Security Requirements.**

The Airport is committed to protecting its information resources from unauthorized intrusion. To accomplish this, Information Security features must be included with Software/Hardware purchases, [(e.g. access permissions, encryption for restricted data and data that passes from trusted to un-trusted networks (FTP, RDP, telnet, etc), common authentication (Active Directory)].

## **5.6 Additional Features and Capabilities**

**A. Complaint System.**

A system that allows the Airport to receive, analyze and respond to complaints about noise. The proposed system shall include the following features:

- Receive complaint information entered manually (person, address, time of event, description of the complaint and time of complaint);
- Identify address on an electronic map;
- Correlate complaint with potential aircraft operations;
- Accumulate a database including person, address, time of event, time of complaint and description of the complaint and any other information that the Contractor believes appropriate;

- Ability to analyze data in the database; and ability to draft responses and add final responses to the database.
- Proven interface with Larson Davis Model 831 Sound Level Meter
- Integration of historical data including: complaint, flight track and noise data
- The preservation of the automated and manually assigned associations between related data such as track to complaint, noise to complaint, and track to noise event
- Integration of FAA sensor-based flight tracking source to include local radar feeds and ADS-B data
- Web-based NOMS.
- 2D and 3D real-time (less than five seconds delay) depictions of airspace and flight operations, including historic replay

**B. Automatic Noise Modeling System.**

A system that uses the flight information from the NOMS as input to the latest version of the FAA's Integrated Noise Model (INM) as the INM changes from time to time. The program shall model all operations at the airport during each 24-hour day (local time). Output shall include all standard INM output. The system shall automatically produce average daily output for days, weeks, months, and years. In addition, the system shall be able to produce average daily output for a user-defined period. Contractors who are offering this option should provide a full description of the Automatic Noise Modeling System, including the way it produces the INM input, the airports where it is currently in use and the correlation between model output and aircraft noise levels measured in the communities around the airports.

**5.7 Hardware**

The selected Contractor must integrate existing Airport owned Larson Davis model 831 noise monitors in addition to any additional necessary hardware associated with the NOMS. Any and all costs associated with integration of the Larson Davis sound meters into the NOMS system will be paid for by the contractor and made part of this invitation to bid.

**5.8 Customer Service.**

The Airport seeks quality Products and Services that are provided in a manner that is courteous, responsive, accessible, and seamless. The Products and Services to be provided by the selected Contractor will be delivered with patience, understanding, good will, and without regard to the Contractor's own convenience. The selected Contractor will be expected to use these guidelines in providing its Products and Services to the Airport:

- Accessible, courteous, responsive and seamless customer service is of highest priority for the Authority.
- Accessible service means that citizens have easy access to the organization.
- Seamless customer service means that a customer gets good service no matter who is responsible for providing the service.

- Responsible customer service means that the Contractor's employees know what they are doing; that information they give is accurate; that they have a good understanding of how to get problems and decisions made; that they are trained and evaluated for the jobs they are doing.
- Continuous improvements in customer service must be made in order to make Airport services accessible, responsive and as seamless as possible.
- The Airport requires up to 3 simultaneous login's to view flight tracking data.

## **5.8 Compatibility with Authority's IT System**

It is preferred, but not required, that the computer Hardware and Software for the NOMS fit within the Airport's current technology system. If contractor requires any additional hardware or software beyond a standard internet browser on a Windows 7 platform, contractor shall provide equipment necessary to perform this function.

Implementation of any new Hardware or Software should require only minimal changes to existing Airport systems. It is preferred that new Software use architectures (e.g. database and reporting solutions) be built upon or be compliant with those already implemented by the Airport.

Similarly, where system integration is required, new Software installation shall include the implementation of the necessary interfaces with the Airport's system, and the Contractor shall identify means of minimizing any changes to the existing systems that it is interfacing. The Contractor shall evaluate the Airport's current information technology system to ensure compatibility between its proposed NOMS and the Airport's system.

## **5.9 Training**

The Airport views training as a critical element of the Project. The Contractor shall submit a proposed Training Plan that shall outline the content, sequence and duration of each segment of each training session necessary to thoroughly and comprehensively train Airport personnel to fully utilize the System (the "Training Plan").

- A. The Training Plan will outline all subjects necessary to train Airport staff to fully understand and utilize all user functions of the System, and to train designated "trainers" to effectively train other Airport personnel to fully understand and utilize the user functions of the System.
- B. The Training Plan shall require the Contractor to provide the operator training and comprehensive "train the trainer" training for five Airport employees to be designated by the Airport; the Contractor will schedule the training classes and modules according to their appropriate phase of the Project.
- C. The Training Plan shall require the Contractor to provide technical descriptions and information associated with the Software and Hardware of the System to the Airport's IT personnel chosen to attend the training session.
- D. The Training Plan must take into account classroom resources and personnel scheduling.
- E. The Training Plan must include a detailed description of the types of training classes that will be conducted, the number of persons that can be trained in each session, and the total number of hours required for each person to be trained.

F. All training will be conducted on-site in Airport facilities.

G. The cost of all training referenced in this Section must be included in the Proposal pricing.

#### **5.10 Maintenance and Support Services.**

Beginning on the date of the Airport's Final Acceptance of the NOMS and continuing throughout the remaining term of the Agreement, the selected Contractor shall provide to the Airport the following Maintenance and Support Services:

- Prevention and Correction of System Defects;
- Prevention and Correction of Software Defects;
- Prevention and Correction of Hardware Defects, including all required parts, labor and travel expenses;
- Software Updates and Enhancements;
- Hardware Updates and Enhancements, including all required parts, labor and travel expenses; (excluding Larson Davis hardware installed on site).
- Any Additional Training Required by Authority Staff in the Use of Updates and Enhancements;
- Compliance with laws;
- Training and Documentation for Major Updates and Enhancements;
- Correction of Defects;
- Telephone Support;
- Remote Support;
- Onsite Support at least quarterly;
- Change Control Procedures;
- Severity Levels, Response Times, and Resolution Times;
- Disaster Recovery;
- Phone Logs;
- Technical Records
- Malfunction Service Reports for each incident for which the Contractor is responsible. The Contractor must complete, sign and deliver the Malfunction Service Report upon completion of the maintenance. The Report must contain a description of the malfunction and the dates and times of the following: the need for service reported by the Airport; the Contractor-initiated response; the Contractor's staff (by name) that arrived on site; the issue resolved. The Report shall also list all parts supplied and the time spent for repair; and
- Continuing flight track data for full operation of the NOMS.
- If the selected Contractor offers a hosted solution, the Maintenance and Support Services to be provided by the Contractor shall also include continuous operation of the hosted site throughout the term of the Agreement so as to provide to the Authority all data, reports, and capabilities to be provided by the NOMS that is offered by the Contractor, and by subsequent updates and enhancements, including both required and optional features.

#### **5.11 Related Items**

Any award resulting from this ITB may be expanded to cover related items provided that such products are normally furnished by the Contractor. Contractor shall agree to provide related products using the same pricing structure as the items covered by this ITB in Section [insert] Pricing (percent discount used to calculate the unit price shall be used to calculate the unit prices of related items added to the contract).

#### **5.12 Brand Name or Equal**

When products of a specific brand(s), material(s), construction, design, style, or size are named, they indicate the quality level or performance required for the products(s) in the invitation to bid.

The following are the salient characteristics of the products in the ITB.

Larsen Davis Model 831

These characteristics are provided for information purposes only. Alternate products must be submitted and approved prior to bid opening.

"Equal Products" may be considered providing they meet the same form, fit, function and quality of the original product(s) specified. The Bidder shall submit, at least ten (10) days prior to the bid due date, the brand, model, part number, MSDS, test results and any other documentation that can substantiate that the "Equal Products" are acceptable. An initial determination if the product is acceptable will be complete at least five (5) days prior to bid opening. Any samples shall be provided to Snohomish County at no charge. These products shall not void any warranty. The Bidder shall be responsible for any direct and consequential damage to equipment caused by their products.

Snohomish County retains the sole right to accept or reject "Equal Products" that are bid.

#### **5.13 Approved Equals**

To be submitted by Bidder if alternate noise monitors is desired.

Larson Davis model 831 is the standard for Snohomish County Paine Field and therefore, only approved equals will be accepted. See Sections 5.12 and 6.2.

### 5.14 Desired/Required Specifications

	Desired Specifications - Important	X	√	Your Exact Specifications
	<b>Desired Specifications: Acknowledge compliance of each item (1-13) by marking with a check (√).</b>	<b>REQUIRED</b>	<b>COMPLY</b>	Provide in the spaces below the exact specification of your actual proposed equipment corresponding to each line.
1.	Proven interface with Larson Davis Model 831 Sound Level Meter	X	<input checked="" type="checkbox"/>	As Larson Davis' (LD) exclusive partner in the deployment and integration of the 831 Sound Level Meters for airports, Exelis is the most experienced integrator of this equipment in the US, with more than five airports currently integrated, including PAE. No additional integration work would be required in Exelis' proposed NOMS solution since the 831 Sound Level Meters are already integrated in the system.
2.	Integration of historical data (approximately 5 years) including: complaint, flight track and noise data	X	<input checked="" type="checkbox"/>	Exelis has Paine Field's historic complaint, flight track and noise data already integrated in the existing proposed NOMS solution. There are no costs or risks from the conversions of the data into a new system. Specifically, Exelis' approach introduces no additional risks to the schedule, data loss or inconsistencies from reprocessing the data that are often associated with database conversions of historic noise and flight tracking data.
3.	The preservation of the automated and manually assigned associations between related data such as track to complaint, noise to complaint, and track to noise event	X	<input checked="" type="checkbox"/>	Exelis is the only vendor that can preserve the existing automated and manually assigned associations between flight track, complaint and noise event data.



				Other vendors can integrate flight track and noise data, but the correlations are performed in their system with different algorithms which frequently lead to different end results. The Exelis solution provides consistent results with both historic data and data collected in the future.
4.	Integration of FAA sensor-based flight tracking source to include local radar feeds and ADS-B data	X	<input checked="" type="checkbox"/>	Exelis is the exclusive provider of integrated FAA -sensor based flight tracking data, providing NexGen surveillance directly to its customers as well as secondary integrators. Exelis' NextGen surveillance data includes Exelis/FAA ADS-B sensors located at Paine Field Airport, local terminal radars, en route radars and flight plan data.
5.	Web-based NOMS with US-based data center	X	<input checked="" type="checkbox"/>	Exelis was the first NOMS provider to develop and deploy a professionally hosted NOMS. Our data centers are located in the US.
6.	Dynamic and configurable NOMS with the ability to have multiple windows depicting operations on one or more displays	X	<input checked="" type="checkbox"/>	This is inherent to our NOMS, Symphony® EnvironmentalVue™ (previously branded AirScene.com NOMS). EnvironmentalVue's powerful GIS applications support multiple window configurability including same screen display or multiple screens if available.
7.	2D and 3D real-time (less than five seconds delay) depictions of airspace and flight operations, including historic replay	X	<input checked="" type="checkbox"/>	EnvironmentalVue offers the NOMS industry's most-robust and integrated 2D and 3D depictions of airspace and flight operations, including a number of aircraft wire frames and airline liveries for both

				real-time and historical replay.
8.	Public portal access via IE, Apple or Android operating system (e.g. tablet/PDA applications)		<input checked="" type="checkbox"/>	Exelis' public portal, Symphony@PublicVue™, is the NOMS industry's first public portal that supports multiple operating systems (e.g. tablet/PDA applications) including IE, Apple, Android, Chrome, Firefox and Mozilla.
9.	User initiated GIS import mapping to include the minimum: <ul style="list-style-type: none"> <li>-ESRI type files</li> <li>-Airspace</li> <li>-IFR/VFR</li> <li>-Aerials</li> <li>-Road Maps</li> <li>-Misc. files such as airport layers</li> <li>-Noise Contours</li> </ul>	X	<input checked="" type="checkbox"/>	This is inherent to EnvironmentalVue's GIS mapping applications. EnvironmentalVue integrates/imports more than 30 GIS file formats including all of the required maps and formats outlined.
10.	2D and 3D depictions of gates and corridors	X	<input checked="" type="checkbox"/>	See also item #7 above. This is inherent to EnvironmentalVue's capabilities, resulting in rich and robust depictions of gates and corridors in both 2D and 3D.
11.	Compatible with Windows/Safari/Mozilla/Chrome operating systems		<input checked="" type="checkbox"/>	EnvironmentalVue will run on a number of platforms, including those listed, that are able to run Java.
12	Complaint system that meets the requirements of section 5.6A.	X	<input checked="" type="checkbox"/>	All of the capabilities listed are currently available in our existing and proposed solution at PAE. If the County elects to add the public portal option, complaints entered by the public will directly populate into the complaint database and become accesible in the NOMS, resulting in more time for staff to conduct analysis vs. data entry.

13	Ability to create FAA INM contours per section 5.6B	X	<input checked="" type="checkbox"/>	Per the revised requirement in Amendment No.2, EnvironmentalVue uses flight information from the NOMS as input to the latest version of the FAA's INM. The standard INM output includes data for all operations at the airport during each 24-hour day (local time).
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**SECTION 6 Bid Response**

**6.1 Rules of Price Evaluation**

Bids meeting all material requirements of this ITB will be evaluated on price. The Bid will be awarded to the lowest responsive and responsible bidder for Schedule I, NOMS Years 1 through 5 only. Schedule II, Optional Public Access Use Portal Items will not be used in determining the lowest bid offer.

Bidders are cautioned not to alter the specification, pricing information section, and the terms and conditions of this ITB. Any alteration may render a bid non-responsive. This means do not include your normal quote sheet as it may have terms and conditions that conflict with this ITB rendering your bid non-responsive. Bids stating price in effect at the time of shipment will not be accepted.

**6.2 Important Dates**

ITB is advertised: Wednesday, August 28, 2013

Questions due: Thursday, September 05, 2013, 3:00 p.m. Exactly Pacific Local Time

Equal Products  
submittal due: Thursday, Thursday, September 05, 2013, 3:00 p.m. Exactly Pacific Local Time

ITB due date: Tuesday, September 17, 2013, 11:00 a.m. Exactly Pacific Local Time

**6.3 Inter-local Agreement**

Are you willing to provide this product or service to other government agencies at the same bid price, terms and conditions until further notice? Snohomish County accepts no responsibility for the payment of the purchase price by other government agencies.

Yes  No

**6.4 Payment Method**

In addition to Section 3.4, the County may make payments for purchases under this contract using the County's VISA purchasing card (PCARD).

Are you willing to accept PCARD payments without any fees or surcharges?

Yes  No

**6.5 Delivery/Installation**

Delivery is required as soon as possible and not later than 30 days after placement of an order. Bid prices shall include delivery, FOB destination, to the following location(s):

Loc #1

Snohomish County

Paine Field Airport

3220 100<sup>th</sup> Street SW

Everett, WA 98204

**6.6 Bidders Contact Information**

**Primary Location**

Physical Address: 12930 Worldgate Drive Herndon, Virginia 20170

Mailing Address: 12930 Worldgate Drive Herndon, Virginia 20170

Name of Contact Person: Kathleen Taylor

Email: kathy.taylor@exelisinc.com

Telephone No. (Local/Toll Free): (703) 668 6308

Fax No. (Local/Toll Free): (703) 668-6211

UBI No.: 603143839

Washington State Contractor's License (if applicable): Not applicable

State hours and days of operation:

Hours: 8 ET a.m. to 5 ET p.m. Days: Monday to Friday

**6.7 Remit Address (where payment will be mailed):**

Huntington National Bank

Exelis L-3070

Columbus OH 43260

**6.8 Prompt Pay Discount**

Prompt payment discounts offered by Contractors shall be used to calculate the low bid provided the discount offered allows a minimum of 20 days for payment. The number of days is calculated from the date of acceptance of goods or services or from the date a complete invoice is date stamped as received by Snohomish County, whichever event occurs last, and the check/warrant date. The County will take advantage of any prompt payment discount terms bid. Discount periods shall be extended if:

- The date printed on the invoice is more than three days earlier than the invoice receipt date;
- The delay is caused awaiting a credit memo, invoice correction, adjustment or reissue;
- An invoice is received prior to receiving goods ordered.

**Prompt pay discount offered N/A % - N/A Days, Net N/A**

If no discount is offered, the County's standard payment terms are Net 30 days.

**6.9 Pricing**

To be considered responsive, Bidders shall bid on all items including the optional items. Bids may be deemed non-responsive if Bidder fails to complete all of the items listed.

**Schedule I**

Item #	Estimated Qty	Description	Unit Price	Extended Price
1.	LS	NOMS, year 1	\$ 72,212	\$ 72,212
2.	LS	NOMS, year 2	\$ 68,061	\$ 68,061
3.	LS	NOMS, year 3	\$ 70,101	\$ 70,101
4.	LS	NOMS, year 4	\$ 72,204	\$ 72,204
5.	LS	NOMS, year 5	\$ 74,373	\$ 74,373
			<b>TOTAL</b>	<b>\$ 356,951</b>

**Schedule II - Option**

6.	LS	View Flight Tracking Web-based Public Access Use Portal, year 1	\$ 23,000	\$ 23,000
7.	LS	View Flight Tracking Web-based Public Access Use Portal, year 2	\$ 15,450	\$ 15,450
8.	LS	View Flight Tracking Web-based Public Access Use Portal, year 3	\$ 15,915	\$ 15,915
9.	LS	View Flight Tracking Web-based Public Access Use Portal, year 4	\$ 16,392	\$ 16,392
10.	LS	View Flight Tracking Web-based Public Access Use Portal, year 5	\$ 16,881	\$ 16,881
			<b>TOTAL</b>	<b>\$ 87,638</b>

## 6.10 References

List the names and addresses of four (4) customers, for whom the bidder has performed or provided similar goods and/or services, preferably in Washington State, for a period not less than one (1) year. Include dates, contact persons and telephone numbers. Should any reference submitted by a bidder be found unsatisfactory, Snohomish County, at its sole option, may reject that bidder's bid. Snohomish County shall be the sole judge in determining a satisfactory/unsatisfactory reference response. **Reference must be submitted with bid.**

Company Name: King County International Airport  
7277 Perimeter Road S  
Company Address: Seattle, WA 98108  
Company Phone: (206) 296-7437  
Contact Person: Ms. Sharyn Parker  
Contact Email: sharyn.paker@kingcounty.gov  
Dates: October 1996 - Present

Company Name: Phoenix Sky Harbor International Airport  
Company Address: 3400 E Sky Harbor Blvd  
Company Phone: (602) 273-4300  
Contact Person: Mr. James Davies  
Contact Email: james.davies@phoenix.gov  
Dates: November 1995 - Present

Company Name: Hartford Bradley International Airport  
Terminal A - 3<sup>rd</sup> Floor  
Company Address: Windsor Locks, CT 06096  
Company Phone: (860)292-2082  
Contact Person: Mr. Kevin P. Lynch  
Contact Email: klynch@bradleyairport.com  
Dates: March 2009 - Present

Company Name: McCarran International Airport  
5757 Wayne Newton Blvd.  
Company Address: Las Vegas, NV 89119  
Company Phone: (702) 261-5510  
Contact Person: Mr. Jeffrey Jacquart  
Contact Email: jeffj@mccarran.com  
Dates: August 2001 - Present





**6.11 Bid Form and Signature**

**TOTAL BID PRICE: \$ 444,589 (Including WSST)**

**BIDDERS SHALL COMPLETE AND SIGN THE FORM BELOW**

We acknowledge that all Addenda ( 1 through 2 ) have been examined as part of the Contract documents. The submittal is signed by an authorized representative of the Bidder accepting all terms and conditions contained in the bid and any addenda. We acknowledge that attaching our terms and conditions or modifying the ITB terms and conditions may result in our bid being rejected.

**Company Name**

Exelis Inc.

**Address**

12930 Worldgate Drive

**City/State/Zip Code**

Herndon/VA/20170

**Signature**

**Print Name and Title**

*GREGORY P. HUGHES, SR. CONTRACTS MANAGER*

Kathleen Taylor, Contracts Manager

**Email**

kathy.taylor@exelisinc.com

**Phone**

(703) 668-6308

**Fax**

(703) 668-6211

The following information is optional:

Is your firm a Minority Business Enterprise (MBE), Women Business Enterprise (WBE) or a Disadvantaged Business Enterprise (DBE)?

MBE  Yes  No

WBE  Yes  No

DBE  Yes  No

Do you have a certification number?  Yes  No

If yes, provide certification number and state or entity who issued the number:

Certification No.: \_\_\_\_\_

State or Entity Issued: \_\_\_\_\_

Email: [purchasing@co.snohomish.wa.us](mailto:purchasing@co.snohomish.wa.us) / FAX (425) 388-3931

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## NextGen Surveillance Data License Agreement

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**Licensee:** Snohomish County  
Purchasing Division  
Robert J. Drewel Building, 6<sup>th</sup> Floor  
3000 Rockefeller Avenue, M/S 507  
Everett, WA 98201

**Airports:** Snohomish County Airport/Paine Field (PAE)

**Effective Date:** Date last signed

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This License Agreement ("Agreement") is between the Licensor, Exelis Inc. ("Exelis"), having a place of business at 12930 Worldgate Drive, Herndon, Virginia 20170 and the party identified as "Licensee" above and subsequently in this Agreement. Exelis and Licensee may be collectively referred to herein as the "Parties", or singularly as a "Party". This product/service is intended to be used solely by the Licensee.

### RECITALS

**WHEREAS**, Exelis owns and operates a national surveillance network providing Automatic Dependent Surveillance – Broadcast (ADS-B) services under contract to the US Government; and

**WHEREAS**, Exelis owns and operates a national network of service delivery points at Federal Aviation Administration (FAA) air traffic control facilities to which Exelis delivers ADS-B data to the US Government and from which the US Government provides Exelis with radar surveillance data; and

**WHEREAS**, Exelis and the US Government have agreed and codified under contract that the distribution of air surveillance data under strict controls to responsible users could potentially provide significant benefit to such users and the U.S. flying public; and

**WHEREAS**, Licensee desires to procure the NextGen Data as set forth herein and Exelis desires to provide such service.

1. **Purpose of this Agreement.** Subject to the terms and conditions of this Agreement, Exelis agrees to grant Licensee a non-exclusive, limited, and revocable right to use NextGen Data in Symphony® EnvironmentalVue™ as set forth herein.

2. **Definitions.**

- a. **NextGen Data:** Exelis NextGen Data is a multi-sensor based surveillance fused data feed available for the U.S. National Airspace System ("NAS"), as set forth in Attachment "A". The NextGen data feed contains ADS-B data derived directly from the U.S. national ADS-B Network owned by Exelis, and U.S. Government-sourced data including but not limited to: FAA en route and terminal secondary surveillance data, airport surface surveillance data from the FAA Airport Surface Detection Equipment Model X (ASDE-X), and flight plan data from the FAA host system. The NextGen data also includes value added content provided by Exelis through the application of proprietary algorithms and data. Ownership of and all other rights to the NextGen Data remains with Exelis and the FAA. Specifically, the NextGen Data is categorized as set forth in Table 1 below:

## NextGen Surveillance Data License Agreement

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**Table 1: Categories of NextGen Surveillance Data Services**

Requirement Mnemonic	Requirement
NAS-Wide Service Area	Data shall be provided for CONUS, Alaska, Hawaii, and Puerto Rico, <u>excluding the surface of any airports</u> . Coverage shall be equivalent to current radar coverage.
Terminal Service Area	Data shall be provided for a volume 30 nautical miles around the center of the airport extending to a height of 20,000 feet, <u>excluding the surface of the airport</u> . Coverage shall be equivalent to current radar coverage.
ASDE-X Airport Service Area	Data shall be provided for the surface of an ASDE-X airport. Coverage shall be equivalent to current ASDE-X surface coverage.

- b. **National Air Space (NAS):** The FAA-defined, 3-dimensional air space volume above the continental United States of America and its legal territories.
  - c. **Interface Software:** Means the software, methods and processes provided by Exelis to allow the Licensee to interface with the NextGen surveillance data.
  - d. **Service/Services:** Provisioning of NextGen data, NextGen data delivery, maintenance of NextGen data delivery system and service level agreement (SLA) as set forth in Attachment "A"
  - e. **"Agreement"** means this Exelis NextGen Data License Agreement.
  - f. **"Derivative Work(s)"** means a work which is based upon one or more pre-existing works, such as a revision, enhancement, modification, translation, abridgement, condensation, expansion, or any other form in which such pre-existing work(s) may be recast, transformed, or adapted, and which, if prepared without authorization of the owner of the copyright in such pre-existing work(s), would constitute a copyright infringement.
  - g. **"Materials"** means any text, data compilations, photographs, data instruction packets, graphics, illustrations, artwork, video, sound, Exelis documentation, Exelis NextGen Data, instructions, help guides, tutorials and any other contents of the Exelis Website, and other information that is available to Authorized Users via the Exelis Next Gen Data or that relate to the Exelis Next Gen Data and is provided in printed or electronic form to Licensee from Exelis.
  - h. **"Third Party"** means individuals or entities other than Licensee and Exelis and their affiliates and employees.
3. **License General Terms and Conditions.**
- a. **NextGen Data** will be provided to Licensee solely for use in Exelis' Noise and Operations Management System ("NOMS") by Licensee personnel as specifically permitted in this Agreement. Ownership of the NextGen Data remains with Exelis.
  - b. **Authorized Use:** Authorized Use of the NextGen data is limited to use for in NOMS and only by Licensee personnel. Authorized use includes:

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## NextGen Surveillance Data License Agreement

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- (1) Public visualization of flight tracks delayed a minimum of ten (10) minutes;
  - (2) Reports including graphics and text as generated directly from the NOMS;
  - (3) Airport community engagement and communication, such as:
    - (a) Response letters to complainants
    - (b) Reports to the authorities (published on website or hardcopy)
    - (c) Reports to the communities (published on website or hardcopy)
    - (d) Newsletters to communities
    - (e) Community meetings using viewers or other tools provided in by NOMS product
  - (4) Export to INM for contour building
  - (5) Internal (within airport) engagement with or reports from NOMS to other Operational departments of Licensee
- c. **Prohibited Use:** The restrictions herein pertaining to the use of the NextGen Data includes all data provided under this Agreement, any stored or archived data originating from the data provided under this Agreement, and any subset, part, portion, or derivative data originating from the data provided under this Agreement.
- d. **Restrictions:** Licensee agrees as follows and shall flow-down these restrictions to its clients:
- d.1. THE NEXTGEN DATA PROVIDED UNDER THIS AGREEMENT MAY NOT BE UTILIZED TO SUPPLANT AIR TRAFFIC CONTROL OR CONTROL ADVISORY SERVICES PROVIDED BY THE FAA.
  - d.2. LICENSEE IS EXPRESSLY PROHIBITED FROM RE-SELLING NEXTGEN DATA.
  - d.3. Licensee shall be responsible and liable for any and all uses of the NextGen Data by Licensee, regardless of whether such use is restricted or not restricted by this Agreement. Licensee shall indemnify Exelis from any and all liabilities associated with any use or distribution of the data by Licensee in accordance with the Indemnification clause(s) of this Agreement. The FAA shall not be held responsible or retain legal obligation as to the accuracy, validity, or continued availability of the data being shared.
  - d.4. The distribution of the live real-time NextGen Data feed must be strictly controlled for the reasons of safeguarding public safety, security, and privacy while protecting the applicable US Government and Exelis business interests. The NextGen Data is for Licensee use only as an integrated component in NOMS and shall NOT be disseminated, distributed, or made accessible by Licensee, in any form, either directly or indirectly, to the public or to any third party or parties, except third parties as specifically and within the very narrow parameters authorized in this Agreement.
  - d.5. The recipient of National Airspace System surveillance data (i.e. NextGen Data) under this agreement shall not for any reason initiate contacts with the FAA for the purpose of discussing observations made from the data regarding the operation of the NAS, including but not limited to Air Traffic Control, flight routing, and flight planning. This restriction,

## NextGen Surveillance Data License Agreement

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however, shall not apply to aircraft and airport operators who have ongoing interaction with the FAA for discussions as part of their normal course of business with the FAA and may use the data to facilitate and provide better insight for such discussions.

d.6. Licensee shall NOT transmit or utilize the live real-time NextGen Data feed for any purpose or application outside of the United States of America except as provided herein.

d.7. Licensee shall not use the NextGen Data in violation of any Federal Aviation Administration regulations or other regulations or laws and, without limiting the generality of the foregoing, Licensee shall not export, re-export or use the NextGen Data or any copy thereof in violation of the export control laws or other laws of the United States of America or any other country. The Licensee shall make no representation that either the United States Government or the Federal Aviation Administration endorses, guarantees or makes any representation about the availability, accuracy, reliability, or any other quality of the NextGen Data.

#### 4. Fees.

Services and Fees for the NextGen Data begin upon establishment of the data delivery service at the designated point of delivery. For establishment of services in 2013, the Licensee agrees to compensate Exelis for the services described in Section 1 as set forth in Table 2 below:

**Table 2: NextGen Data Subscription Fees**

NextGen Data Service	Annual Fee <sup>1</sup>
Annual Data Set Subscription Fee for use of Terminal Service Area data (excluding Surface) for an Individual Airport <sup>1</sup> in EnvironmentalVue	\$14,000

#### Notes

<sup>1</sup> Pricing is included in the lump sum pricing provided in this bid.

The Pricing provided above is Exelis proprietary and competition sensitive information for providing NextGen data. This pricing shall not be disclosed to any third party.

For the duration of the Agreement, on each anniversary of the Effective Date of this Agreement, the Annual Service Area Subscription Fee will increase by 3%, as outlined in the lump sum pricing provided in this bid.

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## NextGen Surveillance Data License Agreement

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### 5. Term, Termination, and Breach.

The Effective Date of this Agreement is set forth on Page 1. This Agreement will terminate five years from the Effective date.

Exelis shall have the right to terminate this Agreement in whole or in part if its prime contract for ADS-B is terminated by the FAA, the FAA fails to exercise an option year, or the contract ends.

### 6. Class of Data.

The Class Type of Data that the Licensee will be entitled to receive will be determined by the FAA User Class Guidelines for Commercialized Surveillance and Broadcast Services Data Release. The applicable license class shall be shown in Attachment "D".

### 7. Ownership and Rights to Air Surveillance Data and Data Interfaces.

The Parties agree that as between Exelis and Licensee, Exelis owns all right, title and interest, including without limitation all Intellectual Property Rights, in and to the NextGen Data and Interface Software and all technology, software, documents and other materials relating to the Services. The delivery of Services under this Agreement does not constitute "sale" of the products or transition of any ownership of the afore-stated rights, title, or interest.

### 8. Support and Maintenance/System Availability.

Ongoing system maintenance as detailed in Attachment "B" will be performed by Exelis as part of the subscription service and as part of the subscription price. Subject to Licensee's payment of the License fees and set forth in this Agreement, Exelis will provide Licensee support regarding the use and operation of the Service, as detailed in the Attachment "B".

Uptime and general system availability is described in Attachment "B" to this Agreement.

### 9. Authorized Access.

Licensee agrees to take sufficient precautions to protect the NextGen Data and Interface Software from unauthorized access, including access limitations imposed by this Agreement, applicable US export control laws and regulations, and any other applicable law, regulation, or statute. Licensee shall maintain the confidentiality of the Access Codes and instruct its staff to maintain the confidentiality of the Access Codes. Licensee agrees to promptly, but in any event within 24 hours or earlier as may be required by applicable law, notify Exelis of any unauthorized use of any Access Codes or any other breach of security of which Licensee becomes aware. Licensee shall be responsible for any damages or losses incurred by Exelis or any third party resulting from breach of this Section.

Licensee agrees and understands that Exelis, in its sole discretion, may prevent Licensee access to the Services if Exelis or the US Government reasonably believes that public safety, security, or privacy are compromised or potentially compromised through the use of the Services. The US Government retains the right to direct the complete or partial cessation of NextGen Data broadcasts in the event of an emergency or security related circumstance without notice to the Exelis and/or Licensee.

### 10. Proprietary Information - Restrictions on Use and Disclosure.

Licensee acknowledges that the NextGen data subscription provided herein is available only through the approval and authorization of the US Government, Department of Transportation, Federal Aviation

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## NextGen Surveillance Data License Agreement

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Administration (FAA) under the terms of Exelis' FAA ADS-B prime contract and, by entering into this Agreement, Licensee authorizes Exelis to provide any and all Licensee-related information related to or resulting from this Agreement to the US Government to the same extent as if the US Government were a party to this Agreement.

Additionally, Licensee acknowledges that any and all authorized uses of the NextGen Data specifically identified in this Agreement, regardless of whether or not the specific usage was developed or conceptualized by Licensee and/or the specific authorization was requested by Licensee, may be included by Exelis in any other license or Agreement issued by Exelis to any other licensee at the sole discretion of Exelis and any other licensee may use the NextGen Data for such similar purposes. Licensee waives all rights, for itself and any party working with or on behalf of Licensee, to patent, invention, intellectual property, or any similar right or claim in regard to such data usage by Exelis or any Licensee.

### 11. Release of Data to Legal Authorities.

In the event Licensee receives a subpoena or other validly issued administrative or judicial process requesting NextGen Data, or any part or derivative thereof, Licensee shall promptly notify Exelis of such receipt and cooperate reasonably with any efforts of Exelis or the US Government to limit or control such data release and may, thereafter, comply with such subpoena or process to the extent required by law.

If Licensee is or becomes aware of any active or pending law, regulation, statute, legislation, court decision, or any such edict or pronouncement by any entity of authority that Licensee's use of the NextGen Data results in a requirement for its release or dissemination, in whole or in part, beyond the limited scope intended by this Agreement, Licensee shall immediately cease access to and use of the Services and immediately notify Exelis of such circumstance in accordance with the Notices section herein.

### 12. Representations and Warranties.

Exelis shall exert commercially reasonable efforts to deliver to Licensee all data transmitted through the Service in an accurate, complete and timely manner. Exelis' hosting standards shall conform to prevailing industry standards for hosting computing and data communications services supporting similar applications.

### 13. DISCLAIMERS.

EXELIS, TO THE FULLEST EXTENT PERMITTED BY LAW, DISCLAIMS ALL WARRANTIES NOT EXPRESSLY GRANTED IN THE AGREEMENT, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND NON-INFRINGEMENT OF PROPRIETARY OR THIRD PARTY RIGHTS. EXELIS DOES NOT WARRANT THAT THE SERVICES WILL BE OR OPERATE ERROR-FREE. NEITHER EXELIS NOR ANY OF ITS PROVIDERS OF INFORMATION, INCLUDING BUT NOT LIMITED TO THE FEDERAL AVIATION ADMINISTRATION, SHALL HAVE ANY LIABILITY FOR THE ACCURACY OF THE DATA CONTAINED ON THE SERVICES OR FOR DELAYS OR OMISSIONS THEREIN. LICENSEE ACKNOWLEDGES THAT DATA CONTAINED IN THE SERVICES SHALL BE USED FOR INFORMATIONAL PURPOSES ONLY, AND SHALL NOT BE USED FOR SAFETY PURPOSES. LICENSEE FURTHER ACKNOWLEDGES THAT THE DATA DOES NOT ALTER LICENSEE'S OBLIGATION TO ADHERE TO APPLICABLE FEDERAL AVIATION REGULATIONS AND AIR TRAFFIC CONTROL INSTRUCTIONS AND PROCEDURES.



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## NextGen Surveillance Data License Agreement

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IF LICENSEE IS DISSATISFIED WITH THE SERVICES AS A RESULT OF EXELIS BREACH, THEN, TO THE MAXIMUM EXTENT AUTHORIZED BY LAW, LICENSEE'S SOLE REMEDY IS TO DISCONTINUE USE OF THE SERVICES AND TERMINATE THIS AGREEMENT. IN NO EVENT SHALL EXELIS OR THE FEDERAL AVIATION ADMINISTRATION, BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY INDIRECT DAMAGES, INCIDENTAL OR CONSEQUENTIAL DAMAGES, SPECIAL DAMAGES, EXEMPLARY DAMAGES OR LOST PROFITS RESULTING FROM THE USE OR INABILITY TO USE THE SERVICES, WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER EXELIS IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EXELIS' TOTAL LIABILITY TO LICENSEE FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE) OR OTHERWISE, EXCEED THE AMOUNT PAID TO EXELIS BY LICENSEE FOR SUCH SERVICES.

### 14 Risk of Loss / Insurance.

Licensee acknowledges that the prices charged by Exelis for the Services provided herein are based on the expectation that the risk of any loss or injury that might be incurred directly or indirectly in the use of the Services or resulting from the use of the Services will be borne by Licensee. Licensee shall maintain at its expense commercial comprehensive general liability insurance (including bodily injury, property damage, product liability, contractual liability and completed operations coverage) in a minimum amount of two million dollars (\$2,000,000) per occurrence and annual aggregate.

### 15. Indemnification.

Neither the US Government nor Exelis shall be held responsible or retain legal obligation as to the accuracy, validity, or continued availability of the Services provided herein.

To the extent permitted by law, Licensee agrees to indemnify and hold harmless the US Government, its agents, officers, employees or representatives and Exelis, its agents, officers, employees or representatives (the "indemnified parties") from and against all claims, demands, damages, liabilities, losses, suits, and judgments (including the costs and expenses incident thereto) which may accrue against, be suffered by, be charged to, or recoverable from the Indemnified Parties, arising out of the US Government providing surveillance data to Exelis and arising out of negligent acts or omissions of Licensee, its employees, agents, affiliates, or contractors in use of the data hereunder, except to the extent caused by negligence or willful misconduct of the Indemnified Parties.

In the event of any claim or suit against the US Government or Exelis arising from Licensee's negligent use or handling of US Government surveillance data provided to Licensee during the performance of this Agreement, Licensee will indemnify and save and hold harmless the US Government, its officers, agents and employees acting for the US Government and Exelis, its agents, officers, employees or representatives against any liability, including costs and expenses incurred by the US Government in defending such claim or suit (hereinafter collectively "losses"), to the extent such losses were caused by Licensee's negligent use or handling of such US Government surveillance data. Licensee will require any third party granted access to the data by Licensee under this Agreement to accept the same indemnification obligations.

Licensee agrees to defend, indemnify, and hold harmless Exelis, its affiliates, parents and subsidiaries and its and their officers, directors, employees and agents, from and against (i) any claim by any third

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party arising from Licensee's use of the Services and (ii) any award of monetary relief on such claim and reasonable expert and attorney's fees and costs incurred in defending such claim.

In the event that the Indemnified Party gives the Indemnifying Party notice of a third party claim covered under this Section, the Indemnifying Party shall assume the defense of such third party claim with counsel reasonably satisfactory to the Indemnified Party. The Indemnifying Party shall not be permitted to compromise or settle such claim subject to indemnification without the Indemnified Party's consent, unless there is (a) no finding or admission of any violation of the rights of any third party by the Indemnified Party; (b) no effect on any other claims that may be made by the Indemnified Party; (c) no injunctive or other equitable relief is entered against the Indemnified Party, and (d) the settlement is solely for money damages for which the Indemnified Party is fully indemnified. Notwithstanding the right of the Indemnifying Party to assume the defense of any claim to which the Indemnified Party may become a party or target, the Indemnified Party shall have the right to employ separate counsel and to participate in the defense of such action. The Indemnifying Party shall bear the reasonable fees, costs and expenses of such separate counsel, if: (i) the use of the counsel chosen by Indemnifying Party to represent the Indemnified Party would present such counsel with a conflict of interest; (ii) the defendants in, or targets of, such claim include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to those available to Indemnifying Party (in which case Indemnifying Party shall not have the right to direct the defense of such claim on behalf of the Indemnified Party); (iii) in the exercise of the Indemnified Party's reasonable judgment, the Indemnifying Party shall not have employed satisfactory counsel to represent the Indemnified Party within a reasonable time after notice of the institution of such claim; or (iv) Indemnifying Party shall not have assumed the defense of such claim. At the written request of the Indemnified Party, Indemnifying Party shall advance funds to the Indemnified Party to cover claims for which the Indemnified Party may be indemnified hereunder.

### 16. Subordination.

Licensee agrees that this Agreement is subject and subordinate at all times to any agreement, current or future, between Exelis and the US Government pertaining to the authorized use or distribution of the Services provided by this Agreement.

### 17. No Waiver.

No provision of this Agreement will be deemed to have been waived by either Party except my Amendment executed in accordance with this Agreement. No custom or practice which may develop between the Parties in the administration of this Agreement is to be construed to waive or lessen any Party's right to insist upon strict performance of this Agreement.

### 18. Cumulative Rights and Remedies.

The rights granted in this Agreement are cumulative of every other right or remedy that the enforcing Party may otherwise have at law or in equity or by statute and the exercise of one or more rights or remedies will not prejudice or impair the concurrent or subsequent exercise of other rights or remedies.

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19. **Covenant of Good Faith.**

Each party agrees that, in its respective dealings with the other party under or in connection with this Agreement, it shall act in good faith. Additionally, both parties agree to reasonably cooperate with the other in any inquiries relating to compliance with the terms and conditions of the agreement.

20. **Relationship.**

Nothing contained in this Agreement shall be deemed or construed by the Parties hereto or by any third person or party to create any relationship of partnership, joint venture, or any association between Exelis and Licensee other than as a licensor and Licensee within the narrow confines of this Agreement. The Parties agree not to make any statements, written or verbal, or cause or encourage others to make any statements, written or verbal, that defame, disparage or in any way criticize the personal or business reputation, practices, or conduct of the other Party its employees, directors, and officers. The Parties acknowledge and agree that this prohibition extends to statements, written or verbal, made to anyone, including but not limited to, the news media, investors, potential investors, any board of directors or advisory board or directors, industry analysts, competitors, strategic partners, vendors, employees (past and present), and clients.

21. **Publicity.**

Licensee shall not issue any marketing, advertising, promotional materials, or public information releases, which references the Exelis in relation to this Agreement or any products or services provided by the Exelis without first having obtained the prior written approval of Exelis.

22. **Survival.**

Any paragraph or section, which by its terms and nature, are meant to survive termination of this Agreement shall survive such termination. Such paragraphs and sections include, without limitation, restrictions on the use and dissemination of Air Surveillance Data, ownership of rights, title, and interest, restrictions on the use of Exelis proprietary data in development of competing products, restrictions on the use and disclosure of confidential information, disclaimers and indemnification, dispute resolution, and restrictions on publicity.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement the date last written below.

**Exelis Inc.**

**Licensee**

By:

*[Handwritten Signature]* 9/13/13  
Signature

Typed Name: Sharon Goldin  
GREGORY P. HETHE'S  
Title: Contracts Manger

*S.R. CONTRACTS MANAGER*

By:

\_\_\_\_\_  
Signature

Typed Name:

Title:

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### Attachment "A" – Service Level Agreement

#### 1. Definitions

The following boldface terms will have the definitions set forth below:

**1.1 "System Uptime"** will mean the total amount of time during any calendar month, measured in minutes, during which data is being sent to Licensee.

**1.2 "Scheduled Downtime"** will mean the total amount of time during any calendar month, measured in minutes, during which data is not being sent to Licensee, due to planned system maintenance performed by Exelis. Exelis will exercise reasonable efforts to perform scheduled system maintenance during non-business hours based on Eastern Standard Time (EST).

**1.3 "Unscheduled Downtime"** will mean the total amount of time during any calendar month, measured in minutes, during which data is not being sent to Licensee, other than Scheduled Downtime, as defined above.

**1.4 "System Availability"** will mean, with respect to any particular calendar month, the ratio obtained by subtracting Unscheduled Downtime during such month from the total time during such month, and dividing the difference by the total time during such month.

#### 2. System Performance

##### 2.1 System Availability:

System availability shall be 0.995 measured from existence of data at the NAS boundary to delivery through the NextGen Gateway Servers. Availability shall be measured over a monthly period. Coordinated interruptions of service for system maintenance or interruption by the FAA shall not count against system availability. The System Availability shall be calculated as follows:

$$\text{System Availability} = \frac{\text{(Total Monthly Time – Unscheduled Down Time)}}{\text{Total Monthly Time}}$$

NOTE: "Total Monthly Time" is deemed to include all minutes in the relevant calendar month to the extent such minutes are included within the Term of this Agreement.

The following shall not be considered toward any reduction in System Availability measurements: (i) Licensee's breach of any provision of this Agreement; (ii) non-compliance by Licensee with any provision of this Addendum; (iii) poor or inadequate performance of Licensee's systems; (iv) equipment failures; (v) acts or omissions of Exelis or suppliers; or (vi) force majeure.

**2.2 Access to Support; Response Times:** Licensee may report Unscheduled Downtime by email at [SymphonySupport@exelisinc.com](mailto:SymphonySupport@exelisinc.com) 24 hours a day, 7 days a week. Exelis will exercise commercially reasonable efforts to respond to reports of Unscheduled Downtime email acknowledgement within two (2) hours of each such report during normal business hours or the next business day if the report is

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received after hours, on weekends or federal holidays. All methods for reaching the support team are as follows:

Email: [symphonysupport@exelisinc.com](mailto:symphonysupport@exelisinc.com)

Hotline: 877-448-2647 (8AM-6PM EST)

Customer Support Portal: <https://secure.symphonycdm.com/support> (contact support team for username and password)

Chat: <https://home-c7.incontact.com/inContact/ChatClient/ChatClient.aspx?poc=15eade5-7dca-4d1e-9174-e91e70e308ff&bu=4593878> (Link found in product "Help" menus and login screens.)

### 3. Measurement and reports

**3.1 System Monitoring and Measurement:** Exelis will provide for monitoring of System Availability on an ongoing basis. All measurements of System Availability will be calculated on a monthly basis for each calendar month during the Term.

**3.2 System Performance Reports:** Upon Licensee's request, Exelis will provide designated Licensee personnel with a monthly report that summarizes the operational status of the data availability the previous month. The report will identify availability of the data feed and occurrence of any maintenance events. If Licensee disagrees with any measurement or other information set forth in any such report, it must so inform Exelis in writing within five (5) calendar days after receipt thereof, provided that the accuracy of any such report shall be deemed conclusive unless such notice is provided by Licensee. Any such notice must indicate specific measurements in dispute and must include a detailed description of the nature of the dispute. Exelis and Licensee agree to attempt to settle any such disputes regarding System Availability in a timely manner by mutual good faith discussions.

**4. REMEDIES.** In the event Unscheduled Downtime occurs, Exelis will undertake commercially reasonable efforts to remedy such Unscheduled Downtime within a commercially reasonable timeframe. If Exelis is unable to meet the System Availability standards set forth in Section 2.1, Licensee shall be entitled to the following Licensee Credits, provided that the maximum number of Licensee Credits to be issued by Exelis to Licensee for any and all Unscheduled Downtime shall not exceed one month of service. In addition, upon request from Licensee, historical data (if available) for the Downtime period will be provided by Exelis.

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Length of Unavailability	Licensee Credit*
4 to 24 hours of continuous Unscheduled Downtime	1 day of service fees credited (i.e., 1/30 monthly fees)
24 to 48 hours of continuous Unscheduled Downtime	2 days of services fees credited (i.e., 1/15 monthly fees)
48 to 72 hours of continuous Unscheduled Downtime	3 days of service fees credited (i.e., 1/10 ** monthly fees)

\* Licensee Credit shall be applied to the next invoice for Licensee Fees.

\*\* Each block of 72 hours of continuous Unscheduled Downtime thereafter shall be credited 3 days of service fees.

NOTE: For more than 168 hours of total Unscheduled Downtime, 1 full month of Licensee fees shall be credited.

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Attachment "B" – FAA User Class Guidelines

Class Type	Sub-Class Type	Data Requestor Type	Definition of Requestor Type	Delayed* or Real-Time **	Filtering Required	FAA Notice or Approval
1	1A	Federal Government (Civil)	Agencies and Departments under the Executive, Legislative, and Judicial Branches of the U.S. Federal Government	Real-time	Yes	Notice
	1B	Federal Government (Security, Intelligence, Defense Agencies)	Agencies and Departments under the Executive, Legislative, and Judicial Branches of the U.S. Federal Government directly involved in security, intelligence and defense activities	Real-time	No	Notice
2	2A	Federally Funded R&D Centers (FFRDC)	Organizations that conduct R&D for the US Gov as administered in accordance with CFR Title 48, Part 35, Section 35.017	Real-time	Yes	Notice
	2B	Non-USG ANSPs in Support of FAA Reciprocity	Non-US Air Navigation Service Providers (ANSPs) with a data exchange reciprocity agreement with the FAA	Real-time	Yes	Notice

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Class Type	Sub-Class Type	Data Requestor Type	Definition of Requestor Type	Delayed* or Real-Time **	Filter Required	FAA Notice or Approval
3	3A	State & Local Government (Law Enforcement)	State and Local government bodies involved in the prevention of crime and the apprehension of criminals	Real-time	No	Notice
	3B	State & Local Government (Civil)	Government bodies that enact and enforce laws for a state or territory within the USA or for local jurisdictions within the US states and territories.	Real-time	Yes	Notice
	3C	Aircraft Operators	Certified under 49 CFR Part 119, 121, 125 & 135, and organizations providing dispatch or tracking functions for these certified aviation partners.	Real-time	Yes	Notice
	3D	State, Local & Interstate** Governments and Bodies (Airport Authorities)	State, Local government bodies that manage and operate airports.	Real-time	Yes	Notice
	3E	Commercial Entities directly or indirectly Supporting Flight Operations	Organization providing products of services directly supporting airport or aircraft operators.	Real-time	Yes	Notice
4	4	All Others	All other organizations or persons that are not covered by the definitions in the other categories.	To be determined on a case-by-case basis	To be determined on a case-by-case basis	Approval