

C-5302

**PROFESSIONAL SERVICES AGREEMENT
WITH NAVERUS, INC., FOR
TECHNICAL REPORT AND ANALYSIS FOR JOHN WAYNE AIRPORT**

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made and entered into as of this 21 day of December, 2012 ("Effective Date") by and between the CITY OF NEWPORT BEACH, a California Municipal Corporation ("City"), and NAVERUS, INC., a Delaware corporation ("Consultant"), whose address is 20415 72nd Ave S, Suite 300, Kent, WA 98032, and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Consultant to produce a technical report and analysis to assess the feasibility of developing public use Required Navigation Performance – Authorization Required (RNP AR) instrument departure procedures at John Wane Airport ("Project").
- C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the professional services described in this Agreement.
- D. The principal member of Consultant for purposes of Project shall be Malia Miller.
- E. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on December 31, 2013, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

City and Consultant acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement. Consultant shall diligently perform all the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). The City may elect to delete certain Services within the Scope of Services at its sole discretion.

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3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Consultant shall perform the Services in accordance with the schedule included in Exhibit A. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Consultant to strictly adhere to the schedule set forth in Exhibit A, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.2 Notwithstanding the foregoing, Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice within two (2) calendar days of the occurrence causing the delay to the other party so that all delays can be addressed.

3.3 Consultant shall submit all requests for extensions of time for performance in writing to the Project Administrator (as defined in Section 6 below) not later than ten (10) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Consultant's control.

3.4 For all time periods not specifically set forth herein, Consultant shall respond in the most expedient and appropriate manner under the circumstances, by fax, hand-delivery, mail and electronic mail.

4. COMPENSATION TO CONSULTANT

4.1 City shall pay Consultant for the Services on a fixed price basis in accordance with the provisions of this Section and the Pricing, Fees and Payment Terms set forth in Exhibit A. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **Seventy-Five Thousand Dollars and No/100 (\$75,000.00)** without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

4.2 City shall reimburse Consultant only for those costs or expenses specifically identified in Exhibit A to this Agreement, or specifically approved in writing in advance by City.

4.3 Consultant shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid as set forth in the prior written authorization.

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5. PROJECT MANAGER

5.1 Consultant shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Consultant has designated Malia Miller, Customer Program Manager, to be its Project Manager. Consultant shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

6. ADMINISTRATION

This Agreement will be administered by the City Manager's Office. Dave Kiff, City Manager, or designee, shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator or designee shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

To assist Consultant in the execution of its responsibilities under this Agreement, City agrees to provide access to and upon request of Consultant, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Consultant's Work schedule.

8. STANDARD OF CARE

8.1 All of the Services shall be performed by Consultant or under Consultant's supervision. Consultant represents that it possesses the professional and technical personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with the highest professional standards. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one (1) or more first-class firms performing similar work under similar circumstances.

8.2 All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Consultant certifies that the Work conforms to the requirements of this Agreement; all applicable federal, state and local laws; and the highest professional standard.

9. INDEPENDENT CONTRACTOR

It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the Work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Contractor or its employees. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees

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of City. Consultant shall have the responsibility for and control over the means of performing the Work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance of the Work or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the Services.

10. NOTICES

10.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Consultant to City shall be addressed to City at:

Attn: Dave Kiff, City Manager
City of Newport Beach
3300 Newport Boulevard
PO Box 1768
Newport Beach, CA 92658

10.2 All notices, demands, requests or approvals from City to Consultant shall be addressed to Consultant at:

Attn: Lisa Slyter
GE Aviation
3290 Patterson Ave.
2D1
Grand Rapids, MI 49512-1934
Lisa.slyter@ge.com

and

Attn: Ken Shapero, Director, U.S. Programs
GE Aviation
PBN Services
20415 72nd Ave. S, Suite 300
Kent, WA 98032
Ken.shapero@ge.com

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11. STANDARD PROVISIONS

11.1 Compliance with all Laws. Consultant shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all Work prepared by Consultant shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

[SIGNATURES ON NEXT PAGE]

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 12/21/12

By: [Signature]
Aaron C. Harp
City Attorney

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: 12/21/2012

By: [Signature]
Dave Kiff
City Manager

ATTEST:

Date: 12.21.12

By: [Signature]
Leilani I. Brown
City Clerk



CONSULTANT: NAVERUS, INC., a
Delaware corporation

Date: _____

By: _____
Giovanni Spitale
President

Date: _____

By: _____
Lisa Slyter
Senior Contract Manager

Date: _____

By: _____
David Wheeler
General Counsel
Secretary

[END OF SIGNATURES]

Attachments: Exhibit A – Scope of Services

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 12/21/12

By: [Signature]
Aaron C. Harp
City Attorney

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: 12/21/2012

By: [Signature]
Dave Kiff
City Manager

ATTEST:

Date: 12.21.12

By: [Signature]
Leilani I. Brown
City Clerk



CONSULTANT: NAVERUS, INC., a
Delaware corporation

Date: Jan 9, 2013

By: [Signature]
Giovanni Spitale
President

Date: 1/8/2013

By: [Signature]
Lisa Slyter
Senior Contract Manager

Date: 1/2/2013

By: [Signature]
David Wheeler
General Counsel
Secretary

[END OF SIGNATURES]

Attachments: Exhibit A – Scope of Services

Handwritten initials/signature in the bottom right corner.

**EXHIBIT A
SCOPE OF SERVICES**

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3. Statement of Work

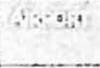

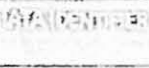
3.1. Scope

This section of the SOW defines the airport, and relevant aviation regulatory authority applicable to the work to be performed.

3.1.1. Airport

Table 3-1 below lists the airport included in this statement of work for an RNP AR departure technical report.

Table 3-1: In-Scope Airport

		
John Wayne Airport	KSNA	SNA

3.1.2. Relevant Aviation Regulatory Authority

Federal Aviation Administration (FAA)

3.2. RNP AR Instrument Departure Procedure Technical Report and Assessment

This section of the SOW states the design criteria and elements to be evaluated in the proposed technical report.

3.2.1. Design Criteria

GE Aviation will evaluate the feasibility of developing Public Use RNP AR instrument departure procedures in accordance with FAA Order 8260.58 and other pertinent regulatory documents.

3.2.2. Topics to be evaluated

- i. Evaluate all current departures: public RNAV departure procedures and tracks
- ii. Research all available public criteria and options for possible waivers for the development of RNP AR departures that may be beneficial to residents of the City of Newport Beach.
- iii. Evaluate the proposed RAWLZ RNAV departure and provide comments for city to submit to FAA
- iv. Support the City of Newport Beach in presenting the comments developed in iii above to the FAA

Handwritten initials/signature

5. Pricing, Fees, and Payment Terms

The pricing outlined in this section includes the activities, milestones, and deliverables required to perform an RNP AR criteria analysis for The City of Newport Beach as described in the statement of work (Section 3 of this document).

5.1. Pricing

Table 5-1: Pricing

NAME OF THE EXPENSE AND THE WORKING AGREEMENT	UNIT	PRICE (USD)
RNP AR Feasibility Study and Technical Report	1	\$72,500

5.2. Payment Schedule

Table 5-2: Payment Schedule

FEE SCHEDULE ALIGNED WITH PROGRAM MILESTONES (USD)			
ORDER	PROJECT MILESTONE	DELIVERY OF REPORT AND COMMENTS TO FAA	
RNP AR Feasibility Study and Technical Report - Development and Support of Comments to FAA	Milestone %	50%	50%
		\$ 36,250	\$ 36,250

5.3. Travel Fees and Lodging Fees

Travel and hotel expenses for GE Aviation personnel required to support the activities for operations approval support and procedure deployment (Section 3.0) are included in stated fee for this scope of work. It is estimated that GE Aviation travel will consist of one trip for two operations specialists for a duration of two days. Travel and lodging by GE Aviation Personnel shall be in accordance with the Federal government's regulations and guidance regarding class of travel and rate of hotel room(s). Any additional travel, beyond this scope, must be agreed upon by GE Aviation and The City of Newport Beach beforehand and is to be reimbursed by The City of Newport Beach.

Table 5-3: Estimated Travel

TYPE OF TRIP	GE PERSONNEL	No. TRIPS	No. People	Days (Total)
Project setup and stakeholder coordination	Operations Specialist	2	1	2

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Naverus, Inc.

STANDARD Terms and Conditions OF SALE

THIS AGREEMENT ("Agreement") is entered into as of 21 December, 2012 (the "Effective Date"), by and between Naverus, Inc., part of GE Aviation (hereinafter referred to as "Naverus"), a Delaware Corporation, and the City of Newport Beach, a California Municipal Corporation (hereinafter referred to as "Customer").

WHEREAS, Naverus and the City of Newport Beach have entered into a Statement of Work, incorporated herein as Exhibit A to this Agreement that describes the project governed by this Agreement.

THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the Parties hereto, each intending to be legally bound, agree as follows:

ARTICLE 1

DEFINITIONS

- 1.1 **"Actual Navigation Performance"** or **"ANP"** means the level of navigation accuracy and integrity being computed by a navigation system at any moment in time.
- 1.2 **"Aerodrome"** and **"Airport"** are used synonymously to mean an aeronautical facility with one or more Runway.
- 1.3 **"Aeronautical Data"** means Nav Data, Obstacle Data, Terrain Data, and other information about aerodromes and airspace that affects Procedures.
- 1.4 **"AIS Designee"** means the party (governmental branch or corporation) in the Country of Use responsible for publishing aeronautical information in compliance with ICAO Annex 15. The AIS Designee publishes the Aeronautical Information Publication.
- 1.5 **"Agreement"** means the combination of the Naverus Standard Terms and Conditions of Sale and one or more Statements of Work.
- 1.6 **"AIRAC Cycle"** means the 28 calendar day cycle by which aeronautical information is updated, as published in ICAO Annex 15 – Aeronautical Information Services.
- 1.7 **"Aircraft Platform"** means a specific combination of airframe, engine, and Installed Avionics System, such as a Boeing 737-700 with 22k engines and a GE Aviation FMS.

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- 1.8 **"Air Traffic Services Provider"** ("ATS" or "ATC") means the party (governmental branch or corporate) in the Country of Use responsible for providing separation services for aircraft in flight.
- 1.9 **"Authorized Agents"** is defined in Section 2.3.8.
- 1.10 **"Confidential Information"** is defined in Section 5.1.
- 1.11 **"Country of Use"** means the country in which an Aerodrome, for which a Naverus Procedure has been designed, is located.
- 1.12 **"Covered Aerodromes"** means the specific Aerodromes or Airports for which Deliverables are to be supplied.
- 1.13 **"Deliverables"** means the documents, information, and other items to be delivered to Customer by Naverus pursuant to this Agreement, as defined in the Naverus Statement(s) of Work (if any).
- 1.14 **"Design Criteria"** are the publicly-available technical specifications (such as FAA TERPS or ICAO PANSOPS) or the Naverus-proprietary technical specifications used to design an instrument flight procedure.
- 1.15 **"Flight Operation Procedures"** means Flight Operations Manual (FOM), Airplane Flight Manual (AFM), Checklists, Operations Manual, or other document that alone or in any combination thereof governs the operation of a flight and flight crew actions.
- 1.16 **"Flight Path"** means a specification of the desired lateral track and vertical profile to be followed by the aircraft.
- 1.17 **"FMS"** means Flight Management System, which is that portion of the Installed Avionics System that provides navigational guidance for the aircraft.
- 1.18 **"Installed Avionics System"** means the Installed Avionics System platform, electronic display system, and flight control computer applicable for the Aircraft Platform set forth in the Statement(s) of Work.
- 1.19 **"Multi-Variant Design"** ("MVD") is a collection of Aircraft Platforms sharing the same airframe and Installed Avionics System. When used as a basis for procedure design, the MVD results in a single lateral track suitable for use by all of the Aircraft Platforms comprising the MVD.
- 1.20 **"Naverus Procedure"** means a Procedure developed by Naverus pursuant to this Agreement.
- 1.21 **"Navigation Data,"** hereafter termed **"Nav Data"** means information about navigational aids, navigational facilities, airways, waypoints, aerodromes,

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runways, approaches, arrivals, and departures which is digitally formatted for installation in aircraft FMS.

- 1.22 **"Nav Data Supplier"** means Customer's FMS database supplier, Customer's navigation chart supplier, and/or Customer's performance data supplier.
- 1.23 **"Obstacle Data"** means information about human-made obstacles that must be considered in the design of Procedures.
- 1.24 **"Operation Specifications"** mean the conditions and limitations imposed upon a particular aircraft operator, as exemplified in Title 14, Section 119.49 of the Code of Federal Regulations (United States), by a competent Civil Aviation Authority or other Government agency exercising jurisdiction.
- 1.25 **"Procedure"** means a specification of the Path to be flown, whether for use in visual or instrument meteorological conditions, along with associated minima, restrictions, limitations, and requirements for executing the procedure. Procedures are used when approaching a Runway End for landing, departing a Runway End on takeoff, or, where applicable, flying en-route.
- 1.26 **"Regulator"** means the official civil aviation governing body holding Customer's operating certificate and the official civil aviation governing body responsible for airspace in the Country of Use.
- 1.27 **"RNAV"** means a method of navigation that permits aircraft operation on any desired flight path within the coverage of station-referenced navigation aids, or within the limits of the capability of a self-contained navigation system, or a combination thereof.
- 1.28 **"RNP"** means **"Required Navigation Performance,"** which is a statement of the navigational performance (precision and accuracy) necessary for operation within a defined airspace.
- 1.29 **"RNP Level"** means the specific value of Actual Navigation Performance, typically expressed in nautical miles, required in order to initiate and continue execution of a particular RNP RNAV Procedure.
- 1.30 **"Runway"** means a strip of prepared ground on which aircraft take off and land; a Runway has two Runway Ends.
- 1.31 **"Runway End"** means a specific end of a Runway.
- 1.32 **"Service"** means Nav Data compare service and/or RNP Availability Forecast Service.
- 1.33 **"Significant Nav Data Changes"** mean changes in Nav Data that either a) cause an impingement on the required lateral or vertical containment parameters

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appropriate for a Procedure, or b) otherwise cause a change in the defined Path of a Procedure larger than 1/10 of a nautical mile or 2 degrees of magnetic heading change (unless otherwise specified).

- 1.34 **"Significant Obstacle or Terrain Changes"** mean Obstacle Data or Terrain Data changes that cause an impingement on the required lateral or vertical containment parameters appropriate for a Procedure.
- 1.35 **"Significant Runway Infrastructure Changes"** mean changes in the characteristics of the runway that affect the runway threshold location, runway-crossing threshold, runway lighting, Touch Down Zone Elevation (TDZE), threshold elevation, or Departure End of Runway (DER) location.
- 1.36 **"Terrain Data"** means topographical information about the geography which must be considered in the design of Procedures.



ARTICLE 2

DELIVERABLES

- 2.1 Deliverables. The Deliverables associated with each product is defined in the Naverus Statement(s) of Work ("SOW") attached hereto.
- 2.2 Relationship. Naverus will be and act as an independent contractor (and not as the agent or representative of Customer) in the performance of this Agreement. This Agreement will not be interpreted or construed as: (a) creating or evidencing any association, joint venture, partnership, or franchise between the Parties; (b) imposing any partnership, franchise obligation, or liability on either Party; or (c) prohibiting or restricting Naverus' performance of any services for any third party, or the provision of products to any third party. Customer must not represent to anyone that Customer is an agent of Naverus or is otherwise authorized to bind or commit Naverus in any way without Naverus' prior written consent.
- 2.3 Customer Obligations. In order for Naverus to complete Consulting Services as set forth in a SOW, Customer agrees to provide the following upon requested:
- 2.3.1 Access to Customer's Aircraft Performance Data, Databases, and Manuals. As reasonably requested by Naverus, Customer will provide relevant aircraft flight manuals, dispatch manuals, maintenance manuals, training manuals, aircraft performance databases, and other aircraft manufacturer data (or necessary licenses to use) as requested by Naverus to satisfy its obligations under this Agreement. Customer is responsible for all related authorizations, costs, and approvals.
- 2.3.2 Access to Customer's Navigation Database. Customer will authorize Naverus access to the Customer's Nav Data as soon as is practical, but not later than the 21st day of each AIRAC Cycle. Customer grants Naverus a license to use Customer's Nav Data to provide services to Customer, and otherwise use the Nav Data for Naverus' business purposes. Customer represents and warrants to Naverus that Customer possesses sufficient rights necessary to provide Customer's Nav Data to Naverus for use in accordance with this Agreement.
- 2.3.3 Access to Production Database. Customer will timely furnish Naverus access to production database and when necessary, the means to 'unpack' binary code so it may be human-readable. Customer represents and warrants to Naverus that Customer possesses sufficient rights necessary to provide such access and means to Naverus for use in accordance with this Agreement.
- 2.3.4 Access to Customer's Simulator. Customer will provide Naverus access to Customer's simulator at reasonable and negotiated times.

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- 2.3.5 Access to Customer's Terrain Data and Obstacle Data. Customer will authorize Naverus access to the Customer's Terrain and Obstacle databases, if requested by Naverus for use in accordance with this Agreement.
- 2.3.6 Access to Customer's Recorded Flight Data. Customer agrees to provide Naverus with data collected by Customer, with a quick access recorder or ACMS system, for the purpose of validating design assumptions and monitoring actual navigation performance. Upon written request, Naverus agrees to abide by any reasonable conditions or restrictions associated with the use of such data related to de-identification of data and confidential treatment.
- 2.3.7 Access to Facilities. Customer will provide Naverus with physical and remote access to Customer's facilities, personnel, information systems, data sources, records, documentation, and other necessary materials, as determined in Naverus' reasonable discretion.
- 2.3.8 Authorized Agents and Cooperation. Customer will provide Naverus with a list of individuals or subcontractors who are duly authorized to request changes to Naverus' Procedures ("**Authorized Agents**"). Authorized Agents will cooperate, at Customer's expense, with Naverus as necessary for Naverus to perform its obligations pursuant to this Agreement.
- 2.4 Restrictions. Customer shall not, directly or indirectly, make any representation to any third party on behalf of Naverus.
 - 2.4.1 Procedure Change Requests. Customer will provide any instructions or requests for modifications to the SOW in written form. Such modifications will require further consideration and amendments to this Agreement; additionally Naverus will only accept modification requests from previously Authorized Agents as defined in Section 2.3.8.
- 2.5 Locale. The Deliverables, unless otherwise specified in the Statement(s) of Work, are developed and produced at Naverus' principal place of business in the State of Washington, United States.
- 2.6 Privacy and Security Policies. Privacy and security policies related to a particular Service may be viewed at the URL designated by Naverus. Naverus reserves the right to modify its privacy and security policies in its reasonable discretion from time to time.



ARTICLE 3

CUSTOMER OBLIGATIONS AND REPRESENTATIONS

- 3.1 Other General Customer Responsibilities. Customer is responsible for all activity occurring under Customer's user account and shall abide by all applicable local, state, national, and foreign laws, treaties, and regulations in connection with Customer's use of Deliverables and Services, including those related to data privacy. Customer shall (i) notify Naverus immediately of any unauthorized use of any password or account or any other known or suspected breach of security, and (ii) report to Naverus immediately and use reasonable efforts to immediately stop any copying or distribution of any documents, software, products, or services in violation of this Agreement.
- 3.2 Environmental Assessments. Customer is solely responsible for charges or fees associated with noise or other environmental assessments related to Customer implementation of Deliverables, including Naverus Procedure(s).
- 3.3 Third-Party Charges. Customer is responsible for all charges levied by a third party including, but not limited to, Nav Data Supplier Charges.
- 3.4 Facilitate Required Designations. Customer will use best efforts to support and coordinate any required qualifications of Naverus as a designer of contingency (engine-out) procedures by Customer's principal operations inspector (or equivalent).
- 3.5 Notification of Regulatory Actions. The Customer will convey to Naverus, in writing, and in timely fashion notice of any pending action, warning, penalty, or admonition issued by regulator(s) related to the use of Naverus Procedure(s) during the design period.
- 3.6 Indemnification. Customer will defend, indemnify, and hold harmless Naverus and its affiliates and their respective officers, partners, directors, employees, agents, successors, and assigns against: (a) all claims, liabilities, losses, damages, costs, and expenses (including attorneys' fees) in connection with Customer's use of the Deliverables or Services of Customer's; Customer's interpretation of any Deliverable's or Service's data output (except to the extent caused by the gross negligence or willful misconduct of Naverus); a breach by Customer of any of the provisions of this Agreement; or Customer's willful misconduct, negligence or gross negligence; (b) all out-of-pocket costs (including reasonable attorneys' fees) reasonably incurred by Naverus in connection with the defense of proceedings arising out of the aforementioned; and (c) if any proceeding arising under this Section 3.6 is settled, Customer will pay any amounts to any third party agreed to by Customer in settlement of any of the claims.



ARTICLE 4

WARRANTIES AND REPRESENTATIONS

- 4.1 Mutual Warranties. Each Party represents and warrants to the other that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against the Party in accordance with its terms; (b) no authorization or approval from any third party is required in connection with either Party's execution, delivery, or performance of this Agreement; and (c) the execution, delivery, and performance of this Agreement does not violate the laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.
- 4.2 Limited Warranty. Naverus warrants that the Naverus Procedure(s) will conform in all material respects to the criteria identified in the attached Statement(s) of Work at time of delivery. If the Naverus Procedure(s) does not conform to the criteria in the applicable Statement of Work at the time of delivery, Customer will notify Naverus within three days of delivery. Naverus will modify the Naverus Procedure(s) and re-submit to Customer. The procedure in this Section will be repeated with respect to each revised version of Naverus Procedure(s) until the Naverus Procedure(s) conforms. THIS IS THE SOLE REMEDY FOR FAILURE OF THE NAVERUS PROCEDURE(S) TO CONFORM TO THE STATEMENT OF WORK.
- 4.3 Disclaimer. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS ARTICLE 4, NAVERUS MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. NAVERUS EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR CUSTOMER'S PURPOSE, RELIABILITY, TIMELINESS, QUALITY, AVAILABILITY, COMPLETENESS, ACCURACY, TITLE, AND NON-INFRINGEMENT FOR THE DELIVERABLES AND SERVICES. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS ARTICLE 4, NAVERUS DOES NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE SERVICES, OR THAT (A) THE DELIVERABLES OR SERVICES ARE ERROR-FREE, THAT CUSTOMER'S USE OF THE SERVICES WILL BE SECURE OR UNINTERRUPTED, OR THAT ANY SERVICE WILL OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE SYSTEM, OR DATA; (B) ERRORS OR DEFECTS IN THE SERVICES WILL BE CORRECTED; OR (C) DELIVERABLES WILL DISPLAY ALL DIFFERENCES BETWEEN NAV DATA. NAVERUS EXERCISES NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED UPON CUSTOMER'S USE OF THE DELIVERABLES OR SERVICES. NAVERUS EXERCISES NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE DELIVERABLES OR SERVICES WILL BE APPROVED OR ACCEPTED FOR CUSTOMER'S USE BY ANY GOVERNMENTAL OR REGULATORY BODY, OR ANY THAT ANY APPROVAL OR ACCEPTANCE FOR USE WILL NOT BE REVOKED. CUSTOMER WILL NOT HAVE THE RIGHT TO MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF NAVERUS TO ANY THIRD PARTY.

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4.4 Limitation of Liability.

4.4.1 Consequential Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NAVERUS WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO CUSTOMER FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE TRANSACTION CONTEMPLATED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, EVEN IF NAVERUS IS APPRISED OF THE LIKELIHOOD OF THESE DAMAGES OCCURRING.

4.4.2 Cap on Liability. UNDER NO CIRCUMSTANCES WILL NAVERUS' TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO NAVERUS UNDER THIS AGREEMENT (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN AN ACTION) REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE.

4.4.3 Independent Allocation of Risk. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES, IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY NAVERUS TO CUSTOMER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT. THE LIMITATIONS IN THIS SECTION 4.4 WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THIS AGREEMENT.

4.5 For the purposes of this entire Article 5, the term "Naverus" shall be deemed to include Naverus and its affiliates and their respective officers, partners, directors, employees, agents, successors, and assigns.



ARTICLE 5

CONFIDENTIALITY

- 5.1 "Confidential Information" means any trade secrets or other information of a Party, whether of a technical, business, or other nature (including, without limitation, information relating to a Party's technology, software, products, services, designs, methodologies, business plans, finances, marketing plans, prospects, or other affairs), that is disclosed to a Party during the term of this Agreement and that such Party has marked with an appropriate legend as confidential, proprietary, or trade secret information of the disclosing Party. Confidential Information does not include any information that: (a) was known to the receiving Party prior to receiving the same from the disclosing Party in connection with this Agreement; (b) is independently developed by the receiving Party without use of or reference to the Confidential Information of the disclosing Party; (c) is acquired by the receiving Party from another source without restriction as to use or disclosure; or (d) is or becomes part of the public domain through no fault or action of the receiving Party. Confidential Information includes, without limitation, the terms, conditions, and pricing that are part of this Agreement.
- 5.2 Restricted Use and Non-Disclosure. During and after the term of this Agreement, each Party will: (a) use the other Party's Confidential Information solely for the purpose for which it is provided; (b) not disclose the other Party's Confidential Information to a third party unless the third party must access the Confidential Information to perform in accordance with this Agreement and the third party has executed a written agreement that contains terms that are substantially similar to the terms contained in this ARTICLE 5 and (c) maintain the secrecy of, and protect the other Party's Confidential Information from unauthorized use and disclosure to the same extent (but using no less than a reasonable degree of care) that it protects its own Confidential Information of a similar nature.
- 5.3 Non-Solicitation. During the term of this Agreement and for a period of one year thereafter, Customer will not, directly or indirectly, employ or solicit the employment or services of any of Naverus' employees or independent contractors without the prior written consent of Naverus.
- 5.4 Disclosure of Business Relationship. Either Party may disclose publicly that Naverus is performing work on behalf of the Customer, to the extent that such disclosure meets the obligations of Section 5.2.
- 5.5 Disclosure of Work Product. Naverus may disclose and describe the work that it performs on behalf of the Customer, including but not limited to written, oral, or graphical depiction of that work, provided that the Customer's name, logo, or other identifiers will not be used in connection with this disclosure without the Customer's express permission.



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- 5.6 Return of Materials. Upon the termination of this Agreement, or upon earlier request, each Party will deliver to the other all Confidential Information that they may have in their possession or control. Notwithstanding the foregoing, neither Party will be required to return materials that it must retain in order to receive the benefits of this Agreement or properly perform in accordance with this Agreement.
- 5.7 Required Disclosure. If either Party is required by law to disclose the Confidential Information or the terms of this Agreement, the disclosing Party must give prompt written notice of the requirement before the disclosure and assist the non-disclosing Party in obtaining an order protecting the Confidential Information from public disclosure.
- 5.8 Existing Obligations. The obligations in this ARTICLE 5 are in addition to, and supplement each Party's obligations of confidentiality under any nondisclosure or other agreement between the Parties.



ARTICLE 6

CUSTOMER DATA AND THIRD-PARTY PROPRIETARY INFORMATION

- 6.1 Third-Party Products. Any third-party products that Customer purchases or licenses from any third party in connection with the services or are necessary for use of the Deliverables or Services are provided pursuant to the terms of the applicable third party's agreement, and Naverus assumes no responsibility for, and specifically disclaims any liability or obligation with respect to these third-party products.

- 6.2 Account Information and Data. Naverus does not own any data, information, or materials that Customer submits to Naverus in the course of using Deliverables or Services ("Customer Data"). Customer, not Naverus, shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership for Customer Data. Naverus shall not be responsible or liable for the deletion, correction, destruction, damage, loss, or failure to store Customer Data.

ARTICLE 7

PAYMENT TERMS

- 7.1 Payment. Naverus will issue invoices for all fees and other amounts pursuant to times and amounts specified in the Statement(s) of Work. All amounts will be expressed in U.S. currency. Unless otherwise specified in the applicable Statement(s) of Work, Customer will pay all fees and other amounts in full within 30 days of the date of invoice.

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ARTICLE 8

CONTRACT TERM AND TERMINATION

8.1 Term. This Agreement will commence as of the Effective Date and will continue until all Statements of Work have been completed.

8.2 Termination

8.2.1 For Convenience. Either Party may terminate this Agreement for any or no reason by giving the other Party written notice of termination. This termination will be effective immediately and Customer will be expected to pay for any portion of the Deliverable finished upon termination request, including any claims by Naverus of substantial performance. Upon termination by Naverus, Customer will not be expected to make any additional payments for work performed and will not receive any type of refund for payments already received. If this Agreement is terminated pursuant to this Section 8.2, the Parties' respective rights and obligations under Sections 3.5, 4.4, and ARTICLE 4, ARTICLE 5, ARTICLE 7, and ARTICLE 9 of this Agreement will survive. Once either Party gives notice of its intent to terminate this Agreement pursuant to this Section 8.2, Customer may not request additional Statements of Work.

8.2.2 For Material Breach. If either Party commits a material breach or default in the performance of any of its obligations under this Agreement, then the other Party may give the breaching Party written notice of the breach or default (including without limitation a description of the services with respect to which the breach or default has occurred, a statement of the facts relating to the breach or default, the applicable provisions of this Agreement, and the action required to cure the breach or default) and the non-breaching Party's intent to terminate pursuant to this Section 8.2 if the breach or default is not cured within 30 days after the date of any notice (or a later date as may be specified in the notice). Without limitation, any of the following will constitute a material breach of this Agreement, and Naverus may, without limitation of any of its other rights and remedies, available hereunder or otherwise, suspend performance of any services then in progress: (a) the failure by Customer to perform its obligations pursuant to Section 7.1, which failure materially impacts Naverus' ability to perform its obligations pursuant to this Agreement, or (b) the failure by Customer to pay to Naverus any amounts owing hereunder on a timely basis. If the breaching Party fails to cure any material breach or default specified in any notice under this Section 8.2 within 30 days after the date of any notice (or a later date as may be specified in the notice), then the non-breaching Party may terminate the Agreement by giving the breaching Party written notice of termination.



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- 8.3 Effect of Termination for Material Breach. If this Agreement is terminated pursuant to and in accordance with Section 8.2.2, then the following will apply: (a) the Parties will cooperate to effect an orderly, efficient, effective, and expeditious termination of the Parties' respective activities; (b) Naverus will have no obligation to perform any services, including additional services previously agreed to by the Parties, after the Effective Date of the termination; (c) Customer will pay to Naverus any fees, reimbursable expenses, compensation, or other amounts payable for the services performed; (d) any and all liabilities accrued prior to the Effective Date of the termination will survive; (e) the Parties' respective rights and obligations under Sections 3.5, 4.4, and ARTICLE 4, ARTICLE 5, ARTICLE 7, and ARTICLE 9 of this Agreement will survive.



ARTICLE 9

MISCELLANEOUS PROVISIONS

- 9.1 Assignment. Neither Party will transfer or assign any of its rights or obligations under this Agreement, in whole or in part, whether voluntary or by operation of law, provided, however, that Naverus may assign its rights under this Agreement to a parent, affiliate, subsidiary, or successor to its business, in a merger or upon the sale of all or substantially all of Naverus' assets, or with Customer's consent, which consent will not be unreasonably withheld. Subject to the foregoing, this Agreement will bind and inure to the benefit of the Parties and their respective successors and assigns. Any purported assignment in violation of the foregoing will be null and void.
- 9.2 Subcontractors. Naverus may use a subcontractor or other third party to perform its duties under this Agreement so long as Naverus remains responsible for all of its obligations under this Agreement including specifically ARTICLE 5.
- 9.3 Third-Party Beneficiaries. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies on any third party other than the Customer, nor is anything in this Agreement intended to relieve or discharge the obligations or liabilities of any third party, nor will any provision give any third party any right of subrogation or action against any Party to this Agreement.
- 9.4 Notices. Any notice required or permitted to be given in accordance with this Agreement will be effective if it is in writing and sent by certified or registered mail, or insured courier, return receipt requested, to the appropriate Party at the address set forth on the Statement(s) of Work and with the appropriate postage affixed. Either Party may change its address for receipt of notice by providing notice to the other Party in accordance with this Section. Notices are deemed given two business days following the date of mailing or one business day following delivery to a courier.
- 9.5 Force Majeure. Neither Party shall be liable or be in breach of its obligations under this Agreement to the extent performance of such obligations is delayed or prevented, directly or indirectly, by causes beyond its reasonable control, including acts of God, fire, terrorism, war (declared or undeclared), severe weather conditions, earthquakes, epidemics, material shortages, insurrection, any act or omission by any governmental authority, strikes, labor disputes, acts or threats of vandalism or terrorism (including disruption of technology resources), transportation shortages, or Customer's failure to perform (each an "Excusable Delay"). The scheduled delivery, Deliverables, or performance date shall be extended for a period equal to the time lost by reason of delay, including time to overcome the effect of the delay. Naverus shall use reasonable efforts to continue performance of obligations i) not impacted by delay, and ii) whenever such causes of delay are removed. If Naverus is delayed by any acts or omissions of Customer

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or other contractors, Naverus shall be entitled to an equitable adjustment in price and time for performance under this Agreement. In the event an Excusable Delay continues for a period of six (6) months or more beyond the scheduled delivery, Deliverables, or performance date, Customer or Naverus may, upon sixty (60) days written notice to the other, cancel the portion of this Agreement impacted by the Excused Delay, and Naverus shall return to Customer all payments relative to the cancelled part of this Agreement and Customer shall pay Naverus its reasonable cancellation charges in the event Customer elects to cancel the affected part of this Agreement.

- 9.6 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without the application of conflict of laws principles. Notwithstanding the foregoing, the federal laws of the United States of America shall be the governing laws, to the extent appropriate, with respect to issues involving patent, copyright, or trademark.
- 9.7 Arbitration. In the event a dispute arises under or relates to this Agreement, the Parties shall diligently attempt to resolve the dispute within thirty (30) days from the date either Party gives written notice to the other, during which period neither Party may commence legal action to assert its rights against the other. In the event the Parties do not resolve the dispute within the thirty (30) day period, either Party may institute legal action to pursue any right or remedy it may have against the other Party. Any legal action or proceeding with respect to this Agreement shall be brought and maintained in the federal or state courts of New York. Customer hereby accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts. No action in law or equity arising out of this Agreement may be brought by Customer more than two years after the cause of action has first arisen.
- 9.8 Government Entities. If Customer is the U.S. Government, Deliverables and Services are provided as "Commercial Items" as defined at 48 C.F.R. 2.101 and are being licensed to U.S. Government end users as commercial computer software with Restricted Rights in Computer Software.
- 9.9 Waiver. The waiver by either Party of any breach of any provision of this Agreement does not waive any other breach. The failure of any Party to insist on strict performance of any covenant or obligation in accordance with this Agreement will not be a waiver of that Party's right to demand strict compliance in the future, nor will the same be construed as a novation of this Agreement.
- 9.10 Severability. If any part of this Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of this Agreement will remain in full force and effect.
- 9.11 Interpretation. The Parties have had an equal opportunity to review this Agreement. No ambiguity will be construed against any Party based upon a claim

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that the Party drafted the ambiguous language. The headings appearing at the beginning of sections contained in this Agreement have been inserted for identification and reference purposes only and must not be used to construe or interpret this Agreement.

- 9.12 Counterparts. This Agreement may be executed in any number of identical counterparts, notwithstanding that the Parties have not signed the same counterpart, with the same effect as if the Parties had signed the same document. All counterparts will be construed as and constitute the same agreement.
- 9.13 Entire Agreement. This Agreement and any following Statement(s) of Work is the final and complete expression of the agreement between the Parties regarding the services. This Agreement supersedes, and the terms of this Agreement govern, all previous oral and written communications regarding these matters, all of which are merged into this Agreement, except that this Agreement does not supersede any prior nondisclosure agreements or comparable agreements between the Parties executed prior to this Agreement being executed or the Statement(s) of Work. No employee, agent, or other representative of Naverus has any authority to bind Naverus with respect to any statement, representation, warranty, or other expression unless the same is specifically set forth in this Agreement. No usage of trade or other regular practice or method of dealing between the Parties will be used to modify, interpret, supplement, or alter the terms of this Agreement. This Agreement may be changed only by a written agreement signed by an authorized agent of the Party against whom enforcement is sought. Naverus will not be bound by, and specifically objects to, any term, condition, or other provision that is different from or in addition to this Agreement (whether or not it would materially alter this Agreement) that is proffered by Customer in any receipt, acceptance, confirmation, correspondence, or otherwise, unless Naverus specifically agrees to the provision in a writing signed by an authorized agent of Naverus.

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EXECUTED as of the Effective Date first written above.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 12/21/12

By: [Signature]
Aaron C. Harp
City Attorney

Attest:

Date: 12.21.12

By: [Signature]
Leilani I. Brown
City Clerk



CITY OF NEWPORT BEACH,
A California Municipal Corporation

Date: 12/21/2012

By: [Signature]
Dave Kiff
City Manager

CONSULTANT :
NAVERUS, Inc., a Delaware Corporation
20415 72nd Ave S., Suite 300
Kent, WA. 98032
+1 (253) 867-3900

Date: Jan 9 2013

[Signature]
Giovanni Spitale
President, Naverus Inc.

Date: 1/2/2013

By: [Signature]
David Wheeler
General Council
Secretary, Naverus Inc.

Date: 1/8/2013

By: [Signature]
Lisa Slyter
Senior Contract Manager, Naverus Inc.

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