

US Digital Designs



END USER'S ACKNOWLEDGMENT AND AGREEMENT

The City of Halladale Beach ("End User") is acquiring the fire station alerting system ("System," as more specifically defined below) designed and manufactured in part by US DIGITAL DESIGNS, INC. ("USDD") and acquired here from Keylite Power and Lighting Corp. ("Keylite") pursuant to the System And Services Agreement Between Broward County And Keylite Power & Lighting Corp., approved October 10, 2017 ("the Broward County Contract"). For purposes of the Broward County Contract and this Acknowledgment and Agreement, Keylite is a USDD authorized Reseller. USDD's obligation to provide the System and certain related services to End User through Keylite is contingent, in part, on USDD's receipt of this End User's Acknowledgment and Agreement, as set forth herein.

For other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, End User agrees as follows:

1. Definitions.

- a. **"Hardware"** means a physically tangible electro-mechanical system or sub-system and associated documentation provided to Keylite or End User by USDD; provided, however, that Hardware shall not include any televisions or monitors manufactured by third parties.
- b. **"Intellectual Property"** means any and all rights of USDD related to Hardware, Software, and other products and business existing from time to time under patent law, copyright law, trade secret law, trademark law, unfair competition law, and any and all other proprietary rights, and any and all derivative works, work product, applications, renewals, extensions and restorations thereof, now or hereafter in force and effect worldwide.
- c. **"Software"** means software programs, including embedded software, firmware, executable code, linkable object code, and source code, including any

updates, modifications, revisions, copies, documentation, and design data provided to End User by USDD through Keylite as part of the System.

- d. **“System”** means all USDD hardware and software purchased by Reseller for resale to End User either as part of Keylite’s Broward Contract, or otherwise, and that is used exclusively by End User as part of its fire station alerting system; provided, however, that the term “System” specifically excludes any components, hardware, or software provided by third parties, including without limitation Reseller or End User’s computers, laptops, computer peripherals, routers, switches, operating systems, computer programs, applications, internet and network connections, and any other parts or items not provided directly by USDD.
2. **Warranty.** End User acknowledges and agrees to the terms of the New System Warranty attached hereto at **Schedule 1** (the “Warranty”) and made a part hereof by this reference. End User agrees that all services provided under the Warranty will be provided directly by USDD, unless otherwise agreed. End User acknowledges and agrees that, unless otherwise agreed in writing, USDD will not be obligated to honor any warranty claims made on Keylite or any other entity. End User may have warranty rights with respect to Keylite or other entities, but those rights (if any) are not included in this Acknowledgement and Agreement.
3. **Intellectual Property.** End User hereby agrees and acknowledges that USDD owns all rights, title, and interest in and to the Intellectual Property. End User agrees not to remove, obscure, or alter USDD’s or any third party’s copyright notice, trademarks, or other proprietary rights notices affixed to or contained within or accessed in conjunction with or through any Hardware, Software, or other products. Nothing in this instrument, the Prime Contract, or the USDD Contract shall be deemed to give, transfer, or convey to End User any rights in the Intellectual Property other than the license to use the Software, as set forth below.
4. **License.** At all times that End User is in compliance with the terms of its agreements with Keylite, End User shall have a non-exclusive, non-transferable, fully paid license to use the Software in conjunction with the System. All other rights to the Software and other Intellectual Property are reserved exclusively to USDD.
5. **Temporary Limitations in Use of System.** End User is dispatched by Broward County (the “County”), who is acquiring the dispatch level portion of the System from Keylite and USDD pursuant to the Broward County Contract. It is anticipated that End User’s System will be installed and implemented prior to final implementation and acceptance of the System by County. Until such time as the County’s System is interfaced to its CAD system and County has accepted the System, End User’s System will not have certain functions available, including automated VoiceAlert announcements, other CAD-related functions, and use of the Phoenix G2 FSA Mobile Application. Notwithstanding these temporary limitations in functionality, End User’s System can be installed and implemented, and used for station alerting utilizing of tone decoding

until such time as the County's System is fully implemented. By its signature below, End User acknowledges the temporary limitations in the System that will apply until the County's System is fully implemented and accepted.

IN WITNESS WHEREOF, End User has executed this instrument as of the date set forth below.

City of Hallandale Beach:

By _____
Name: _____
Its: _____
Date: _____

SCHEDULE 1

NEW SYSTEM WARRANTY



SERVICE AGREEMENT

This Service Agreement ("Agreement") is made by and between Keylite Power & Lighting Corp. ("Keylite"), with its principal place of business at 12240 SW 128th Court Units 106-108 Miami FL 33186, US Digital Designs, Inc. ("USDD"), with its principal place of business at 1835 East Sixth Street, Suite 27, Tempe, Arizona 85281, and the following entity ("Customer"):

City of Hallandale Beach
400 South Federal Highway
Hallandale Beach, FL 33009
(954) 457-3050

1. Recitals.

- a. Keylite entered into a contract (the "Prime Contract") with Broward County, Florida, for the provision, in part, of USDD's Phoenix G2 Fire Station Alerting System (the "System" as more fully defined below) to County's Dispatch Centers and Dispatch Customers.
- b. Customer acquired the System either pursuant to provisions of the Prime Contract, or independently from Keylite or other authorized reseller of the System, and will require software maintenance and hardware repair services for the System after expiration of the warranty period.
- c. USDD as the manufacturer, is the only entity able to provide the required software and hardware maintenance and repair, and has agreed to provide service System pursuant to the terms, conditions and limitations of this Agreement.
- d. Keylite has agreed to provide Enhanced Services (as defined below) that may be required under the Prime Contract or offered to Customer as part of an independent sale, and to provide service, maintenance and support for components that are not part of the System, but purchased in connection with the System.
- e. Keylite and USDD have agreed to provide the services to Customer's System pursuant to the terms, conditions and limitations of this Agreement.
- f. In consideration of the forgoing, and for other good and valuable consideration, the parties hereby agree to the terms set forth in this Agreement.



2. **Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:

- a. "Additional Services" shall have the meaning set forth in Section 7, below;
- b. "Annual Fee" shall mean the total of the annual fee charged by Keylite for Services.
- c. "Application or App" shall mean the *Phoenix G2 FSA Mobile Application* for iOS and Android mobile devices.
- d. "Commencement Date" shall be _____ [***enter the date the Warranty Period ends**];
- e. "Hardware" means a physically tangible electro-mechanical system or sub-system and associated documentation provided to Customer by USDD, provided however, Hardware shall not include any televisions or monitors manufactured by third parties;
- f. "Emergency Support" means telephone access for Customer's "System Administrator" (as defined below) to USDD's senior staff and engineers in the event of a Mission Critical Failure.
- g. "Enhanced Services" shall mean the support and maintenance services to be provided by Keylite, and more specifically set forth in Section 8 below;
- h. "Mission Critical Failure" means a failure in the materials, workmanship or design of the System that causes any fire station served by the System to be incapable of receiving dispatches through all communications paths, provided however, that any such failure caused by operator error, internet or telephony service outages, misuse or neglect of the System or any cause outside of USDD's direct control does not constitute a Mission Critical Failure.
- i. "Services" shall have the meaning set forth in Section 3, below;
- j. "Software" means software programs, including embedded software, firmware, executable code, linkable object code, and source code, including any updates, modifications, revisions, copies, documentation, and design data that are licensed to Customer by USDD;
- k. "System" means all Hardware and Software purchased by Customer either directly from USDD or authorized USDD Reseller under any contract, purchase order, or



arrangement that is used exclusively by Customer as part of its fire station alerting system, provided however, that the term “System” specifically excludes any components, hardware, or software provided by third parties, including without limitation Customer’s computers, lap tops, computer peripherals, monitors, televisions, routers, switches, operating systems, computer programs, applications, internet and network connections, and any other parts or items not provided to Customer directly by USDD;

1. “Term” means the period of time during which this Agreement is in effect, including the Initial Term and all Additional Terms, as defined in Section 9, below.
3. **USDD Scope of Services.** During the Term of this Agreement, USDD agrees to provide Hardware repair service and Software updates and maintenance for the System (collectively the “Services”). Subject to all other terms and conditions contained in the Agreement, the Services shall include the following:
 - a. Technical phone support Monday through Friday from 08:00 to 17:30 MST, excluding USDD holidays;
 - b. Remote access support Monday through Friday from 08:00 to 17:30 MST, excluding USDD holidays;
 - c. Emergency Support, available 24 hours per day, for Customer’s System Administrator in the event of a Mission Critical Failure;
 - d. Updates for all System Software, as and when released by USDD;
 - e. Twenty-four (24) App licenses per each ATX Station Controller that is part of the System and covered under this Agreement. Use of the App shall be strictly governed by the *Mobile Application End User’s Agreement* that must be accepted by each user at the time the software is downloaded.
 - f. Repair of defective or malfunctioning Hardware (not otherwise covered under the USDD warranty applicable to the Hardware) at USDD’s principal place of business; and
 - g. Ground shipping for the return of repaired Hardware.

Any services to be provided pursuant to the service option chosen by End User as set forth in Section 11 not specifically cited above to be performed by USDD, and any Enhanced Services shall be the sole responsibility of Keylite.



4. **Hardware Repairs.** If a Hardware component requires repair and a valid claim is made during the Term, at its option, USDD will, at its principal place of business, either (1) repair the Hardware at no charge, using new parts or parts equivalent to new in performance and reliability or (2) exchange the Hardware with a product that is new or equivalent to new in performance and reliability and is at least functionally equivalent to the original Hardware. When a product or part is exchanged, any replacement item becomes the Customer's property and the replaced item becomes the property of USDD. Parts provided by USDD in fulfillment of the Services must be used in the System to which this Agreement applies. Customer shall be responsible for and bear all risks and costs of shipping any Hardware to USDD for repair. USDD shall be responsible for and bear all risks and costs of returning any Hardware to Customer after repair or replacement. Replacement Hardware will be returned to Customer configured as it was when the Hardware was originally purchased, subject to applicable updates.

5. **Claims.** Prior to requesting Services, Customer is encouraged to review USDD's online help resources. Thereafter, to make a valid claim hereunder, Customer must contact USDD technical support and describe the problem or defect with specificity. The first such contact must occur during the Term. USDD's technical support contact information can be found on USDD's web site: <http://stationalerting.com/service-support/>. Customer must use its best efforts to assist in diagnosing defects, follow USDD's technical instructions, and fully cooperate in the diagnostic process. Failure to do so shall relieve USDD of any further obligation hereunder.

6. **Limitations.** The Services specifically and expressly exclude any repair, software installation, update, or other service that is necessitated by the Customer's misuse or neglect of the System, damage arising from Customer's failure to follow instructions relating to the product's use, cosmetic damage, including but not limited to scratches, dents and broken plastic on ports, alterations or repairs to the System made by any person other than an authorized USDD representative, failure of environmental controls or improper environmental conditions, modification to alter functionality or capability without the written permission of USDD, use with non-USDD products, any damage caused by fire, flood, vandalism, terrorism, riot, storm, lightning, or other acts of nature or civil unrest. The Services shall not include disassembly or re-installation of any Hardware at Customer's site. The Services shall not include the repair of any Hardware that is determined to be obsolete or irreparable in USDD's sole discretion. The Services shall not include repair or replacement of televisions or monitors manufactured by third parties. Repair or replacement of such components shall be subject exclusively to the manufacturer's warranty, if any. USDD shall not be liable to provide Services at any time when Customer is in breach of any obligation to USDD under this Agreement or any other contract.

7. **Additional Services by USDD.** Except for the Services, all other acts or performances requested or required of USDD by Customer ("Additional Services") will be charged at USDD's then current rates and will be in addition to all other fees and charges payable by Customer under



this Agreement. Additional Services shall include (without limitation) Customer's use of Emergency Support in the absence of a Mission Critical Failure and any Services provided by USDD on a rush basis or during hours not included in the description of the Services set forth above. Customer shall pay all invoices for Additional Services within 30 days. Invoices remaining unpaid for more than 30 days shall bear interest at 18% per annum.

8. **Enhanced Services.** In addition to the Services to be performed by USDD under this Agreement, in connection with the Purchase Order(s) or other purchasing documents, redacted copies of which are attached hereto as **Exhibit A**, Keylite shall perform the following services ("Enhanced Services"):

- a. Technical service work and support, mileage, and parts 24/7/365 to maintain the above equipment to its original manufacturer's specifications as long as parts and support are provided by the original manufacturer.
- b. On-site support of installed hardware, assisting USDD by replacing with provided spares if available or replacement hardware from USDD as needed.
- c. On-site support for radio interfaced to USDD for over-the-air dispatch notification. This includes an annual PM check and alignment if necessary.

9. **Customer Facilitation of Services.** In order to facilitate USDD's delivery of the Services, Customer will appoint a person from its staff to consult with USDD and provide such information, access, description, and guidance as is necessary for USDD to perform its duties hereunder ("System Administrator"). The Customer will ensure that the System Administrator is reasonably available to USDD. USDD may rely on the direction of the System Administrator in performing its duties hereunder, including without limitation, direction to provide Additional Services. In the absence of the designated System Administrator, USDD will contact Keylite. Without limiting the foregoing, Customer will be responsible for the following:

- a. The provision of VPN or other means for remote access to the System for remote access support;
- b. The procurement and/or provision of all computers, peripherals, and consumables (collectively "Customer Equipment"), including printer paper, toner and ink necessary for the operation, testing, troubleshooting, and functionality of the of the System;
- c. Any configuration and regular maintenance that is normally undertaken by the user or operator as described in the operating manual for the Customer Equipment, including the replacement of UPS batteries as necessary;



- d. The correct use of the System in accordance with USDD’s operating instructions;
and
- e. The security and integrity of the System.

10. **Ongoing Service Term, Renewal and Termination.** The initial term of this Agreement shall begin on the Commencement Date and shall continue for one year (“Initial Term”). Unless previously terminated as set forth in this Section, Customer may renew this agreement for four (4) additional one-year terms (each an “Additional Term”) by giving written notice of Customer’s intent to renew at least 30 days prior to the expiration of the Initial Term or any Additional Term, as the case may be, or by timely payment of the “Annual Fee” (as defined below). This Agreement may be terminated by either party by providing written notice of termination to the other party at least 30 days prior to the expiration of the Initial Term or any Additional Term. USDD or Keylite may terminate this Agreement for any breach hereof upon 30 days written notice. The notice shall specify the nature of the breach. If Customer fails to cure the breach within 30 days, this Agreement shall be terminated. Notwithstanding the foregoing, USDD or Keylite may terminate this Agreement immediately upon non-payment of any sum due from Customer under this Agreement or any other contract. Upon termination of this Agreement, all sums previously paid to Keylite and to USDD shall be nonrefundable.

11. **Annual Fees.** On or before the first day of the Initial Term and each Additional Term (each a “Due Date”), Customer shall pay Keylite an Annual Fee in advance for the Services and Enhanced Services to be delivered hereunder. The Annual Fee shall be calculated as set forth in the redacted attachments set forth in **Exhibit A and as selected here.**

✓	Service Options, A: Premium Support; B: Standard Support; <u>or</u> C: Basic Support. Check the box to the left to indicate the level of support applicable here.
_____	Option A: Premium Support includes: 24/7/365 1 hour telephone support; Includes Next Business Day priority shipping from factory replacement, field replacements; Includes 24/7/365 2 hours onsite response, +4 hours uptime guarantee; Includes all active parts and equipment supplied to repair or replace; Includes all station wiring, connectors; Includes batteries; Includes annual on-site test and optimization; Includes software maintenance. Includes onsite software upgrades as necessary; Includes annual remedial training class if necessary includes annual engineering review Includes 24 licenses G2 Mobile FSAS application (iPhone or Android) per each ATX Station Controller that is part of the System and covered under this Agreement; Includes priority restoration service, external antenna wind.
_____	Option B: Standard Support includes 24/7/365 1 hour telephone support; Includes Next Business Day priority shipping from factory replacement, field replacements; Includes



_____	24/7/365 2 hours onsite response, +4 hours uptime guarantee; Includes all parts and active equipment supplied to repair or replace; Includes software maintenance; Includes onsite software upgrades as necessary Includes 24 licenses G2 Mobile FSAS application (iPhone or Android) per each ATX Station Controller that is part of the System and covered under this Agreement.
_____	Option C: Basic Support includes: 24/7/365 1 hour telephone support; Includes Next Business Day priority shipping from factory replacement, field replacements; Includes remote software maintenance, upgrades; Includes 24 licenses G2 Mobile FSAS application (iPhone or Android) per each ATX Station Controller that is part of the System and covered under this Agreement; On-site field labor rates per contract (\$105 per hour year 1, CPI annual escalator) plus return mileage for onsite work

Customer shall pay the Annual Fee on or before the Due Date or 30 days after the date of the invoice, whichever is later. Annual Fees are nonrefundable.

Customer acknowledges that the Annual Fees referenced herein covers only Hardware and Software purchased pursuant to its initial Purchase Order(s) or other purchasing documents. In the event Customer purchases additional Hardware and Software during the Term of this Agreement to be used with the System, upon expiration of the warranty on such additional Hardware and Software, Customer, USDD and/or Keylite may enter into separate Service Agreements for such additional Hardware and Software, or include the annual fee for servicing such additional Hardware and Software to the Annual Fee, as the parties may mutually agree.

12. **Limited Warranty.** USDD and Keylite warrants that the Services performed hereunder will be carried out with due care and attention by qualified personnel. Defective Hardware subject to repair hereunder will be repaired to good working order. TO THE EXTENT PERMITTED BY LAW, THIS WARRANTY AND REMEDIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REMEDIES AND CONDITIONS, WHETHER ORAL OR WRITTEN, STATUTORY, EXPRESS OR IMPLIED. AS PERMITTED BY APPLICABLE LAW, USDD SPECIFICALLY DISCLAIMS ANY AND ALL STATUTORY OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES AGAINST HIDDEN OR LATENT DEFECTS. If USDD cannot lawfully disclaim statutory or implied warranties then to the extent permitted by law, all such warranties shall be limited in duration to the duration of this express warranty and to repair or replacement service as determined by USDD in its sole discretion. No reseller, agent, or employee is authorized to make any modification, extension, or addition to this warranty. If any term is held to be illegal or unenforceable, the legality or enforceability of the remaining terms shall not be affected or impaired. EXCEPT AS PROVIDED IN THIS WARRANTY AND TO THE EXTENT PERMITTED BY LAW, USDD IS NOT RESPONSIBLE FOR DIRECT, SPECIAL,



INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY BREACH OF WARRANTY OR CONDITION, OR UNDER ANY OTHER LEGAL THEORY, INCLUDING BUT NOT LIMITED TO LOSS OF USE; LOSS OF REVENUE; LOSS OF THE USE OF MONEY; LOSS OF ANTICIPATED SAVINGS; LOSS OF GOODWILL; LOSS OF REPUTATION; and LOSS OF, DAMAGE TO OR CORRUPTION OF DATA. USDD IS NOT RESPONSIBLE FOR ANY INDIRECT LOSS OR DAMAGE HOWSOEVER CAUSED INCLUDING THE REPLACEMENT OF EQUIPMENT AND PROPERTY, ANY COSTS OF RECOVERING PROGRAMMING OR REPRODUCING ANY PROGRAM OR DATA STORED OR USED WITH USDD PRODUCTS, AND ANY FAILURE TO MAINTAIN THE CONFIDENTIALITY OF DATA STORED ON THE PRODUCT. USDD disclaims any representation that it will be able to repair any hardware under this warranty or make a product exchange without risk to or loss of the programs or data stored thereon.

13. **Force Majeure.** Except for Customer's duty to pay sums due hereunder, neither party will be liable for any act, omission, or failure to fulfill its obligations under this Agreement if such act, omission or failure arises from any cause beyond its control including acts of nature, strikes, lockouts, riots, acts of war, acts of terrorism, epidemics, governmental action after the date of this Agreement, fire communication line failures, power failures, earthquakes or other disasters. The party unable to fulfill its obligations due to Force Majeure will immediately:

- a. Notify the other in writing of the reasons for its failure to fulfill its obligations and the effect of such failure; and
- b. Use all responsible endeavors to avoid or remove the cause and perform its obligations.

14. **Headings and Usage.** The headings, captions, and section numbers contained herein are provided for convenience only and are not part of the terms of this Agreement. When the context of the words used in this Agreement indicate that such is the intent, words in the singular shall include the plural, and vice versa, and the references to the masculine, feminine or neuter shall be construed as the gender of the person, persons, entity or entities actually referred to require.

15. **Waiver.** No failure or delay, in any one or more instances, to enforce or require strict compliance with any term of this Agreement shall be deemed to be a waiver of such term nor shall such failure or delay be deemed a waiver of any other breach of any other term contained in this Agreement.

16. **Governing Law; Parties in Interest.** This Agreement will be governed by and construed according to the laws of the State of Arizona without regard to conflicts of law principles and will bind and inure to the benefit of the successors and assigns of the parties.



17. **Execution in Counterparts.** This Agreement may be executed in counterparts, all of which taken together shall be deemed one original. The date of this Agreement shall be the latest date on which any party executes this Agreement.

18. **Entire Agreement.** This Agreement contains the entire understanding between the parties, and supersedes any prior understandings and agreements between or among them with respect to the subject matter hereof. This Agreement may not be amended, altered, or changed except by the express written agreement of the parties.

19. **Joint Effort.** This Agreement has been drafted through the joint efforts of the parties and shall not be construed against any party on the basis that such party is the drafter of this Agreement or any term thereof.

20. **Savings Clause.** In the event any part, provision, or term of this Agreement is deemed to be illegal or unenforceable, this Agreement shall be construed as if such unenforceable part, provision, or term had not been included herein. Such illegal or unenforceable part, provision, or term shall be deemed revised to the extent necessary to cure its defect and such revision and the remainder of the Agreement shall be and remain in full force and effect.

21. **Images and Testimonials.** During the term of this Service Agreement, Customer agrees that USDD may take, make or obtain images, pictures, photographs, commentary, and video and audio recordings of Customer's System and property and reproductions of the same in whole or in part, either digitally or in any other medium now known or later discovered (collectively "Images"). In addition, USDD may request Customer to provide testimonials, endorsements, feedback or other written or oral comments concerning Customer's experience with the System (collectively "Testimonials"). Customer consents to USDD's use of such Images and Testimonials for verification, training, and promotional purposes in USDD's sole discretion and agrees that all such Images and Testimonials shall remain the property of USDD and may be used and exploited in any media format.

22. **Customer Representative.** The undersigned representative of Customer hereby represents and warrants that s/he has the authority to bind Customer and that the execution, delivery and performance by Customer under this Agreement will not violate the provisions of any law, rule, regulation or policy, and will not conflict with or result in the breach or termination or constitute a default under any agreement or instrument to which Customer is a party.

(signatures next page)



City of Hallandale Beach:

By: _____

Name: _____

Its: _____

Date: _____

US Digital Designs, Inc.:

By _____

Dominic Magnoni, Vice President

Date: _____

Keylite Power & Lighting Corp.

By _____

Angel Munoz, President

Date: _____