



MAINTENANCE VISIT AGREEMENT Fireblast 451, Inc.

THIS MAINTENANCE VISIT AGREEMENT (this "**Agreement**") is entered into this **13th** day of **November 2012** by and between **FIREBLAST 451, INC.**, ("**Supplier**") and **Board of County Commissioners, Sumter County, Florida** ("**Customer**"), with reference to the following facts:

WHEREAS, Customer desires to engage Supplier to perform one-time limited maintenance work, on customers Fire Training Simulator.

WHEREAS, Supplier desires to perform such services as an independent contractor on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing promises and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

1. Term of Agreement; Additional Services. This Agreement shall commence on **November 13th 2012 and expires on November 13th 2013** (the "**Term**"). This Agreement is limited to one (1) service visit during which time all reasonably necessary Services (as defined herein) shall be provided ("**Service Visit**"). Supplier shall only be obligated to provide the specific Services defined in this Agreement. If parts, maintenance, repairs, work or other services (collectively referred to as "**Additional Services**") are required or requested, such Additional Services shall only be provided if Customer and Supplier first enter into a separate written agreement specifying the scope of Additional Services and compensation to be paid by Customer to Supplier for providing Additional Services.

2. Nature of Services. Provided Customer complies with the Notice provision of this Agreement (Section 11), Supplier shall provide the following specific maintenance services identified in this Section 2 on Customer's fire training simulators purchased from Supplier (specifically identified as a "**Fireflash Trainer**"):

- Program reinstallation from original software. Program upgrades at Supplier's cost when applicable (software only);
- Gas monitoring verification and recalibration; alarm system test;
- Flame detection system removal and cleaning;
- Ignition probe inspection;

- Leak check of liquid propane gas (LPG) piping and verification of accuracy of pressure regulator(s);
- Electrical panel check, including voltage and wiring checks, e-stops and dead-man pedal;
- Generator fluid change;
- Verification of temperature monitoring system and probe(s) accuracy;
- Air compressor fluid change;
- Verification of correct ventilation and airflow fan operation;
- Testing of smoke machine and distribution system (if applicable);
- Cleaning of smoke machine nozzle (if applicable);
- Testing LPG valve body for safety shut-off accuracy;
- Inspecting water-cooling system for adequate levels of dispersion (if applicable);
- Inspecting entire trailer bracket system and securing pipes and electrical conduit (if applicable);
- Cleaning and lubing of gas valve (if applicable);
- Testing ventilation prop rams (if applicable);
- Conducting a full system inspection including burn quality test and
- Inspecting applicable lift system for safe operation (2 story).

(collectively the "**Services**").

3. Exclusivity of Engagement. Supplier, or its assignee or agents, shall be the exclusive provider of the Services during the Term. Supplier cannot warrant the capabilities, training or experience of any unapproved service provider or the quality of work such non-approved providers may perform on Customer's system. Use of an unapproved service provider by Customer may lead to serious injury or death. Therefore, use of an unapproved service provider will result in the following: (1) Supplier shall be immediately relieved of any and all duties and obligations pursuant to this Agreement, (2) Customer's Payment shall be immediately forfeited in full, (3) any warranty, whether express or implied, related in any respect to Customer's Fireflash Trainer shall be immediately void and of no force or effect.

4. Payment. In return for Supplier performing the Services under this Agreement, Customer shall pay Supplier the total sum of **Nine Thousand US Dollars (\$9000.00)** the "**Payment**"), payable upon execution of this Agreement.

5. Cancellation Fee. Once service visit date is confirmed and travel arrangements have been completed, customer will be responsible for a cancellation fee if service date is cancelled or changed by the customer. Fees will include, all incurred costs including administrative fees.

6. Termination and Non-Renewal. This Agreement may be terminated:

- (a) for any reason specifically provided in this Agreement;

(b) by both parties, upon mutual written agreement to terminate; and/or

(c) by either party, upon 30-days prior written notice, if the other party materially breaches any material obligation under this Agreement and fails to cure such breach within 30 days after written notice specifying in reasonable detail the nature of the alleged breach. If this Agreement is terminated due to Supplier's breach of any material obligations required by this Agreement, customer shall be entitled to a refund of any un-earned portion of the payment tendered to Supplier.

7. Termination Due to Acts of Customer. Supplier may unilaterally terminate this Agreement for the following reasons:

(a) Customer's use of any person or entity, other than Supplier or a person or entity pre-approved in writing by Supplier, for maintenance or service on the Fireflash Trainer; and/or

(b) Customer's failure to operate or maintain the Fireflash Trainer in accord with the Supplier Operations Manual, Operations Check List, and/or Maintenance Manual.

8. Binding Effect, Benefits; Assignability. This Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their respective successors, assigns and delegees. Supplier may at any time, and with prior consent from Customer, assign and/or delegate the rights, duties and obligations of this Agreement. This Agreement shall be incorporated by reference into any assignment and/or delegation and any assignee/delegee shall comply with all the terms and conditions of this Agreement.

9. Attorneys' Fees. If any party to this Agreement shall bring any action, suit, claim, counterclaim, appeal or arbitration against the other party to enforce the terms hereof or to declare rights hereunder (collectively, an "**Action**"), the losing party shall pay to the prevailing party a reasonable sum for attorneys' fees and costs incurred in bringing and prosecuting such Action and/or enforcing any judgment, order, ruling, or award. For purposes of this provision, (a) attorneys' fees shall include, but not be limited to, fees incurred in discovery, post judgment motions and collection actions, and bankruptcy litigation.

10. Rules of Construction.

(a) Headings. The section headings in this Agreement are inserted only as a matter of convenience, and in no way define, limit, or extend or interpret the scope of this Agreement or of any particular section.

(b) Tense and Case. Throughout this Agreement, as the context may require, references to any word used in one tense or case shall include all other appropriate tenses or cases.

(c) No Limitation. Whenever the words "including," "include" or "includes" or words of similar import appear in this Agreement, they shall be deemed to be followed by the words "without limitation."

(d) Severability. The validity, legality or enforceability of the remainder of this Agreement will not be affected even if one or more of the provisions of this Agreement is held to be invalid, illegal or unenforceable in any respect.

(e) Construction of Agreement. No party hereto, nor its respective counsel, shall be deemed the drafter of this Agreement for purposes of construing the provisions of this Agreement, and all provisions of this Agreement shall be construed in accordance with their fair meaning, and not strictly for or against any party hereto.

(f) Customer Actions. Any item requiring the Customer's consent, approval, request, notice, authorization, designation or direction shall be deemed satisfied by such action by a duly authorized agent, representative or designee of Customer.

11. Further Assurances. Each party hereby agrees to execute and deliver such documents and instruments, and to take such further actions, as may from time to time be requested by another party in order to accomplish the purpose and intent of this Agreement or to consummate or effectuate the transactions contemplated hereby.

12. Notice. Any and all requests for Services pursuant to this Agreement shall be in writing and shall be deemed properly delivered or served only when (1) delivered to Supplier via registered mail or certified United States mail, return receipt requested, postage prepaid, addressed as follows: **Fireblast 451, Inc., 545 Monica Circle Corona, CA 92880**, and (2) delivered to Supplier no later than 30-days prior to the last day of the Term of this Agreement. Supplier shall use good faith efforts to schedule and commence the Services within 30 days from the date of delivery of a request for Services. Supplier shall have no obligation to provide Services unless notice of a request for Services is first provided in strict conformity with the manner of preparation, delivery and time provided for in this Agreement. Supplier may change its address for the purposes of this section by giving written notice of the change to Customer

13. Delays or Omissions; Remedies. Time is of the essence in this Agreement. Supplier's obligation to perform the Services, however, shall be excused without liability when prevented by an act of war, terrorist act, force majeure, an act of God, governmental action or actions or omissions of Customer. No delay or failure to exercise any right, power or remedy available to any party under this Agreement or at law or in equity shall impair or act as a waiver of any such right, power or remedy or constitute an implied consent to, acquiescence in or waiver of any breach, default or omission of any other party which gave rise to any such right, power or remedy. No consent to any action or waiver of any right by any party to this Agreement shall operate or be construed as a continuing or blanket consent to or waiver of any other action or right in the future. All remedies available to any party to this Agreement, whether by the terms of this Agreement or at law or in equity, are cumulative and not exclusive or alternative.

14. Governing Law; Entire Agreement; Execution; Amendment. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Florida without giving effect to its conflicts or choice of law principles and the parties irrevocably agree to submit to the jurisdiction and venue of the courts servicing Sumter County, Florida to resolve any disputes arising under or relating to this Agreement. This Agreement and the Supplier Operations Manual, Operations Check List, and Maintenance Manual represent the complete and final understanding of the parties with respect to this Agreement's subject matter and supersede any and all prior or contemporaneous oral or written discussions, negotiations, agreements or understandings with respect to such subject matter. This Agreement may be executed by facsimile signature and in two or more counterparts, each of which shall constitute an original and all of which when taken together shall constitute one and the same instrument. Any amendment or modification of, or supplement to, this Agreement must be in writing and executed by each party hereto.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

CUSTOMER

By: _____

Name: _____

Title: _____

Date: _____

SUPPLIER

By: _____

Name: _____

Title: _____

Date: _____