

COMMISSIONERS JOURNAL NO. 60 - DELAWARE COUNTY
 MINUTES FROM REGULAR MEETING HELD OCTOBER 17, 2013

THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY MET IN REGULAR SESSION ON THIS DATE WITH THE FOLLOWING MEMBERS PRESENT:

Present:
Ken O'Brien, President
Dennis Stapleton, Vice President
Gary Merrell, Commissioner

RESOLUTION NO. 13-1071

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD OCTOBER 14, 2013:

It was moved by Mr. Merrell, seconded by Mr. Stapleton to approve the following:

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on October 14, 2013; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.12 of the Ohio Revised Code, that the entire record of the proceedings at that meeting is completely and accurately captured in the electronic record of those proceedings;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the electronic record of proceedings at the previous meeting.

Vote on Motion Mr. Merrell Aye Mr. Stapleton Aye Mr. O'Brien Aye

PUBLIC COMMENT

ELECTED OFFICIAL COMMENT

RESOLUTION NO. 13-1072

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR1016:

It was moved by Mr. Merrell, seconded by Mr. Stapleton to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR1016, and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			
Ohio CAT	Preventative Maint. on Generators	66211903-5328	\$7,000.00

<u>PR #</u>	<u>Vendor Name</u>	<u>Line Description</u>	<u>Line Account</u>	<u>Amount</u>
800 RE BANDING 911 COMMUNICATIONS-MATERIALS AND SUPPLIES				
R1305860	B&C COMMUNICATIONS	RADIO EQUIPMENT	10011325-5260	\$13,110.71
800 RE BANDING (911 COMMUNICATIONS)-SERVICE AND CHARGES				
R1305860	B&C COMMUNICATIONS	MAINTENANCE	10011325-5328	\$75.00

Vote on Motion Mr. Stapleton Aye Mr. Merrell Aye Mr. O'Brien Aye

RESOLUTION NO. 13-1073

IN THE MATTER OF GRANTING THE ANNEXATION PETITION OF 498.244 ACRES OF LAND IN BERLIN TOWNSHIP TO THE CITY OF DELAWARE:

It was moved by Mr. Stapleton, seconded by Mr. Merrell to approve the following resolution:

Whereas, on September 20, 2013, the Clerk to the Board of the Delaware County Commissioners received an annexation petition filed by Michael R. Shade, agent for the petitioners, of 498.244 more or less, in Berlin Township to the City of Delaware; and

Whereas, ORC Section 709.023-Expedited Type 2 Annexation Petition; Petitions By All Property Owners With Or Without Consent of Municipality & Township(s) – If the Municipality or Township does not file an objection within 25 days after filing of annexation, the Board at its next regular session shall enter upon its journal a resolution granting the proposed annexation; and

Whereas, 25 days have passed and the Clerk of the Board has not received an objection from the City of Delaware or Berlin Township.

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Therefore, Be It Resolved, the Delaware County Board of Commissioners grants the annexation petition request to annex 498.244 acres, more or less, in Berlin Township to the City of Delaware.

Vote on Motion Mr. O'Brien Aye Mr. Merrell Aye Mr. Stapleton Aye

RESOLUTION NO. 13-1074

IN THE MATTER OF SCHEDULING THE SPECIAL COMMISSIONERS' SESSIONS FOR THE 2014 BUDGET HEARINGS STARTING AT 9:30AM WEDNESDAY OCTOBER 23RD, 2013 AND CONTINUING THRU FRIDAY NOVEMBER 1ST, 2013:

It was moved by Mr. Stapleton, seconded by Mr. Merrell to approve scheduling the Special Commissioners' sessions for the 2014 budget hearings starting at 9:30AM Wednesday October 23RD, 2013 and Continuing Thru Friday November 1ST, 2013.

Starting times for each day are as follows:

Wednesday October 23, 2013 at 9:30AM
Thursday October 24, 2013 at 1:00PM
Friday October 25, 2013 at 9:30AM

Monday October 28, 2013 at 2:00PM
Tuesday October 29, 2013 at 9:30AM
Wednesday October 30, 2013 at 9:30AM
Thursday October 31, 2013 at 1:00PM
Friday November 1, 2013 at 11:00AM

Vote on Motion Mr. Merrell Aye Mr. O'Brien Aye Mr. Stapleton Aye

RESOLUTION NO. 13-1075

IN THE MATTER OF APPROVING A STANDARD TERMS AND CONDITIONS OF SALE CONTRACT BETWEEN DELAWARE COUNTY AND AVIAT NETWORK FOR THE FOR THE COUNTYWIDE MICROWAVE COMMUNICATIONS SYSTEM UPGRADE:

It was moved by Mr. Merrell, seconded by Mr. Stapleton to approve the following:

Whereas, the 911 Communications Director for Emergency Communications and the Systems Manager recommend approval of the standard terms and conditions of sale contract between Delaware County And Aviat Network for the Countywide Microwave Communications System Upgrade;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the standard terms and conditions of sale contract between Delaware County And Aviat Network for the Countywide Microwave Communications System Upgrade.

Further Be It Resolved, that The Board hereby approves a purchase order in the amount of \$512,323 to Aviat Networks from Fund Number 41711436.

**AVIAT NETWORK
STANDARD TERMS AND CONDITIONS OF SALE
DELAWARE COUNTY, OHIO**

(These negotiated terms and conditions will apply to Purchase Orders issued by Delaware County)

I. DEFINITIONS

In addition to the terms defined elsewhere in these Conditions, the following terms used herein have the following meanings:

A. "Agreement" means the Order, agreement or other contractual instrument between the Customer and Aviat Networks into which these Conditions are incorporated, all as acknowledged by Aviat Networks on its standard acknowledgement form;

B. "Aviat Networks":

C. United States. The contracting entity shall be Aviat U.S., Inc. a wholly owned subsidiary of Aviat Networks, Inc.

D. Outside of the United States. The contracting entity shall be Aviat Networks (S) Pte. Ltd., a subsidiary of Aviat U.S., Inc.;

E. "Conditions" means these Standard Terms and Conditions of Sale;

F. "Customer" means the purchaser of Equipment, Software, or Services from Aviat Networks;

G. "Equipment" means any hardware and excludes any Software or Services;

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H. "Order" means the Customer's purchase order or signed Quote, as acknowledged by Aviat Networks on its standard acknowledgement form;

I. "Quote" means the price quotation of Aviat Networks itemizing the purchase price and includes all exhibits referred to within such Quote, including but not limited to the technical proposal, technical specifications, scope of work, schedule, the Agreement and any maintenance agreement specifically included in the purchase price;

J. "Services" means installation, warranty, maintenance support, integration, or other services to be provided to Customer as part of the Agreement;

K. "Software" means software and/or firmware, including all copies provided to Customer.

L. "United States" means the United States of America and its territories.

II. VALIDITY OF QUOTE

A Quote is an invitation for an offer and a notice to Customer of these Conditions which automatically expires after sixty (60) days from the date of Quote, (i) if Customer has not issued Aviat Networks a purchase order or (ii) if the Quote is not signed by Customer and returned to Aviat Networks within such time frame, unless an extension of such period is granted or agreed to in writing by Aviat Networks.

III. ORDER ACCEPTANCE

1. Customer's Order, regardless of any contrary wording, will constitute an offer to purchase only on these Conditions (which shall be deemed incorporated into the Order) and as set forth in the Agreement. If Customer's purchase order or signed Quote should contain any terms and conditions in addition to or in conflict with those contained in these Conditions, Customer, by submission of the purchase order or signed Quote, specifically agrees that such additional or conflicting terms are rejected by Aviat Networks and will be void, unless expressly accepted in writing and signed by an authorized representative of Aviat Networks. The failure of Aviat Networks to object reasonably to any such term and condition in Customer's purchase order or signed Quote will not constitute a waiver of these Conditions. Customer's Order shall be deemed accepted by Aviat Networks only when Aviat Networks transmits to Customer its standard acknowledgement form.

2. In case of any inconsistency between the terms and conditions of the Agreement and any purchase order, acknowledgment or form of contract sent from the Customer to Aviat Networks, or contained in any other communications between the Customer and Aviat Networks, or any terms implied by trade, custom, practice or prior course of dealings between the parties, the terms of the Agreement shall control.

3. The only obligation of Aviat Networks under the Agreement will be to provide the Equipment, Software and Services as listed in the Quote. The technical requirements of the Equipment, Software and Services shall be only as specified in the Quote or if not so specified as set forth in Aviat Networks' standard technical specifications for such Equipment, Software and Services.

4. Model, nomenclature and the mechanical and electrical design of Equipment described herein are subject to change without notice, provided that they do not affect the fit, form, or function of the Equipment in the application originally agreed to with the Customer.

5. Customer acknowledges and has placed Customer's Order upon (i) signing the Quote in the space provided or (ii) providing Aviat Networks with Customer's Purchase Order.

6. The timely securing of permits, licenses or other local, state or federal governmental approvals required in connection with any purchases hereunder shall be the sole responsibility of Customer and Customer shall bear the cost thereof.

IV. PRICES

Unless otherwise agreed in writing, all prices are in United States Dollars. All prices are exclusive of shipping (including Aviat Networks internal handling charges) and insurance charges which will be invoiced separately.

V. TAXES

All prices are exclusive of all sales, use, excise, and other taxes, duties, or charges. Unless evidence of tax exempt status is provided by Customer, Customer will pay, or upon receipt of invoice from Aviat Networks, will reimburse Aviat Networks within a reasonable time after receipt of notification for, all such taxes or charges levied or imposed on Customer, or required to be collected by Aviat Networks as a result of this transaction or any part thereof.

VI. CHANGES/CANCELLATION

Customer may request changes to the Equipment, Software, or scope of Services previously specified. However,

a) Aviat Networks shall not be obligated to accept any changes requested by Customer.

b) All changes will result in extra charges to Customer.

c) Cancellation of any Software, Services, Equipment that was custom manufactured to Customer's specifications or any resale equipment ordered for Customer's requirements may include a termination charge of up to 100% of the listed selling price depending upon the level of customization.

d) Except as otherwise expressly provided herein, cancellation of Customer's Order in whole or in part by Customer shall in all cases be subject to Aviat Networks' reasonable cancellation charges.

e) Aviat Networks may cancel any Order immediately upon notice to Customer if Aviat Networks determines that compliance with any applicable environmental law or regulation by Aviat Networks is not reasonably technologically or economically feasible, or would otherwise require Aviat Networks to change its manufacturing process.

VII. DELIVERY

a) Scheduled Delivery Date. The date Customer has committed to take delivery of the Equipment, Software, or Services as stated in the Agreement shall be the "Scheduled Delivery Date." SCHEDULED DELIVERY DATES INDICATED HEREIN AND AS MAY BE SUBSEQUENTLY ACKNOWLEDGED TO CUSTOMER ARE APPROXIMATE AND SUBJECT TO CUSTOMER'S SECURING FINANCING AND AVAILABILITY OF INVENTORY. Aviat Networks shall exercise reasonable efforts to comply with Customer's requested shipping schedule if Customer furnishes all information necessary, including sufficient detail to complete the technical specifications, to permit Aviat Networks to complete the Order. Aviat Networks shall have the right to adjust the Scheduled Delivery Date as of the date Customer secures financing. Aviat

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Networks shall have the right to make, and Customer agrees to accept, shipments in more than one lot, and payment for each lot shall be due accordingly.

b) Customer Delay.

i. If Customer, through Customer's actions or inactions, delays the Scheduled Delivery Date specified in the Agreement, payments are nevertheless to be made by Customer as though shipment had been made or Services performed as scheduled.

If so delayed, Aviat Networks will ship the Equipment to either a storage facility designated by the Customer within ten (10) business days, or if Customer fails to designate, to any storage facility designated by Aviat Networks and all expenses for storage at such facility shall be paid by Customer. Title and risk of loss for Equipment placed in storage shall pass to Customer upon placement of the Equipment into storage and the warranty will start on that date.

ii. If Customer is unable to meet any of Customer's obligations, or secure financing, or if through action or inaction Customer causes a delay that is not resolved for a period of one hundred eighty (180) days, then Aviat Networks may cancel the Agreement upon giving Customer thirty (30) days written notice that conditions of the Agreement were not met. Upon issuance of such notice Aviat Networks will stop all work under the Agreement and cancel purchase orders and subcontracts with suppliers. Upon any termination pursuant to this provision, Aviat Networks will be entitled, at a minimum, to all costs actually incurred up to the time of termination, plus a fair and reasonable pro rata profit on such cost. A termination notice containing these charges will be prepared and an invoice for termination charges will be submitted to Customer and will be payable upon receipt.

c) **Aviat Networks Delay Beyond 180 Days of the Scheduled Delivery Date.** If shipment of any Equipment is delayed by Aviat Networks for more than one hundred eighty (180) days beyond the Scheduled Delivery Date, either party may cancel the Order for such Equipment by written notice to the other, whereupon Aviat Networks shall refund to Customer an amount equal to an equitable portion of any payment made by Customer towards the total price, without interest.

d) When Aviat Networks is providing financing to Customer, shipments will not be made until all required security agreements and financing statements have been executed and approved by Aviat Networks.

VIII. FREIGHT CHARGES AND TRANSPORTATION INSURANCE

Unless otherwise stated in the Agreement, all prices and terms are F.O.B. origin for domestic shipments (within the United States) or 'Ex-Works' (Incoterms 2010) for international shipments (outside the United States), and are exclusive of freight charges. Shipping charges to Customer's destination will be added to the Aviat Networks invoices. The method of shipment will normally be determined by Customer's Order, but if no carrier or method of shipment is specified, Aviat Networks will select a carrier as a convenience to Customer. Aviat Networks suggests that Customer arrange transit insurance for maximum protection against loss or damage.

IX. RISK OF LOSS AND TITLE

a) **Shipments Within the United States.** Title to and risk of loss for Equipment and Software media (except as reserved in clause 13 below) sold under the Agreement shall transfer to Customer at the F.O.B. origin delivery point.

b) **Shipments Outside the United States.** Title to Equipment and Software media (except as reserved in clause 13 below) shall transfer to Customer upon shipment; risk of loss in Equipment shall transfer in accordance with the delivery term 'Ex-Works' (Incoterms 2010), subject to Customer's rights with respect to any transit insurance purchased by Aviat Networks as provided above.

X. PAYMENT TERMS

a) **Domestic Orders.** Customer shall make payment of the purchase price net thirty (30) days from the date of invoice, unless otherwise specified in the Agreement or agreed to in writing by Aviat Networks. Aviat Networks will invoice upon shipment of Equipment or Software or upon commencement of Services, or if more than one is applicable, whichever is earlier. If payment is not made when due, Aviat Networks may assess interest on the overdue balance at the lesser of 1-1/2% per month or the maximum rate allowed by law.

b) **International Orders.** Customer shall make payment of the purchase price which may include a down payment and the balance due prior to shipment without deduction or set-off of any kind, in US dollars, either by prepaid telegraphic transfer (please contact the Aviat Networks Financial Controller) or by fully negotiable irrevocable letter of credit, confirmed by a bank acceptable to Aviat Networks and payable at site, unless otherwise specified in the Agreement or agreed to in writing by Aviat Networks.

c) **Past Due Invoices.** In the case that Customer fails to pay Aviat Networks in accordance with Article 10 of this Agreement, such non-payment shall be considered a material breach of this Agreement. Such breach shall result in damage to the interests of Aviat Networks, and Aviat Networks will notify Customer in writing to pay the overdue payment within ten (10) days from the notification. Aviat Networks shall have the right, without incurring any penalties, to (i) stop all pending and future shipments of the Equipment and Software; and/or (ii) stop performing Services until such payment in full is made by Customer. Aviat Networks, in its sole discretion, may not accept new Purchase Orders from Customer until the outstanding balance, including interest, is paid to Aviat Networks.

XI. EQUIPMENT RETURN POLICY

a) **Immediate Customer Inspection of Equipment.** Upon receipt of shipments, Customer must open and inspect all boxes immediately for possible freight damage or missing items of Equipment. If Customer finds an issue, Customer is responsible for immediately contacting Aviat Networks to request a return authorization and further instructions, as applicable. Failure to notify Aviat Networks in writing within thirty (30) days of delivery of the affected shipment in the case of damaged or missing Equipment will result in Customer's waiver of any right to claim for remedy.

i. **Equipment Damaged in Shipment.** Customer must immediately notify the delivering carrier and request an inspection.

ii. **Items Shipped in Error.** Equipment shipped in error is not subject to a restocking fee, provided that it is returned without damage and in complete and unused condition.

iii. **Defective Equipment Under Warranty.** If the Equipment Customer receives is defective, it is covered under the Aviat Networks or manufacturer's standard equipment warranty.

iv. **Custom Manufactured or Special Order Items.** Customer may not return custom manufactured or special order items unless they are found to be damaged in shipment or shipped in error.

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V. Installation Materials. Excess components and materials used during Aviat Networks systems installation will be evaluated on a case-by-case basis.

b) Return Authorization Required. Equipment shall not be returned without Aviat Networks' prior authorization, and such return is subject to restocking fees and other fees and charges, as applicable. Each return authorization shall be completed by Customer describing the nature of the condition or reason for return. Customer shall not discard packing material, and shall return the Equipment without damage and in complete and unused condition.

i. Return authorization numbers must appear on each individual package being returned. Customer is responsible for insuring the return for the full invoice amount and all shipping costs. Aviat Networks may refuse shipments of Equipment returned without return authorization numbers. All Equipment being returned for credit must be returned in a timely manner and in good condition. Aviat Networks will inspect all Equipment returned. If there is damage, wear and tear, or if there are missing components or accessories, Aviat Networks will charge Customer for repair/refurbishment in addition to a restocking fee and other charges.

c) No Fault Found (NFF) Fee. Aviat Networks' policy is that there will not be a No Fault Found Fee for in warranty returns deemed NFF by the repair center unless it is identified that the Customer's NFF return rate has exceeded 10% of the total return volume during any 12 month period. The Customer can then be billed the standard repair price for any additional Equipment returned during the warranty period that are found to be NFF. All out of warranty No Fault Finds will be billed at the standard repair price.

XII. WARRANTY PROVISIONS

a) EQUIPMENT WARRANTY.

i. This warranty is extended to Customer and applies to all Aviat Networks manufactured Equipment purchased, installed, and used for the purpose for which such Equipment was originally designed.

ii. Aviat Networks warrants that the Equipment i) is free from defects in materials and workmanship and ii) substantially conforms to Aviat Networks' published specifications. If the Equipment does not function as warranted during the warranty period, Aviat Networks will determine to either i) make it do so, or ii) replace it with equivalent Equipment.

iii. Items not manufactured by Aviat Networks to be utilized in conjunction with or independently of Aviat Networks manufactured Equipment shall be only covered by the specific warranty terms of the supplier or manufacturer of those items.

iv. Aviat Networks does not warrant, provides no guarantee and is not responsible for:

(1) Defects or failures caused in whole or in part by (A) power failures, surges, fires, floods, accidents, actions of third parties, or other events outside of Aviat Networks' control, (B) Customer's abuse, mishandling, misuse, negligence, improper storage, servicing or operation, or unauthorized attempts to repair or alter the Equipment in any way, (C) items normally consumed during the Equipment operation, or (D) failures caused by non-Aviat Networks Equipment. Customer must provide qualified technical personnel to operate, maintain, and handle the Equipment.

(2) Consequential expenses incurred for transportation, removal, replacement, evaluation, or for testing, repair, or other services not performed by Aviat Networks personnel. Consequential damages from any causes such as downtime costs, costs for substituting Equipment or loss of anticipated profits or revenue are not covered.

(3) Equipment built to Customer's specifications that are later found not to meet Customer's needs or expectations.

(4) The performance of the Equipment when used in combination with equipment not purchased, specified, or approved by Aviat Networks.

(5) Signal coverage delivered by antenna equipment whether or not supplied by Aviat Networks.

(6) Damages and performance limitations due to outside forces such as snow, ice, lightning, excessive heat or cold, or highly corrosive environments.

(7) Cost to ship Equipment to Aviat Networks to provide the repair, replacement, or return of a defective part or unit. Equipment shall be returned to Aviat Networks in accordance with the terms and conditions of the Aviat Networks Equipment Return Policy described in Article 11.

V. Warranty on Replacement Parts and Repair of Aviat Networks Manufactured Items Outside the Equipment Warranty Period. Replacement parts and repairs are warranted to be free from defects in material or workmanship for a period of one hundred eighty (180) days from shipment date or the balance of the original warranty, whichever is longer. Aviat Networks will replace parts or repair unit(s) at its factory per its authorization.

vi. Scope of Aviat Networks Equipment Warranty. Aviat Networks Equipment Warranty does not cover on-site trouble shooting or first level maintenance services. On-site trouble shooting services can be provided at Aviat Networks' option if a reasonable effort by Customer's qualified technical personnel has not corrected the problem. If so, Customer will be responsible for the labor, travel and living expenses associated with the field service of Aviat Networks' personnel. A TWO-DAY MINIMUM CHARGE APPLIES TO ALL ON-SITE TROUBLE SHOOTING VISITS. First level maintenance services can be provided under a separate AviatCare Service Level Agreement ("SLA").

vii. **USED EQUIPMENT. IF THE EQUIPMENT SPECIFIED IN THE AGREEMENT IS DESCRIBED AS USED, IT IS SOLD "AS IS" AND THE WARRANTY PERIOD WILL BE SPECIFIED AT THE TIME OF SALE. IF THE AGREEMENT COVERS EQUIPMENT NOT OWNED BY AVIAT NETWORKS, IT IS SOLD SUBJECT TO THE TERMS OF AVIAT NETWORKS' ACQUISITION OF POSSESSION.**

b) SERVICE WARRANTY.

i. Aviat Networks warrants that the Services will be performed in a professional manner (the "Services Warranty"). Aviat Networks is not liable for any claim under the Services Warranty unless Customer has given Aviat Networks notice of the claim, specifying in reasonable detail the nature of the claim within the applicable Services Warranty period starting on the date on which Aviat Networks has determined that the performance of the Services has been completed (the "Services Warranty Period").

ii. Warranty of Path Engineering Services: Aviat Networks warrants that the installed radio communication path will conform to Customer's multipath performance reliability requirements, when Aviat Networks has performed a path survey, recommended the path design, and Aviat Networks has performed the installation. It is further warranted that all Aviat Networks field activities and path propagation analysis will utilize current hardware, software, engineering practice and judgment with the goal of meeting Normal Path Loss, as defined in Telecommunications Industry Association/Electronic Industry Association Standard RS-252A.

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- iii. Aviat Networks will not be responsible for paths that it does not survey or for changes in path design (beyond those specifically allowed in the path survey report or in writing) after the field survey is completed, including, but not limited to: (1) any change in path design; (2) any movement of site locations; (3) any building or other structure built on-path; (4) any change to or disturbance of the terrain which may cause blockage or reflection; (5) any additional frequency interference source; (6) any change of available antenna mounting space on tower; or (7) installation of non-Aviat Networks radio equipment. Any one or more of the above changes will nullify this warranty. Customer will in such case bear the total cost of determining that such change was the cause. When non-Aviat Networks radio equipment is installed on a surveyed path, or when the installation is not performed by Aviat Networks or a Aviat Networks certified Value Added Service Provider, Aviat Networks' responsibility under the terms of this warranty will be limited to re-surveying the path.
- iv. Aviat Networks will not be responsible for degraded path performance when such degradation is due to anomalous propagation conditions such as: (1) long-term loss of fade margin due to antenna decoupling misalignment caused by widely varying k-factor changes; (2) long-term loss of fade margin due to Atmospheric Boundary Layering (ABL) causing wavefront defocusing (beam spreading), signal entrapment, "blackout" fading, and other such occurrences; (3) excessive rain outage rates beyond those published in the agreed to standards used in the calculations (Crane, ITU, regional, etc.); (4) degradation resulting from certain types of multipath interference attributed to unidentifiable off-path terrain features and/or structures; or (5) any other technological or atmospheric condition not foreseeable through the exercise of prudent engineering knowledge and judgment.
- v. THE MICROWAVE PATH DESIGN IS BASED UPON ENGINEERING PRACTICES AND STANDARDS COMMON IN THE INDUSTRY. SELECTION OF A TRANSMISSION CONFIGURATION IS BASED UPON THE MOST ECONOMICAL METHOD FOR MEETING THE PATH PERFORMANCE OBJECTIVES. WHEN PATH LOSS OR RELIABILITY PERFORMANCE IS NOT ACHIEVED, EXCLUSIVE OF ANOMALOUS PROPAGATION OR PATH CHANGES AS DESCRIBED ABOVE, THEN CUSTOMER'S SOLE REMEDY, AND AVIAT NETWORKS' EXCLUSIVE LIABILITY IN CONNECTION WITH PATH ENGINEERING, WILL BE THAT AVIAT NETWORKS WILL PROVIDE INCREMENTAL LABOR AND MATERIAL TO OPTIMIZE THE ANTENNA SYSTEM BEYOND WHAT WOULD HAVE BEEN REQUIRED DURING INITIAL INSTALLATIONS AND WILL DO SO WITHIN THE CONSTRAINTS OF THE EXISTING FACILITIES (E.G., TOWERS, SITES). ALL INCREMENTAL MATERIAL, HARDWARE OR SUPPORTING STRUCTURES REQUIRED FOR THE OPTIMIZATION WILL BE THE RESPONSIBILITY OF THE CUSTOMER.
- vi. Where anomalous propagation is suspected on an installed microwave path, Aviat Networks will work with Customer to obtain reasonable evidence that such condition exists. The total retroactive costs for such study will be the responsibility of Customer with Aviat Networks providing in-office engineering support. The cost of relocating towers, antennas, passive reflectors or other measures required to remedy this type of problem will be the sole responsibility of Customer.

c) SOFTWARE WARRANTY.

- i. Aviat Networks warrants all physical media ("Software Media") for the Licensed Programs (as defined in Article 13.e), including custom software and traffic translators to be free of defects in material or workmanship (the "Software Warranty Period"):
 - a) for a period of ninety (90) days from the date of completed installation, or
 - b) for a period of ninety (90) days from the date of shipment of the Licensed Programs by Aviat Networks if Customer should assume responsibility for installation of the Software.
- ii. This limited warranty extends only to Customer as the original licensee. Customer's exclusive remedy and the entire liability of Aviat Networks and the third party licensors under this limited warranty will be, at Aviat Networks' option, repair or replacement of the Software Media.
- iii. Aviat Networks warrants that during the Software Warranty Period the Aviat Networks Software and related documentation provided hereunder ("Licensed Aviat Networks Programs") shall operate substantially in compliance with Aviat Networks' specifications for the Licensed Aviat Networks Programs. Aviat Networks does not warrant that such Programs are error free or that Customer will be able to operate such Programs without problems or interruptions. The entire liability of Aviat Networks under this limited warranty is to provide, free of charge, a corrected copy of any portion of the Licensed Aviat Networks Programs which is found by Aviat Networks inspection not to be in substantial compliance with its specifications. If Aviat Networks is unable to provide a corrected copy of the Licensed Aviat Networks Programs within a reasonable time, Aviat Networks will replace the same with a functionally similar program or refund to Customer the amounts Customer paid Aviat Networks to purchase or license such Licensed Aviat Networks Programs. Corrections to the Licensed Aviat Networks Programs beyond the Software Warranty Period will only be made by Aviat Networks pursuant to a software maintenance agreement (attached to the Agreement, if any). The software maintenance agreement does not cover hardware replacement, hardware upgrades or emergency service for hardware; an expanded software maintenance agreement is required for such coverage.
- iv. During the Software Warranty Period, Aviat Networks will bear the material cost and shipment of corrected or replacement Software at no charge to Customer. In the rare event that Customer requires an Aviat Networks customer support engineer to visit the site, related reasonable and pre-approved on-site time and travel expenses will be billed at the prevailing daily rates, unless otherwise agreed to in writing prior to the visit. A TWO-DAY MINIMUM CHARGE APPLIES TO ALL ON-SITE VISITS.
- v. This warranty does not apply to any Software Media or Licensed Aviat Networks Programs that:
 - (1) has been altered or modified, except by Aviat Networks;
 - (2) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Aviat Networks;
 - (3) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; or
 - (4) has been used in ultra-hazardous activities.

d) EQUIPMENT, SERVICES AND SOFTWARE WARRANTY COVERAGE MATRIX

- i. "Final Acceptance" means testing of the Equipment following installation by Aviat Networks at Customer's site(s) under the terms set forth in the Statement of Work and may be performed on a link by link basis, or when live traffic is cut over, or when the Customer has beneficial use of the Equipment, whichever occurs first.

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EQUIPMENT/SERVICES/SOFTWARE	WARRANTY
Aviat Networks Equipment Warranty – U.S.A, Canada, and the Caribbean	24 months from ship date, or 36 months from ship date if the installation is performed by Aviat Networks.
Aviat Networks Equipment Warranty – Rest of World	15 months from ship date, or 27 months from ship date if the installation is performed by Aviat Networks.
Non-Aviat Networks OEM Equipment	OEM warranty is a pass through from Aviat Networks from the Ship date; maximum OEM warranty plus 3 months if the Equipment is installed by Aviat Networks.
Radio Operating Software (firmware)	Same as associated Equipment warranty period.
Element/Network Management Software (such as Provision) and other Operational, non-capacity related Software utilized on Aviat Networks equipment	90 days from Final Acceptance as defined above.
Installation Services	12 months from Final Acceptance as defined above.
Path Engineering Services	15 months from date of survey or 12 months from Final Acceptance as defined above, whichever occurs first.
Civil Engineering Services	12 months from Final Acceptance as defined above.
Equipment Repair Services	180 days from the return shipment date or the balance of the original Equipment warranty, whichever is longer.
Advance Replacement program	When units are available this service will be supplied and the cost for each Advance Replacement unit will be based on published rates at time of service.
Turn Around Time (TAT) on Repairs	Thirty (30) calendar days for currently available products. Twenty (20) calendar days is available for customers with an AviatCare Support Agreement in place.
AviatCare Extended Warranty, Warranty Plus, Warranty Preferred, and Warranty Premier Support Programs are available on current products.	AviatCare Support Programs are available on a global basis and can provide enhanced levels of support beyond standard warranty coverage on Aviat Networks equipment as well as our OEM provided products.

a) LIMITATIONS ON EQUIPMENT, SOFTWARE AND SERVICES WARRANTIES

- i. For purposes of Aviat Networks' warranties for Equipment and Software media, a defect is defined as a failure of any unit or component manufactured or supplied by Aviat Networks that is not attributable to unauthorized modification or alteration, lack of care in operation, maintenance or handling. The written notice of claim of defect must include a description of the defect with detailed information, which will enable Aviat Networks to identify the defect and determine its probable cause. Components that Customer claims to be defective must be available to Aviat Networks for inspection and test. No defective Equipment or parts are to be returned without first receiving written authorization and instructions from Aviat Networks. Customs clearance for all repaired and replacement parts under the warranty or otherwise will be Customer's sole responsibility.
- ii. CLAIMS UNDER ANY OF THE FOREGOING WARRANTIES ARE WAIVED UNLESS MADE WITHIN THE EQUIPMENT WARRANTY PERIOD, IN THE CASE OF EQUIPMENT, OR WITHIN THE SOFTWARE WARRANTY PERIOD, IN THE CASE OF SOFTWARE MEDIA, OR THE SOFTWARE WARRANTY PERIOD, IN THE CASE OF LICENSED AVIAT NETWORKS PROGRAMS, OR THE SERVICES WARRANTY PERIOD IN THE CASE OF SERVICES. NO PERSON IS AUTHORIZED TO GIVE ANY OTHER WARRANTIES OR TO ASSUME ANY OTHER LIABILITIES ON AVIAT NETWORKS' BEHALF, UNLESS MADE OR ASSUMED IN WRITING BY A DULY AUTHORIZED REPRESENTATIVE OF AVIAT NETWORKS.
- iii. AVIAT NETWORKS' LIABILITY FOR BREACH OF ANY OR ALL WARRANTIES FOR EQUIPMENT, SOFTWARE MEDIA, SERVICES AND LICENSED AVIAT NETWORKS PROGRAMS IS EXPRESSLY LIMITED TO THE REPAIR, REPLACEMENT, OR REFUND OF THE PURCHASE PRICE OF DEFECTIVE EQUIPMENT, SOFTWARE MEDIA OR LICENSED AVIAT NETWORKS PROGRAMS, LESS A REASONABLE CHARGE FOR USE. IN NO EVENT WILL AVIAT NETWORKS OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES BY REASON OF ANY BREACH OF WARRANTY OR DEFECT IN MATERIALS OR WORKMANSHIP. AVIAT NETWORKS WILL NOT BE REQUIRED TO REPAIR, REPLACE, OR REFUND THE PURCHASE PRICE OF EQUIPMENT OR LICENSED AVIAT NETWORKS PROGRAMS WHICH HAVE BEEN SUBJECTED TO NEGLIGENCE, ACCIDENT, OR IMPROPER USE, OR WHICH HAVE BEEN ALTERED OTHER THAN BY AUTHORIZED AVIAT NETWORKS PERSONNEL.
- iv. THIS LIMITED WARRANTY CONSTITUTES AVIAT NETWORKS' SOLE AND EXCLUSIVE LIABILITY HEREUNDER AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR DEFECTIVE OR NON-CONFORMING EQUIPMENT, SERVICES, AND SOFTWARE MEDIA OR LICENSED AVIAT NETWORKS PROGRAMS. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES (EXCEPT AS TO TITLE), WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, ANY IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY OR CONDITION ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, OR CUSTOM OR USAGE OF TRADE. CUSTOMER AGREES THAT NO CIRCUMSTANCE CAUSING CUSTOMER'S EXCLUSIVE AND LIMITED REMEDIES TO FAIL IN THEIR ESSENTIAL PURPOSE SHALL INCREASE OR EXTEND ANY AVIAT NETWORKS WARRANTY. THE TOTAL LIABILITY OF AVIAT NETWORKS AND ITS LICENSORS UNDER THIS WARRANTY SHALL IN ANY EVENT BE SUBJECT TO THE LIMITATIONS IN THIS ARTICLE.
- v. ANY WARRANTY CLAIM NOT SENT TO AVIAT NETWORKS IN WRITING DURING THE APPLICABLE WARRANTY PERIOD IS WAIVED BY CUSTOMER. REPLACEMENT EQUIPMENT, SERVICES, SOFTWARE

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MEDIA AND LICENSED AVIAT NETWORKS PROGRAMS ARE WARRANTED ONLY FOR THE BALANCE OF THE UNEXPIRED PORTION OF THE ORIGINAL WARRANTY PERIOD, IF ANY.

13. LICENSES.

- a) Aviat Networks grants to Customer, and Customer hereby accepts, a nontransferable (except as expressly provided in this Article 13), nonexclusive license to use Licensed Aviat Networks Programs solely in connection with the use of the Equipment purchased by Customer.
- b) If the Customer utilizes the Licensed Aviat Networks Programs with other Equipment, then an additional license fee may be assessed by Aviat Networks.
- c) The Licensed Aviat Networks Programs furnished with the Equipment shall be Aviat Networks' latest commercial generation available at the time of shipment of the Equipment, and Aviat Networks shall be under no obligation to supply updates to such Licensed Programs (as defined below) except where so stated in writing.
- d) In addition to the Licensed Aviat Networks Programs, other Software or documentation provided by Aviat Networks may originate from third party licensors ("Licensed Third Party Programs"), and may require that the terms of their respective licenses be accepted prior to use. Such license terms, if any, may be attached or may appear as part of the delivered or downloaded Software and may require acceptance by Customer prior to installation of the Licensed Third Party Programs. Third party licensors shall be deemed to be third party beneficiaries with respect to any Licensed Third Party Programs. The terms of the third party licenses shall be controlling with respect to any Licensed Third Party Programs provided hereunder.
- e) The term "Licensed Programs," as used herein, refers to both the Licensed Aviat Networks Programs and the Licensed Third Party Programs. Customer's license for the Licensed Programs shall be subject to the following additional rules:
- i. Unless expressly stated, the Licensed Aviat Networks Programs are limited to object code programs and related documentation only and do not apply to any of the corresponding source code or program listings. Title in and to the Licensed Programs is and shall continue to be solely and exclusively vested in Aviat Networks and the third party licensors, as the case may be.
 - ii. Customer acknowledges that Aviat Networks and the third party licensors have and shall continue to have valuable intellectual property rights in the Licensed Aviat Networks Programs and the Licensed Third Party Programs, as the case may be, and that such intellectual property rights are and shall continue to be the sole and exclusive property of Aviat Networks or the third party licensors, as the case may be.
 - iii. Customer shall keep the Licensed Aviat Networks Programs confidential by affording access only to those of Customer's employees, agents, or consultants having a need to know and shall require such individuals to agree in writing to the obligations contained herein. In addition, Customer shall employ reasonable measures to prevent any unauthorized use, copying, publishing, reproduction, or disclosure of the Licensed Aviat Networks Programs and shall not treat such with lesser care than Customer's own confidential information. Customer shall not make copies of the Licensed Aviat Networks Programs without the prior written permission of Aviat Networks.
 - iv. Customer may copy machine-readable Licensed Aviat Networks Programs to the extent reasonably necessary for normal use with the Equipment. All originals and copies of the Licensed Aviat Networks Programs shall be and shall remain the property of Aviat Networks.
 - v. Customer shall label each copy of the Licensed Aviat Networks Programs with the copyright, trademark, and proprietary notices, in the same form, which appear on the Licensed Aviat Networks Programs delivered to Customer by Aviat Networks. All copies of the Licensed Aviat Networks Programs, when not in use, shall be destroyed or maintained in a secure place within Customer's business premises under access and use restrictions compatible with this Article 13. Customer shall be deemed to own only the magnetic or other physical media in which the Licensed Aviat Networks Programs (original and all copies) are recorded.
 - vi. The Licensed Aviat Networks Programs and Licensed Third Party Programs may be used solely in connection with the Equipment or Software system purchased by Customer and on which the Licensed Programs were originally installed. Customer may not rent, lease, assign, transfer, network, display, or distribute the Licensed Aviat Networks Programs except as specifically provided herein or in the third party license terms, nor may Customer reverse engineer, disassemble, decompile, modify, alter, translate, or adapt the Licensed Programs or create any derivative thereof, except as permitted by the option selections contained within the Licensed Aviat Networks Programs or as permitted in the third party license terms. The licenses granted herein to the Licensed Aviat Networks Programs exclude the use of any functionality resident in the software application, unless specifically identified in the Order. Customer agrees to not use any functionality which is not specifically identified in the Order without first obtaining Aviat Networks' written consent to expand the license grant to cover such functionality.
 - vii. Customer agrees that a violation of the license terms would cause irreparable injury to Aviat Networks or the third party licensor, and that Aviat Networks or the third party licensor, as a third party beneficiary, shall be entitled, in addition to any other rights and remedies it may have, at law or in equity, to an injunction enjoining and restraining Customer from doing or continuing to do any such act and any other violations or threatened violations of the licenses granted herein. Furthermore, Customer agrees that if Aviat Networks or the third party licensor should waive any breach of any provision of the license terms it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision of the license terms.
 - viii. The terms and conditions of the licenses granted herein shall apply to any and all upgrades, enhancements, updates and modified versions of the Licensed Aviat Networks Programs which may be provided by Aviat Networks to Customer in connection with the Agreement. Aviat Networks may provide such versions of the Licensed Programs via electronic download or on media, such as CDs or diskettes. If required by Aviat Networks, Customer agrees to substitute such version for the previous version being used with the Equipment and to delete and destroy any previous version and all copies thereof.
 - ix. The term of the licenses to the Licensed Aviat Networks Programs shall be coextensive with Customer's ownership of the Equipment, subject to early termination by Aviat Networks upon notice to Customer in the event of a material breach of the terms of these Conditions or of the Agreement. The term of the license to any Licensed Third Party Programs may be different. Upon any such termination, Customer shall immediately discontinue use of the Licensed Aviat Networks Programs, shall comply with the terms of the license applicable to the Licensed Third Party Programs, and in the case of any termination other than a permitted transfer to a subsequent owner, promptly shall return to Aviat Networks all copies of the Licensed Aviat Networks Programs. In the event of non-payment by Customer, Aviat Networks reserves the right to deactivate or remove the Software.

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- X. Aviat US represents that its Equipment may contain software duly licensed from Cisco ("Cisco Software"). It is a condition of the Customer's right to use the Cisco Software as an end user that Customer accepts the terms of the End User Software License Agreement set forth at <http://www.cisco.com/go/eula>. By signing this Agreement, Customer acknowledges and agrees that Customer has reviewed the terms and conditions of the Cisco End User License Agreement and agrees to abide by them.

14. DISCONTINUED AVAILABILITY/LAST TIME BUY

a) Customer acknowledges that Aviat Networks has made no representation about the continued availability of the Equipment listed in the Agreement. Aviat Networks reserves the right, in its absolute discretion, with or without notice, without incurring any liability to Customer or otherwise, whether in contract or tort, to discontinue manufacturing or selling any of the Equipment listed in the Agreement at any time or from time to time. Upon notice, Aviat Networks will provide Customer with an opportunity to purchase such quantities of the Equipment within six (6) to twelve (12) months of said notice ("Last Time Buy"). Customer's Last Time Buy rights are limited to products available in Aviat Networks' inventory at the time of Customer's request. Standard Aviat warranty provisions will apply to Equipment that has been discontinued and is no longer manufactured.

b) For a period of five (5) years from the date of Aviat Networks' notice that the Equipment has been discontinued and subject to continued availability of components, hardware defect repair and replacement services will be available, including the repair and/or replacement of component parts. However, such services shall only be provided if Customer has extended and converted its standard warranty coverage to an AviatCare Extended Warranty or Extended Warranty Plus Support Program.

15. INSURANCE

If Customer's Order involves deferred payments and Aviat Networks requires the same to protect its security interest, Customer shall furnish Aviat Networks evidence of Customer's insurance of Equipment and Software against fire and extended coverage perils in an amount equal to the full value of the Equipment and Software, with loss first payable to Aviat Networks as its interest may appear. Customer agrees to maintain such insurance until full payment has been made to Aviat Networks.

16. SECURITY INTEREST

a) As security for the full and prompt payment of all amounts and obligations owing by Customer to Aviat Networks hereunder, Customer grants to Aviat Networks a security interest in all Equipment and Software supplied by Aviat Networks to Customer hereunder and all proceeds thereof (collectively "Collateral"). Such security interest is and shall continue to be a first-priority security interest in the Collateral whether by virtue of the priority accorded purchase-money security interests under the applicable Uniform Commercial Code (the "UCC") or otherwise. Customer shall take all actions Aviat Networks deems necessary or desirable to perfect such security interest and maintain its first priority. Customer irrevocably authorizes Aviat Networks to file financing statements and amendments thereto in such places as Aviat Networks deems necessary or desirable (without Customer's signature where permitted by applicable law). Upon request of Aviat Networks, Customer will execute and deliver to Aviat Networks a separate security agreement under which Customer grants to Aviat Networks a security interest in the Collateral, and any such separate security agreement shall control over any conflicting terms of the Agreement. If the Collateral will be inventory in Customer's hands, Customer agrees that Aviat Networks may notify others claiming security interests in Customer's inventory of Aviat Networks' purchase-money security interest prior to supplying the Collateral to Customer.

b) If Customer fails to pay or perform when due any amount or obligation owing to Aviat Networks hereunder or if Customer becomes insolvent, is the subject of any bankruptcy or insolvency proceeding, then Aviat Networks may declare all amounts and obligations of Customer owing to Aviat Networks hereunder immediately due and payable and Aviat Networks shall have the rights and remedies of a secured party under the UCC.

17. INTELLECTUAL PROPERTY INDEMNIFICATION

a) Customer agrees to promptly notify Aviat Networks in writing of any notice, suit, or other action against Customer based upon a claim that any Equipment or Licensed Aviat Networks Program infringes a U.S. patent, copyright, trademark, or trade secret of a third party. Provided that Customer: (i) promptly notifies Aviat Networks of the claim; and (ii) gives Aviat Networks a copy of each communication relating to the claim, Aviat Networks will defend at its expense any such action, except as excluded below, and shall have full control of such defense, including all appeals and negotiations, and will pay all settlement costs or damages finally awarded against Customer; BUT AVIAT NETWORKS SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL DAMAGES.

b) In the event of such notice, suit, or action, Aviat Networks will at its expense procure for Customer the right to continue using the Equipment and Licensed Aviat Networks Programs, or modify the Equipment and Licensed Aviat Networks Programs to render the same non-infringing, or accept return of the Equipment and Licensed Aviat Networks Programs and replace the same with substantially equivalent non-infringing Equipment and Software, or accept return of the Equipment and Licensed Aviat Networks Programs and refund or credit to Customer the amount of the original purchase price, less a reasonable charge for depreciation and damage.

c) The preceding agreements by Aviat Networks shall not apply to any Equipment, Licensed Aviat Networks Program, or portion thereof, manufactured to specifications furnished by Customer or on Customer's behalf or to any infringement arising out of the use of such Equipment or Licensed Aviat Networks Program in combination with other equipment or software not furnished by Aviat Networks, or to use in a manner not normally intended, or to any patent, copyright, trademark or trade secret in which Customer, or any of Customer's affiliates has a direct or indirect interest, or if Customer has not provided Aviat Networks with prompt notice, authority, information and assistance necessary to defend the action.

d) THE FOREGOING STATES THE ENTIRE LIABILITY OF AVIAT NETWORKS AND CUSTOMER'S SOLE REMEDY FOR PATENT, COPYRIGHT, TRADEMARK AND TRADE SECRET INFRINGEMENTS BY ANY EQUIPMENT OR LICENSED AVIAT NETWORKS PROGRAM SOLD OR LICENSED UNDER THESE CONDITIONS OR THE AGREEMENT.

18. TECHNICAL DATA AND INVENTION

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a) Unless expressly stated in this Agreement, the sale and/or license of Equipment, Software and Services under the Agreement confers on Customer no right in, license under, access to, or entitlement of any kind to any of Aviat Networks' technical data including, but not limited to design, process technology, software and drawings, or to any of Aviat Networks' inventions (whether or not patentable), irrespective of whether any such technical data or invention or any portion thereof arose out of work performed under or in connection with the Agreement, and irrespective of whether Customer has paid or is obligated to pay Aviat Networks for any part of the design or development of the Equipment, Software or Services.

b) Aviat Networks will not be obliged to safeguard or hold confidential any data whether technical or otherwise, furnished by Customer for Aviat Networks' performance of the Agreement unless (and only to the extent that) Customer and Aviat Networks have entered into a separate written confidentiality agreement.

c) Customer shall not (1) disclose Aviat Networks' confidential or proprietary data to others without Aviat Networks' written permission; nor (2) violate Aviat Networks' copyright in the documents or Software.

19. EXCUSABLE DELAY

a) Aviat Networks will be excused from performance under the Agreement and not be liable to Customer for delay in performance attributable in whole or in part to any cause beyond its reasonable control, including, but not limited to, actions or inactions of government whether in its sovereign or contractual capacity, judicial action, war, civil disturbance, insurrection, sabotage, act of public enemy or terrorism, labor difficulties, failure or delay in delivery by Aviat Networks' suppliers or subcontractors, transportation difficulties, shortage of energy, materials, labor or equipment, accident, fire, flood, storm or other act of nature, Customer's fault or negligence or where compliance with any applicable environmental law or regulation by Aviat Networks is not reasonably technologically or economically feasible, or would otherwise require Aviat Networks to change its manufacturing process. ("Excusable Delay")

b) In the event of an Excusable Delay, Aviat Networks will make reasonable efforts to notify Customer of the nature and extent of such delay and (i) Aviat Networks will be entitled to a schedule an extension on at least a day-for-day basis, and (ii) if the delay is caused by Customer's fault or negligence, Aviat Networks will be entitled to an equitable adjustment in price under the Agreement.

20. COMPLIANCE WITH APPLICABLE LAWS

a) Customer warrants that Customer shall comply with any and all applicable US federal and state laws, and shall operate in good faith to comply with other laws and regulations and industry best practices, applicable to Customer's performance hereunder, and shall promptly act to correct any noncompliance once identified.

b) EXPORT AND RE-EXPORT RESTRICTIONS. Customer acknowledges that the Equipment and Licensed Programs sold or licensed to it by Aviat Networks under this Agreement may be subject to export controls under the laws of the United States or Canada. Customer will not export or re-export the Equipment or Licensed Programs, technology, or products manufactured from the technology that are the subject of the Agreement in violation of the export control laws of the United States or Canada.

c) ANTICORRUPTION LAWS. Customer warrants that it will comply with the United States Foreign Corrupt Practices Act of 1997, as amended.

d) WASTE RECYCLING LAWS. Customer acknowledges and agrees that the supply of the Equipment by Aviat Networks to the Customer, and the resale or re-supply of the Equipment by the Customer, may give rise to obligations for Aviat Networks and the Customer under the Environmental Laws as hereinafter defined. "Environmental Laws" means any law or regulation in any jurisdiction worldwide pertaining to the use of hazardous substances, or the recycling or treatment of waste equipment including without limitation the laws implementing the current version of the European Directive (2002/95/EC) on the Restriction on the Use of Certain Hazardous Substances in Electronic and Electrical Equipment "RoHS Directive", the current version of the European Directive (2002/96/EC) on Waste Electrical and Electronic Equipment ("WEEE Directive"), and the current version of the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Directive. The term "Laws" as used in the term "Environmental Laws" shall include any and all national laws and regulations, whether civil, criminal, or administrative, in any jurisdiction giving effect to that meaning including, but not limited to, statutes and subordinate legislation, ordinances, permits, common law, local laws, judgments, and any notices, orders, directions, instructions or decisions of any competent authority. The Customer shall be responsible for the collection, recycling, reuse and disposal of the Equipment in compliance with the Environmental Laws unless Customer returns waste electrical and electronic equipment ("WEEE") to Aviat Networks' approved treatment facility. If Customer returns WEEE to Aviat Networks' approved treatment facility, Customer shall solely bear the cost of collection and delivery of such WEEE to such facility. The Customer shall provide Aviat Networks with such compliance plans or other documents and information that Aviat Networks may reasonably request to enable Aviat Networks and its affiliates to verify and prove to any enforcement agency the compliance by the Customer and Aviat Networks of their respective obligations under this Article and the Environmental Laws.

21. LIMITATION OF LIABILITY

a) CUSTOMER IS EXPRESSLY NOTIFIED THAT UNDER NO CIRCUMSTANCES SHALL AVIAT NETWORKS BE LIABLE FOR (A) ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY PARTY, INCLUDING THIRD PARTIES, EVEN IF SUCH DAMAGES ARE FORESEEABLE, OR (B) LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE, LOST SAVINGS, OR LOST OR CORRUPTED DATA, OR (C) LOSSES RESULTING FROM SYSTEM SHUTDOWN, FAILURE TO ACCURATELY TRANSFER, READ OR TRANSMIT INFORMATION, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION, SYSTEM INCOMPATIBILITY OR PROVIDING INCORRECT COMPATIBILITY INFORMATION OR BREACHES IN SYSTEM SECURITY EVEN IF AVIAT NETWORKS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION SHALL APPLY TO ANY CLAIM OR CAUSE OF ACTION WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY OR BREACH OF WARRANTY).

b) IN NO EVENT SHALL AVIAT NETWORKS' TOTAL LIABILITY TO CUSTOMER OR ANY PARTY CLAIMING THROUGH CUSTOMER EXCEED THE LESSER OF ONE HUNDRED THOUSAND UNITED STATES DOLLARS (\$100,000.00 USD) OR THE ACTUAL SALES PRICE PAID BY CUSTOMER FOR ANY EQUIPMENT, SOFTWARE OR SERVICES SUPPLIED HEREUNDER.

c) THIS ARTICLE SHALL SURVIVE THE TERM OR EXPIRATION OF THE AGREEMENT.

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22. APPLICABLE LAW, VENUE, AND JURISDICTION

The Agreement, and any disputes related thereto, shall be governed by and interpreted in accordance with the laws of the State of Ohio, USA, regardless of any conflict of law principles requiring the application of any other law. The parties specifically exclude the application of the United Nations Convention on Contracts for the International Sale of Goods to the Agreement, to the contractual relationship created under the Agreement, and to the construction, validity, enforcement, and interpretation of the Agreement. Any disputes which cannot be resolved will be filed in and heard before the courts of Delaware County, Ohio

23. JURY WAIVER

CUSTOMER AND AVIAT NETWORKS FURTHER AGREE, TO THE EXTENT PERMITTED BY LAW, TO WAIVE ALL RIGHTS TO A TRIAL BY JURY OF ANY ACTION RELATING TO THE DISPUTE OR INTERPRETATION OF THE AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. THE PARTIES SPECIFICALLY ACKNOWLEDGE THAT THIS WAIVER IS MADE KNOWINGLY AND VOLUNTARILY AFTER AN ADEQUATE OPPORTUNITY TO NEGOTIATE ITS TERMS AND THAT SUCH WAIVER IS MATERIAL CONSIDERATION FOR THE SALE AND PURCHASE CONTEMPLATED HEREBY.

24. ASSUMPTION OF RISK

Each party hereto acknowledges (a) the risks of its undertakings hereunder, (b) the uncertainty of the benefits and obligations hereunder, and (c) its assumption of such risks and uncertainty. Each party has conducted its own due diligence and requested and reviewed any contracts, business plans, financial documents and other written material as in such party's opinion shall be the basis of that party's decision to enter into the Agreement.

25. RELIANCE ON COUNSEL AND OTHER ADVISORS

Each party has consulted such legal, financial, technical or other experts it deems necessary or desirable before entering into the Agreement. Each party represents and warrants that it has read, knows, understands and agrees with these Conditions and the terms of the Agreement, and these Conditions and the Agreement shall not be construed against either party as the drafter.

26. GENERAL PROVISIONS

a) Assignment. Customer shall not assign any of its rights under this Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law or any other manner. Any purported assignment of rights in violation of this Article is null and void.

b) Enforceability. If any provision of this Agreement is held invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions will, to the extent of such invalidity, illegality, or unenforceability, be severed, but without in any way affecting the remainder of such provision or any other provision contained herein, all of which shall continue in full force and effect.

c) No Waiver. Waiver or failure by Aviat Networks to enforce any of the terms or conditions hereunder or the delay in exercise of any of its remedies or any terms or condition herein, will not be a future waiver of any such right, or be a waiver of any other term, condition or remedy contained herein.

d) Notices. All notices must be in writing and will be effective when received by (i) personal delivery, (ii) registered, certified, or nationally recognized overnight mail, proof of receipt requested, and (iii) facsimile, if confirmed within three (3) business days by one of the other methods herein, at the addresses or facsimile numbers indicated or to such other addresses or facsimile numbers as the parties may specify by giving notice pursuant hereto. A copy of all legal notices must be sent to Aviat Networks, Inc., 5200 Great America Parkway, Santa Clara, CA 95054 USA, Attn: Legal Department, facsimile no. 1-408-567-7111. A copy of all notices will be sent to the Customer at the address provided on the Customer's purchase order.

e) Language. This Agreement is in the English language only, which language shall be controlling in all respects.

f) Publicity. Any news release, public announcement, advertisement, or publicity released by either party concerning this Agreement, will be subject to the prior written approval of the other party, and which such approval shall not be unreasonably denied. Any contemplated or proposed publicity shall give due credit to the contributions of each party. In addition, no consent shall be required where disclosure of the terms and conditions of this Agreement, Purchase Orders, Statements of Work, or any matter directly or indirectly related to this Agreement is required by any law and/or regulation.

g) Aviat Networks and/or its suppliers may audit Customer's books and records relating to Customer's purchase and/or use of Equipment, Software and Services provided hereunder, upon reasonable prior notice to Customer.

h) Surviving Provisions. Notwithstanding the expiration or early termination of this Agreement, the provisions regarding Warranties in Articles 12 and 13, Order Acceptance in Article 3, Intellectual Property Indemnification in Article 17, Confidentiality in Article 18(c), Indemnification in Article 20(c) and 20(d), Limitation of Liability in Article 21, due and outstanding cancellation fees pursuant to Article 6, the general provisions in this Article 26, and payment obligations resulting from any outstanding invoice(s) will each survive in accordance with their terms. However, if Customer breaches any provision of this Agreement, the Warranties in Article 12 and 13, and the Intellectual Property indemnification in Article 17 shall not survive.

27. CLAUSES INCORPORATED BY REFERENCE

The following Federal Acquisition Regulations/Defense Federal Acquisition Supplement ("FAR/DFARS") clauses are incorporated herein by reference, to the extent these clauses are applicable, with the same force and effect as if they are included in full text: 52.219-8 Utilization of Small Business Concerns, 52.222-26 Equal Opportunity, 52.222-35 Equal Opportunity for Special Disabled Veterans and Veterans of the Vietnam Era and other eligible Veterans, 52.222-36 Affirmative Action for Workers With Disabilities, 52.222-39 Notification of Employees Rights Concerning Payment of Union Dues or Fees, 52-247-64 Preference For Privately Owned U.S. Flag Commercial Vessels, 252.225-7014 Preference for Domestic Specialty Metals, Alternate I, 252-247-7023 Transportation of Supplies by Sea, and 252.247-7024 Notification of Transportation of Supplies by Sea.

28. ENTIRE AGREEMENT

The Agreement supersedes all previous proposals, negotiations, conversations, and understandings, whether oral or written, and constitutes the sole and entire agreement between the parties pertaining to the subject matter hereof. No modification or

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deletion of, or addition to these terms, will be binding unless made in writing and signed by duly authorized representatives of both parties.

(Copy of exhibits available in the Commissioners' Office until no longer of administrative value).

Vote on Motion Mr. Stapleton Aye Mr. O'Brien Aye Mr. Merrell Aye

RESOLUTION NO. 13-1076

IN THE MATTER OF PURCHASING EQUIPMENT AND SERVICES FOR USE IN THE 9-1-1 SYSTEM AND COUNTYWIDE PUBLIC SAFETY COMMUNICATIONS SYSTEM:

It was moved by Mr. Merrell, seconded by Mr. Stapleton to approve the following:

WHEREAS, the 911 Communications Director and Emergency Communications Systems Manager recommend the purchase of equipment and services for the 9-1-1 system and countywide public safety communications system; and

WHEREAS, the equipment and services are available for purchase at discounted pricing through the State of Ohio's cooperative purchasing program (the "Program"); and

WHEREAS, the Board of County Commissioners (the "Board") is a member of the Program and wishes to purchase the equipment and services through the Program; and

WHEREAS, pursuant to section 307.12(G) of the Revised Code, if the Board finds, by resolution, that the county has personal property that is not needed, or is unfit for public use, the Board may offer to sell the property to a firm from which the Board proposes to purchase new property and have the selling price credited to the firm against the purchase price of the new property; and

WHEREAS, Motorola is currently offering a promotion for trading in obsolete equipment for a credit on the purchase of new equipment; and

WHEREAS, the county has equipment that is not needed, obsolete, or unfit for public use and qualifies for the Motorola trade in promotion;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, STATE OF OHIO:

Section 1. The Board hereby approves the upgrade of the Delaware County 800 MHz Radio System, from Motorola Solutions, Inc., a state-approved dealer under the Program, in accordance with the proposal dated August 23, 2013, at a total price of \$5,934,811.

Section 2. The Board hereby finds that the existing Motorola System including but not limited to the repeaters, network devices and software license are not needed, obsolete, or unfit for public use and authorizes sale of the same to Motorola at a price of \$782,201.

Section 3. The purchase shall be in accordance with the Program, pursuant to the contract and terms and conditions set forth in Index STS073 Schedule # 573077-0-1, which are, by this reference, fully incorporated herein and of which the purchase order approved herein shall be made a part.

Section 4. The Board hereby approves a purchase order in the amount of \$5,152,610 to Motorola Solutions, Inc., from Fund Number 41711436

Communications System Agreement

Motorola Solutions, Inc. ("Motorola") and Delaware County Commissioners ("Customer") enter into this "Agreement," pursuant to which Customer will purchase and Motorola will sell the System, as described below. Motorola and Customer may be referred to individually as a "Party" and collectively as the "Parties." For good and valuable consideration, the Parties agree as follows:

Section 1 EXHIBITS

The exhibits listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement takes precedence over the exhibits and any inconsistency between Exhibits A through E will be resolved in their listed order.

- Exhibit A Motorola "Software License Agreement"
- Exhibit B "Payment Schedule"
- Exhibit C "Technical and Implementation Documents"

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C-1	“System Description” dated August 23, 2013
C-2	“Equipment List” dated August 23, 2013
C-3	“Statement of Work” dated August 23, 2013
C-4	“Acceptance Test Plan” or “ATP” N/A
C-5	“Performance Schedule” dated August 23, 2013
Exhibit D	Service Statement(s) of Work and “Service Terms and Conditions” (if applicable)
Exhibit E	“System Acceptance Certificate”

Section 2 DEFINITIONS

Capitalized terms used in this Agreement have the following meanings:

- 2.1. “Acceptance Tests” means those tests described in the Acceptance Test Plan.
- 2.2. “Administrative User Credentials” means an account that has total access over the operating system, files, end user accounts and passwords at either the System level or box level. Customer’s personnel with access to the Administrative User Credentials may be referred to as the Administrative User.
- 2.3. “Beneficial Use” means when Customer first uses the System or a Subsystem for operational purposes (excluding training or testing).
- 2.4. “Confidential Information” means any information that is disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, or identified at the time of disclosure as being confidential or its equivalent; or if the information is in verbal form, it is identified as confidential at the time of disclosure and is confirmed in writing within thirty (30) days of the disclosure. Confidential Information does not include any information that: is or becomes publicly known through no wrongful act of the receiving Party; is already known to the receiving Party without restriction when it is disclosed; is or becomes, rightfully and without breach of this Agreement, in the receiving Party’s possession without any obligation restricting disclosure; is independently developed by the receiving Party without breach of this Agreement; or is explicitly approved for release by written authorization of the disclosing Party.
- 2.5. “Contract Price” means the price for the System, excluding applicable sales or similar taxes and freight charges.
- 2.6. “Effective Date” means that date upon which the last Party executes this Agreement.
- 2.7. “Equipment” means the equipment that Customer purchases from Motorola under this Agreement. Equipment that is part of the System is described in the Equipment List.
- 2.8. “Force Majeure” means an event, circumstance, or act of a third party that is beyond a Party’s reasonable control (e.g., an act of God, an act of the public enemy, an act of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, and riots).
- 2.9. “Infringement Claim” means a third party claim alleging that the Equipment manufactured by Motorola or the Motorola Software directly infringes a United States patent or copyright.
- 2.10. “Motorola Software” means Software that Motorola or its affiliated company owns.
- 2.11. “Non-Motorola Software” means Software that another party owns.
- 2.12. “Open Source Software” (also called “freeware” or “shareware”) means software with either freely obtainable source code, license for modification, or permission for free distribution.
- 2.13. “Proprietary Rights” means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to the Equipment and Software, including those created or produced by Motorola under this Agreement and any corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by Motorola or another party.
- 2.14. “Software” means the Motorola Software and Non-Motorola Software, in object code format that is furnished with the System or Equipment.
- 2.15. “Specifications” means the functionality and performance requirements that are described in the Technical and Implementation Documents.
- 2.16. “Subsystem” means a major part of the System that performs specific functions or operations. Subsystems are described in the Technical and Implementation Documents.
- 2.17. “System” means the Equipment, Software, and incidental hardware and materials that are combined together into an integrated system; the System is described in the Technical and Implementation Documents.

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2.18. "System Acceptance" means the Acceptance Tests have been successfully completed.

2.19. "Warranty Period" means one (1) year from the date of System Acceptance or Beneficial Use, whichever occurs first.

Section 3 SCOPE OF AGREEMENT AND TERM

3.1. **SCOPE OF WORK.** Motorola will provide, install and test the System, and perform its other contractual responsibilities, all in accordance with this Agreement. Customer will perform its contractual responsibilities in accordance with this Agreement.

3.2. **CHANGE ORDERS.** Either Party may request changes within the general scope of this Agreement. If a requested change causes an increase or decrease in the cost or time required to perform this Agreement, the Parties will agree to an equitable adjustment of the Contract Price, Performance Schedule, or both, and will reflect the adjustment in a change order. Neither Party is obligated to perform requested changes unless both Parties execute a written change order.

3.3. **TERM.** Unless terminated in accordance with other provisions of this Agreement or extended by mutual agreement of the Parties, the term of this Agreement begins on the Effective Date and continues until the date of Final Project Acceptance or expiration of the Warranty Period, whichever occurs last.

3.4. **ADDITIONAL EQUIPMENT OR SOFTWARE.** For three (3) years after the Effective Date, Customer may order additional Equipment or Software if it is then available. Each order must refer to this Agreement and must specify the pricing and delivery terms. Notwithstanding any additional or contrary terms in the order, the applicable provisions of this Agreement (except for pricing, delivery, passage of title and risk of loss to Equipment, warranty commencement, and payment terms) will govern the purchase and sale of the additional Equipment or Software. Title and risk of loss to additional Equipment will pass at shipment, warranty will commence upon delivery, and payment is due within twenty (20) days after the invoice date. Motorola will send Customer an invoice as the additional Equipment is shipped or Software is licensed. Alternatively, Customer may register with and place orders through Motorola Online ("MOL"), and this Agreement will be the "Underlying Agreement" for those MOL transactions rather than the MOL On-Line Terms and Conditions of Sale. MOL registration and other information may be found at <http://www.motorola.com/businessandgovernment/> and the MOL telephone number is (800) 814-0601.

3.5. **MAINTENANCE SERVICE.** During the Warranty Period, in addition to warranty services, Motorola will provide maintenance services for the Equipment and support for the Motorola Software pursuant to the Statement of Work set forth in Exhibit D. Those services and support are included in the Contract Price. If Customer wishes to purchase additional maintenance and support services for the Equipment during the Warranty Period, or any maintenance and support services for the Equipment either during the Warranty Period or after the Warranty Period, the description of and pricing for the services will be set forth in a separate document. If Customer wishes to purchase extended support for the Motorola Software after the Warranty Period, it may do so by ordering software subscription services. Unless otherwise agreed by the parties in writing, the terms and conditions applicable to those maintenance, support or software subscription services will be Motorola's standard Service Terms and Conditions, together with the appropriate statements of work.

3.6. **MOTOROLA SOFTWARE.** Any Motorola Software, including subsequent releases, is licensed to Customer solely in accordance with the Software License Agreement. Customer hereby accepts and agrees to abide by all of the terms and restrictions of the Software License Agreement.

3.7. **NON-MOTOROLA SOFTWARE.** Any Non-Motorola Software is licensed to Customer in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to Motorola the right to sublicense the Non-Motorola Software pursuant to the Software License Agreement, in which case it applies and the copyright owner will have all of Licensor's rights and protections under the Software License Agreement. Motorola makes no representations or warranties of any kind regarding Non-Motorola Software. Non-Motorola Software may include Open Source Software. All Open Source Software is licensed to Customer in accordance with, and Customer agrees to abide by, the provisions of the standard license of the copyright owner and not the Software License Agreement. Upon request by Customer, Motorola will use commercially reasonable efforts to determine whether any Open Source Software will be provided under this Agreement; and if so, identify the Open Source Software and provide to Customer a copy of the applicable standard license (or specify where that license may be found); and provide to Customer a copy of the Open Source Software source code if it is publicly available without charge (although a distribution fee or a charge for related services may be applicable).

3.8. **SUBSTITUTIONS.** At no additional cost to Customer, Motorola may substitute any Equipment, Software, or services to be provided by Motorola, if the substitute meets or exceeds the Specifications and is of equivalent or better quality to the Customer. Any substitution will be reflected in a change order.

3.9. **OPTIONAL EQUIPMENT OR SOFTWARE.** This paragraph applies only if a "Priced Options" exhibit is shown in Section 1, or if the parties amend this Agreement to add a Priced Options exhibit. During the term of the option as stated in the Priced Options exhibit (or if no term is stated, then for one (1) year after the Effective Date), Customer has the right and option to purchase the equipment, software, and related services that are described in the

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Priced Options exhibit. Customer may exercise this option by giving written notice to Seller which must designate what equipment, software, and related services Customer is selecting (including quantities, if applicable). To the extent they apply, the terms and conditions of this Agreement will govern the transaction; however, the parties acknowledge that certain provisions must be agreed upon, and they agree to negotiate those in good faith promptly after Customer delivers the option exercise notice. Examples of provisions that may need to be negotiated are: specific lists of deliverables, statements of work, acceptance test plans, delivery and implementation schedules, payment terms, maintenance and support provisions, additions to or modifications of the Software License Agreement, hosting terms, and modifications to the acceptance and warranty provisions.

Section 4 PERFORMANCE SCHEDULE

The Parties will perform their respective responsibilities in accordance with the Performance Schedule. By executing this Agreement, Customer authorizes Motorola to proceed with contract performance.

Section 5 CONTRACT PRICE, PAYMENT AND INVOICING

5.1. CONTRACT PRICE. The Contract Price in U.S. dollars is \$5,152,610.00. If applicable, a pricing summary is included with the Payment Schedule. Motorola has priced the services, Software, and Equipment as an integrated system. A reduction in Software or Equipment quantities, or services, may affect the overall Contract Price, including discounts if applicable.

5.2. INVOICING AND PAYMENT. Motorola will submit invoices to Customer according to the Payment Schedule. Except for a payment that is due on the Effective Date, Customer will make payments to Motorola within twenty (20) days after the date of each invoice. Customer will make payments when due in the form of a wire transfer, check, or cashier's check from a U.S. financial institution. Overdue invoices will bear simple interest at the maximum allowable rate. For reference, the Federal Tax Identification Number for Motorola Solutions, Inc. is 36-1115800.

5.3. FREIGHT, TITLE, AND RISK OF LOSS. Motorola will pre-pay and add all freight charges to the invoices. Title to the Equipment will pass to Customer upon shipment. Title to Software will not pass to Customer at any time. Risk of loss will pass to Customer upon delivery of the Equipment to the Customer. Motorola will pack and ship all Equipment in accordance with good commercial practices.

5.4. INVOICING AND SHIPPING ADDRESSES. Invoices will be sent to the Customer at the following address: _Delaware County Commissioners 10 Court Street, Delaware, Ohio 43015

5.5. The address which is the ultimate destination where the Equipment will be delivered to Customer is: _ Delaware County Commissioners 10 Court Street, Delaware, Ohio 43015

5.6. The Equipment will be shipped to the Customer at the following address (insert if this information is known): Delaware County Commissioners 10 Court Street, Delaware, Ohio 43015
Or Delaware County Medic 8 6457 US RT 36 West Ostrander, Ohio 43061 – Contact Customer PRIOR to shipping to confirm location. Neither location has a shipping dock, truck with lift gate is required for delivery.

Customer may change this information by giving written notice to Motorola.

Section 6 SITES AND SITE CONDITIONS

6.1. ACCESS TO SITES. In addition to its responsibilities described elsewhere in this Agreement, Customer will provide a designated project manager; all necessary construction and building permits, zoning variances, licenses, and any other approvals that are necessary to develop or use the sites and mounting locations; and access to the work sites or vehicles identified in the Technical and Implementation Documents as reasonably requested by Motorola so that it may perform its duties in accordance with the Performance Schedule and Statement of Work. If the Statement of Work so indicates, Motorola may assist Customer in the local building permit process.

6.2. SITE CONDITIONS. Customer will ensure that all work sites it provides will be safe, secure, and in compliance with all applicable industry and OSHA standards. To the extent applicable and unless the Statement of Work states to the contrary, Customer will ensure that these work sites have adequate: physical space; air conditioning and other environmental conditions; adequate and appropriate electrical power outlets, distribution, equipment and connections; and adequate telephone or other communication lines (including modem access and adequate interfacing networking capabilities), all for the installation, use and maintenance of the System. Before installing the Equipment or Software at a work site, Motorola may inspect the work site and advise Customer of any apparent deficiencies or non-conformities with the requirements of this Section. This Agreement is predicated upon normal soil conditions as defined by the version of E.I.A. standard RS-222 in effect on the Effective Date.

6.3. SITE ISSUES. If a Party determines that the sites identified in the Technical and Implementation Documents are no longer available or desired, or if subsurface, structural, adverse environmental or latent conditions at any site differ from those indicated in the Technical and Implementation Documents, the Parties will promptly investigate the conditions and will select replacement sites or adjust the installation plans and specifications as necessary. If change in sites or adjustment to the installation plans and specifications causes a change in the cost or time to perform, the Parties will equitably amend the Contract Price, Performance Schedule, or both, by a change order.

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Section 7 TRAINING

Any training to be provided by Motorola to Customer will be described in the Statement of Work. Customer will notify Motorola immediately if a date change for a scheduled training program is required. If Motorola incurs additional costs because Customer reschedules a training program less than thirty (30) days before its scheduled start date, Motorola may recover these additional costs.

Section 8 SYSTEM ACCEPTANCE

8.1. COMMENCEMENT OF ACCEPTANCE TESTING. Motorola will provide to Customer at least ten (10) days notice before the Acceptance Tests commence. System testing will occur only in accordance with the Acceptance Test Plan.

8.2. SYSTEM ACCEPTANCE. System Acceptance will occur upon successful completion of the Acceptance Tests. Upon System Acceptance, the Parties will memorialize this event by promptly executing a System Acceptance Certificate. If the Acceptance Test Plan includes separate tests for individual Subsystems or phases of the System, acceptance of the individual Subsystem or phase will occur upon the successful completion of the Acceptance Tests for the Subsystem or phase, and the Parties will promptly execute an acceptance certificate for the Subsystem or phase. If Customer believes the System has failed the completed Acceptance Tests, Customer will provide to Motorola a written notice that includes the specific details of the failure. If Customer does not provide to Motorola a failure notice within thirty (30) days after completion of the Acceptance Tests, System Acceptance will be deemed to have occurred as of the completion of the Acceptance Tests. Minor omissions or variances in the System that do not materially impair the operation of the System as a whole will not postpone System Acceptance or Subsystem acceptance, but will be corrected according to a mutually agreed schedule.

8.3. BENEFICIAL USE. Customer acknowledges that Motorola's ability to perform its implementation and testing responsibilities may be impeded if Customer begins using the System before System Acceptance. Therefore, Customer will not commence Beneficial Use before System Acceptance without Motorola's prior written authorization, which will not be unreasonably withheld. Motorola is not responsible for System performance deficiencies that occur during unauthorized Beneficial Use. Upon commencement of Beneficial Use, Customer assumes responsibility for the use and operation of the System.

8.4. FINAL PROJECT ACCEPTANCE. Final Project Acceptance will occur after System Acceptance when all deliverables and other work have been completed. When Final Project Acceptance occurs, the parties will promptly memorialize this final event by so indicating on the System Acceptance Certificate.

Section 9 REPRESENTATIONS AND WARRANTIES

9.1. SYSTEM FUNCTIONALITY. Motorola represents that the System will perform in accordance with the Specifications in all material respects. Upon System Acceptance or Beneficial Use, whichever occurs first, this System functionality representation is fulfilled. Motorola is not responsible for System performance deficiencies that are caused by ancillary equipment not furnished by Motorola which is attached to or used in connection with the System or for reasons or parties beyond Motorola's control, such as natural causes; the construction of a building that adversely affects the microwave path reliability or radio frequency (RF) coverage; the addition of frequencies at System sites that cause RF interference or intermodulation; or Customer changes to load usage or configuration outside the Specifications.

9.2. EQUIPMENT WARRANTY. During the Warranty Period, Motorola warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship. If System Acceptance is delayed beyond six (6) months after shipment of the Equipment by events or causes within Customer's control, this warranty expires eighteen (18) months after the shipment of the Equipment.

9.3. MOTOROLA SOFTWARE WARRANTY. Unless otherwise stated in the Software License Agreement, during the Warranty Period, Motorola warrants the Motorola Software in accordance with the terms of the Software License Agreement and the provisions of this Section 9 that are applicable to the Motorola Software. If System Acceptance is delayed beyond six (6) months after shipment of the Motorola Software by events or causes within Customer's control, this warranty expires eighteen (18) months after the shipment of the Motorola Software. **TO THE EXTENT, IF ANY, THAT THERE IS A SEPARATE LICENSE AGREEMENT PACKAGED WITH, OR PROVIDED ELECTRONICALLY WITH, A PARTICULAR PRODUCT THAT BECOMES EFFECTIVE ON AN ACT OF ACCEPTANCE BY THE END USER, THEN THAT AGREEMENT SUPERCEDES THIS SOFTWARE LICENSE AGREEMENT AS TO THE END USER OF EACH SUCH PRODUCT.**

9.4. EXCLUSIONS TO EQUIPMENT AND MOTOROLA SOFTWARE WARRANTIES. These warranties do not apply to: (i) defects or damage resulting from: use of the Equipment or Motorola Software in other than its normal, customary, and authorized manner; accident, liquids, neglect, or acts of God; testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Motorola; Customer's failure to comply with all applicable industry and OSHA standards; (ii) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (iii) Equipment that has had the serial number removed or made illegible; (iv) batteries (because they carry their own separate limited warranty) or consumables; (v) freight costs

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to ship Equipment to the repair depot; (vi) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (vii) normal or customary wear and tear.

9.5. **WARRANTY CLAIMS.** To assert a warranty claim, Customer must notify Motorola in writing of the claim before the expiration of the Warranty Period. Upon receipt of this notice, Motorola will investigate the warranty claim. If this investigation confirms a valid warranty claim, Motorola will (at its option and at no additional charge to Customer) repair the defective Equipment or Motorola Software, replace it with the same or equivalent product, or refund the price of the defective Equipment or Motorola Software. That action will be the full extent of Motorola's liability for the warranty claim. If this investigation indicates the warranty claim is not valid, then Motorola may invoice Customer for responding to the claim on a time and materials basis using Motorola's then current labor rates. Repaired or replaced product is warranted for the balance of the original applicable warranty period. All replaced products or parts will become the property of Motorola.

9.6. **ORIGINAL END USER IS COVERED.** These express limited warranties are extended by Motorola to the original user purchasing the System for commercial, industrial, or governmental use only, and are not assignable or transferable.

9.7. **DISCLAIMER OF OTHER WARRANTIES. THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND MOTOROLA SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

Section 10 DELAYS

10.1. **FORCE MAJEURE.** Neither Party will be liable for its non-performance or delayed performance if caused by a Force Majeure. A Party that becomes aware of a Force Majeure that will significantly delay performance will notify the other Party promptly (but in no event later than fifteen days) after it discovers the Force Majeure. If a Force Majeure occurs, the Parties will execute a change order to extend the Performance Schedule for a time period that is reasonable under the circumstances.

10.2. **PERFORMANCE SCHEDULE DELAYS CAUSED BY CUSTOMER.** If Customer (including its other contractors) delays the Performance Schedule, it will make the promised payments according to the Payment Schedule as if no delay occurred; and the Parties will execute a change order to extend the Performance Schedule and, if requested, compensate Motorola for all reasonable charges incurred because of the delay. Delay charges may include costs incurred by Motorola or its subcontractors for additional freight, warehousing and handling of Equipment; extension of the warranties; travel; suspending and re-mobilizing the work; additional engineering, project management, and standby time calculated at then current rates; and preparing and implementing an alternative implementation plan.

Section 11 DISPUTES

The Parties will use the following procedure to address any dispute arising under this Agreement (a "Dispute").

11.1. **GOVERNING LAW.** This Agreement will be governed by and construed in accordance with the laws of the State in which the System is installed.

11.2. **NEGOTIATION.** Either Party may initiate the Dispute resolution procedures by sending a notice of Dispute ("Notice of Dispute"). The Parties will attempt to resolve the Dispute promptly through good faith negotiations including 1) timely escalation of the Dispute to executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for the matter and 2) direct communication between the executives. If the Dispute has not been resolved within ten (10) days from the Notice of Dispute, the Parties will proceed to mediation.

11.3. **MEDIATION.** The Parties will choose an independent mediator within thirty (30) days of a notice to mediate from either Party ("Notice of Mediation"). Neither Party may unreasonably withhold consent to the selection of a mediator. If the Parties are unable to agree upon a mediator, either Party may request that American Arbitration Association nominate a mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Each Party will participate in the mediation in good faith and will be represented at the mediation by a business executive with authority to settle the Dispute.

11.4. **LITIGATION, VENUE and JURISDICTION.** If a Dispute remains unresolved for sixty (60) days after receipt of the Notice of Mediation, either Party may then submit the Dispute to a court of competent jurisdiction in the state in which the System is installed. Each Party irrevocably agrees to submit to the exclusive jurisdiction of the courts in such state over any claim or matter arising under or in connection with this Agreement.

11.5. **CONFIDENTIALITY.** All communications pursuant to subsections 11.2 and 11.3 will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality protections provided by applicable law. The use of these Dispute resolution procedures will not be construed under the doctrines of laches, waiver or estoppel to affect adversely the rights of either Party.

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Section 12 DEFAULT AND TERMINATION

12.1 **DEFAULT BY A PARTY.** If either Party fails to perform a material obligation under this Agreement, the other Party may consider the non-performing Party to be in default (unless a Force Majeure causes the failure) and may assert a default claim by giving the non-performing Party a written and detailed notice of default. Except for a default by Customer for failing to pay any amount when due under this Agreement which must be cured immediately, the defaulting Party will have thirty (30) days after receipt of the notice of default to either cure the default or, if the default is not curable within thirty (30) days, provide a written cure plan. The defaulting Party will begin implementing the cure plan immediately after receipt of notice by the other Party that it approves the plan. If Customer is the defaulting Party, Motorola may stop work on the project until it approves the Customer's cure plan.

12.2. **FAILURE TO CURE.** If a defaulting Party fails to cure the default as provided above in Section 12.1, unless otherwise agreed in writing, the non-defaulting Party may terminate any unfulfilled portion of this Agreement. In the event of termination for default, the defaulting Party will promptly return to the non-defaulting Party any of its Confidential Information. If Customer is the non-defaulting Party, terminates this Agreement as permitted by this Section, and completes the System through a third Party, Customer may as its exclusive remedy recover from Motorola reasonable costs incurred to complete the System to a capability not exceeding that specified in this Agreement less the unpaid portion of the Contract Price. Customer will mitigate damages and provide Motorola with detailed invoices substantiating the charges.

Section 13 INDEMNIFICATION

13.1. GENERAL INDEMNITY BY MOTOROLA. Motorola will indemnify and hold Customer harmless from any and all liability, expense, judgment, suit, cause of action, or demand for personal injury, death, or direct damage to tangible property which may accrue against Customer to the extent it is caused by the negligence of Motorola, its subcontractors, or their employees or agents, while performing their duties under this Agreement, if Customer gives Motorola prompt, written notice of any the claim or suit. Customer will cooperate with Motorola in its defense or settlement of the claim or suit. This section sets forth the full extent of Motorola's general indemnification of Customer from liabilities that are in any way related to Motorola's performance under this Agreement.

13.2. **RESERVE**

13.3. **PATENT AND COPYRIGHT INFRINGEMENT.**

13.3.1. Motorola will defend at its expense any suit brought against Customer to the extent it is based on a third-party claim alleging that the Equipment manufactured by Motorola or the Motorola Software ("Motorola Product") directly infringes a United States patent or copyright ("Infringement Claim"). Motorola's duties to defend and indemnify are conditioned upon: Customer promptly notifying Motorola in writing of the Infringement Claim; Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and Customer providing to Motorola cooperation and, if requested by Motorola, reasonable assistance in the defense of the Infringement Claim. In addition to Motorola's obligation to defend, and subject to the same conditions, Motorola will pay all damages finally awarded against Customer by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Motorola in settlement of an Infringement Claim.

13.3.2. If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense: (a) procure for Customer the right to continue using the Motorola Product; (b) replace or modify the Motorola Product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the Motorola Product and grant Customer a credit for the Motorola Product, less a reasonable charge for depreciation. The depreciation amount will be calculated based upon generally accepted accounting standards.

13.3.3. Motorola will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the combination of the Motorola Product with any software, apparatus or device not furnished by Motorola; (b) the use of ancillary equipment or software not furnished by Motorola and that is attached to or used in connection with the Motorola Product; (c) Motorola Product designed or manufactured in accordance with Customer's designs, specifications, guidelines or instructions, if the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions; (d) a modification of the Motorola Product by a party other than Motorola; (e) use of the Motorola Product in a manner for which the Motorola Product was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by Customer to install an enhancement release to the Motorola Software that is intended to correct the claimed infringement. In no event will Motorola's liability resulting from its indemnity obligation to Customer extend in any way to royalties payable on a per use basis or the Customer's revenues, or any royalty basis other than a reasonable royalty based upon revenue derived by Motorola from Customer from sales or license of the infringing Motorola Product.

13.3.4. This Section 13 provides Customer's sole and exclusive remedies and Motorola's entire liability in the event of an Infringement Claim. Customer has no right to recover and Motorola has no obligation to provide any other or further remedies, whether under another provision of this Agreement or any other legal theory or principle, in connection with an Infringement Claim. In addition, the rights and remedies provided in this Section 13 are subject to and limited by the restrictions set forth in Section 14.

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Section 14 LIMITATION OF LIABILITY

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of the Equipment, Software, or services with respect to which losses or damages are claimed. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT.** This limitation of liability provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account.

Section 15 CONFIDENTIALITY AND PROPRIETARY RIGHTS

15.1. **CONFIDENTIAL INFORMATION.** During the term of this Agreement, the parties may provide each other with Confidential Information. Each Party will: maintain the confidentiality of the other Party's Confidential Information and not disclose it to any third party, except as authorized by the disclosing Party in writing or as required by a court of competent jurisdiction; restrict disclosure of the Confidential Information to its employees who have a "need to know" and not copy or reproduce the Confidential Information; take necessary and appropriate precautions to guard the confidentiality of the Confidential Information, including informing its employees who handle the Confidential Information that it is confidential and is not to be disclosed to others, but these precautions will be at least the same degree of care that the receiving Party applies to its own confidential information and will not be less than reasonable care; and use the Confidential Information only in furtherance of the performance of this Agreement. Confidential Information is and will at all times remain the property of the disclosing Party, and no grant of any proprietary rights in the Confidential Information is given or intended, including any express or implied license, other than the limited right of the recipient to use the Confidential Information in the manner and to the extent permitted by this Agreement.

15.2. **PRESERVATION OF MOTOROLA'S PROPRIETARY RIGHTS.** Motorola, the third party manufacturer of any Equipment, and the copyright owner of any Non-Motorola Software own and retain all of their respective Proprietary Rights in the Equipment and Software, and nothing in this Agreement is intended to restrict their Proprietary Rights. All intellectual property developed, originated, or prepared by Motorola in connection with providing to Customer the Equipment, Software, or related services remain vested exclusively in Motorola, and this Agreement does not grant to Customer any shared development rights of intellectual property. Except as explicitly provided in the Software License Agreement, Motorola does not grant to Customer, either directly or by implication, estoppel, or otherwise, any right, title or interest in Motorola's Proprietary Rights. Customer will not modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, distribute, sublicense, sell or export the Software, or permit or encourage any third party to do so. The preceding sentence does not apply to Open Source Software which is governed by the standard license of the copyright owner.

Section 16 GENERAL

16.1. **TAXES.** The Contract Price does not include any excise, sales, lease, use, property, or other taxes, assessments or duties, all of which will be paid by Customer except as exempt by law. If Motorola is required to pay any of these taxes, Motorola will send an invoice to Customer and Customer will pay to Motorola the amount of the taxes (including any interest and penalties) within twenty (20) days after the date of the invoice. Customer will be solely responsible for reporting the Equipment for personal property tax purposes, and Motorola will be solely responsible for reporting taxes on its income or net worth.

16.2. **ASSIGNABILITY AND SUBCONTRACTING.** Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer. In addition, in the event Motorola separates one or more of its businesses (each a "Separated Business"), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"), Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Motorola and its affiliates, to the extent applicable) following the Separation Event. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

16.3. **WAIVER.** Failure or delay by either Party to exercise a right or power under this Agreement will not be a waiver of the right or power. For a waiver of a right or power to be effective, it must be in a writing signed by the waiving Party. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

16.4. **SEVERABILITY.** If a court of competent jurisdiction renders any part of this Agreement invalid or

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unenforceable, that part will be severed and the remainder of this Agreement will continue in full force and effect.

16.5. **INDEPENDENT CONTRACTORS.** Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership or formal business organization of any kind.

16.6. **HEADINGS AND SECTION REFERENCES.** The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.

16.7. **ENTIRE AGREEMENT.** This Agreement, including all Exhibits, constitutes the entire agreement of the Parties regarding the subject matter of the Agreement and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. A facsimile copy or computer image, such as a PDF or tiff image, or a signature shall be treated as and shall have the same effect as an original signature. In addition, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Customer purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each Party signs that document.

16.8. **NOTICES.** Notices required under this Agreement to be given by one Party to the other must be in writing and either personally delivered or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as Federal Express, UPS, or DHL), or by facsimile with correct answerback received, and will be effective upon receipt:

Motorola Solutions, Inc.

Customer

Attn: Law Department IL01 / 8
1303 East Algonquin Road, Schaumburg, IL 60196
fax: 847-576-0721

Attn: Patrick Brandt _____

fax: 740.833.2059 _____

16.9. **COMPLIANCE WITH APPLICABLE LAWS.** Each Party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement or use of the System. Customer will obtain and comply with all Federal Communications Commission ("FCC") licenses and authorizations required for the installation, operation and use of the System before the scheduled installation of the Equipment. Although Motorola might assist Customer in the preparation of its FCC license applications, neither Motorola nor any of its employees is an agent or representative of Customer in FCC or other matters.

16.10. **AUTHORITY TO EXECUTE AGREEMENT.** Each Party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; the person executing this Agreement on its behalf has the authority to do so; upon execution and delivery of this Agreement by the Parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the Party.

16.11. **ADMINISTRATOR LEVEL ACCOUNT ACCESS.** Motorola will provide Customer with Administrative User Credentials. Customer agrees to only grant Administrative User Credentials to those personnel with the training or experience to correctly use the access. Customer is responsible for protecting Administrative User Credentials from disclosure and maintaining Credential validity by, among other things, updating passwords when required. Customer may be asked to provide valid Administrative User Credentials when in contact with Motorola System support. Customer understands that changes made as the Administrative User can significantly impact the performance of the System. Customer agrees that it will be solely responsible for any negative impact on the System or its users by any such changes. System issues occurring as a result of changes made by an Administrative User may impact Motorola's ability to perform its obligations under the Agreement or its Maintenance and Support Agreement. In such cases, a revision to the appropriate provisions of the Agreement, including the Statement of Work, may be necessary. To the extent Motorola provides assistance to correct any issues caused by or arising out of the use of or failure to maintain Administrative User Credentials, Motorola will be entitled to bill Customer and Customer will pay Motorola on a time and materials basis for resolving the issue.

16.12. **SURVIVAL OF TERMS.** The following provisions will survive the expiration or termination of this Agreement for any reason: Section 3.6 (Motorola Software); Section 3.7 (Non-Motorola Software); if any payment obligations exist, Sections 5.1 and 5.2 (Contract Price and Invoicing and Payment); Subsection 9.7 (Disclaimer of Implied Warranties); Section 11 (Disputes); Section 14 (Limitation of Liability); and Section 15 (Confidentiality and Proprietary Rights); and all of the General provisions in Section 16.

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**Exhibit A
SOFTWARE LICENSE AGREEMENT**

This Exhibit A Software License Agreement ("Agreement") is between Motorola Solutions, Inc., ("Motorola"), and Delaware County Commissioners ("Licensee").

For good and valuable consideration, the parties agree as follows:

Section 1 DEFINITIONS

1.1 "Designated Products" means products provided by Motorola to Licensee with which or for which the Software and Documentation is licensed for use.

1.2 "Documentation" means product and software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which such information is provided).

1.3 "Open Source Software" means software with either freely obtainable source code, license for modification, or permission for free distribution.

1.4 "Open Source Software License" means the terms or conditions under which the Open Source Software is licensed.

1.5 "Primary Agreement" means the agreement to which this exhibit is attached.

1.6 "Security Vulnerability" means a flaw or weakness in system security procedures, design, implementation, or internal controls that could be exercised (accidentally triggered or intentionally exploited) and result in a security breach such that data is compromised, manipulated or stolen or the system damaged.

1.7 "Software" (i) means proprietary software in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by Motorola; and (iii) may contain one or more items of software owned by a third party supplier. The term "Software" does not include any third party software provided under separate license or third party software not licensable under the terms of this Agreement.

Section 2 SCOPE

Motorola and Licensee enter into this Agreement in connection with Motorola's delivery of certain proprietary Software or products containing embedded or pre-loaded proprietary Software, or both. This Agreement contains the terms and conditions of the license Motorola is providing to Licensee, and Licensee's use of the Software and Documentation.

Section 3 GRANT OF LICENSE

3.1 Subject to the provisions of this Agreement and the payment of applicable license fees, Motorola grants to Licensee a personal, limited, non-transferable (except as permitted in Section 7) and non-exclusive license under Motorola's copyrights and Confidential Information (as defined in the Primary Agreement) embodied in the Software to use the Software, in object code form, and the Documentation solely in connection with Licensee's use of the Designated Products. This Agreement does not grant any rights to source code.

3.2 If the Software licensed under this Agreement contains or is derived from Open Source Software, the terms and conditions governing the use of such Open Source Software are in the Open Source Software Licenses of the copyright owner and not this Agreement. If there is a conflict between the terms and conditions of this Agreement and the terms and conditions of the Open Source Software Licenses governing Licensee's use of the Open Source Software, the terms and conditions of the license grant of the applicable Open Source Software Licenses will take precedence over the license grants in this Agreement. If requested by Licensee, Motorola will use commercially reasonable efforts to: (i) determine whether any Open Source Software is provided under this Agreement; (ii) identify the Open Source Software and provide Licensee a copy of the applicable Open Source Software License (or specify where that license may be found); and, (iii) provide Licensee a copy of the Open Source Software source code, without charge, if it is publicly available (although distribution fees may be applicable).

Section 4 LIMITATIONS ON USE

4.1 Licensee may use the Software only for Licensee's internal business purposes and only in accordance with the Documentation. Any other use of the Software is strictly prohibited. Without limiting the general nature of these restrictions, Licensee will not make the Software available for use by third parties on a "time sharing," "application service provider," or "service bureau" basis or for any other similar commercial rental or sharing arrangement.

4.2 Licensee will not, and will not allow or enable any third party to: (i) reverse engineer, disassemble, peel

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components, decompile, reprogram or otherwise reduce the Software or any portion to a human perceptible form or otherwise attempt to recreate the source code; (ii) modify, adapt, create derivative works of, or merge the Software; (iii) copy, reproduce, distribute, lend, or lease the Software or Documentation to any third party, grant any sublicense or other rights in the Software or Documentation to any third party, or take any action that would cause the Software or Documentation to be placed in the public domain; (iv) remove, or in any way alter or obscure, any copyright notice or other notice of Motorola's proprietary rights; (v) provide, copy, transmit, disclose, divulge or make the Software or Documentation available to, or permit the use of the Software by any third party or on any machine except as expressly authorized by this Agreement; or (vi) use, or permit the use of, the Software in a manner that would result in the production of a copy of the Software solely by activating a machine containing the Software. Licensee may make one copy of Software to be used solely for archival, back-up, or disaster recovery purposes; *provided* that Licensee may not operate that copy of the Software at the same time as the original Software is being operated. Licensee may make as many copies of the Documentation as it may reasonably require for the internal use of the Software.

4.3. Unless otherwise authorized by Motorola in writing, Licensee will not, and will not enable or allow any third party to: (i) install a licensed copy of the Software on more than one unit of a Designated Product; or (ii) copy onto or transfer Software installed in one unit of a Designated Product onto one other device. Licensee may temporarily transfer Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Licensee provides written notice to Motorola of the temporary transfer and identifies the device on which the Software is transferred. Temporary transfer of the Software to another device must be discontinued when the original Designated Product is returned to operation and the Software must be removed from the other device. Licensee must provide prompt written notice to Motorola at the time temporary transfer is discontinued.

4.4. When using Motorola's Radio Service Software ("RSS"), Licensee must purchase a separate license for each location at which Licensee uses RSS. Licensee's use of RSS at a licensed location does not entitle Licensee to use or access RSS remotely. Licensee may make one copy of RSS for each licensed location. Licensee shall provide Motorola with a list of all locations at which Licensee uses or intends to use RSS upon Motorola's request.

4.5. Licensee will maintain, during the term of this Agreement and for a period of two years thereafter, accurate records relating to this license grant to verify compliance with this Agreement. Motorola or an independent third party ("Auditor") may inspect Licensee's premises, books and records, upon reasonable prior notice to Licensee, during Licensee's normal business hours and subject to Licensee's facility and security regulations. Motorola is responsible for the payment of all expenses and costs of the Auditor. Any information obtained by Motorola and the Auditor will be kept in strict confidence by Motorola and the Auditor and used solely for the purpose of verifying Licensee's compliance with the terms of this Agreement.

Section 5 OWNERSHIP AND TITLE

Motorola, its licensors, and its suppliers retain all of their proprietary rights in any form in and to the Software and Documentation, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the Software and Documentation (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, emulations to or derivative works from the Software or Documentation, whether made by Motorola or another party, or any improvements that result from Motorola's processes or, provision of information services). No rights are granted to Licensee under this Agreement by implication, estoppel or otherwise, except for those rights which are expressly granted to Licensee in this Agreement. All intellectual property developed, originated, or prepared by Motorola in connection with providing the Software, Designated Products, Documentation or related services, remains vested exclusively in Motorola, and Licensee will not have any shared development or other intellectual property rights.

Section 6 LIMITED WARRANTY; DISCLAIMER OF WARRANTY

6.1. The commencement date and the term of the Software warranty will be a period of ninety (90) days from Motorola's shipment of the Software (the "Warranty Period"). If Licensee is not in breach of any of its obligations under this Agreement, Motorola warrants that the unmodified Software, when used properly and in accordance with the Documentation and this Agreement, will be free from a reproducible defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the Software. Whether a defect occurs will be determined by Motorola solely with reference to the Documentation. Motorola does not warrant that Licensee's use of the Software or the Designated Products will be uninterrupted, error-free, completely free of Security Vulnerabilities, or that the Software or the Designated Products will meet Licensee's particular requirements. Motorola makes no representations or warranties with respect to any third party software included in the Software.

6.2. Motorola's sole obligation to Licensee and Licensee's exclusive remedy under this warranty is to use reasonable efforts to remedy any material Software defect covered by this warranty. These efforts will involve either replacing the media or attempting to correct significant, demonstrable program or documentation errors or Security Vulnerabilities. If Motorola cannot correct the defect within a reasonable time, then at Motorola's option, Motorola will replace the defective Software with functionally-equivalent Software, license to Licensee substitute Software which will accomplish the same objective, or terminate the license and refund the Licensee's paid license fee.

6.3. Warranty claims are described in the Primary Agreement.

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6.4. The express warranties set forth in this Section 6 are in lieu of, and Motorola disclaims, any and all other warranties (express or implied, oral or written) with respect to the Software or Documentation, including, without limitation, any and all implied warranties of condition, title, non-infringement, merchantability, or fitness for a particular purpose or use by Licensee (whether or not Motorola knows, has reason to know, has been advised, or is otherwise aware of any such purpose or use), whether arising by law, by reason of custom or usage of trade, or by course of dealing. In addition, Motorola disclaims any warranty to any person other than Licensee with respect to the Software or Documentation.

Section 7 TRANSFERS

Licensee will not transfer the Software or Documentation to any third party without Motorola's prior written consent. Motorola's consent may be withheld at its discretion and may be conditioned upon transferee paying all applicable license fees and agreeing to be bound by this Agreement. If the Designated Products are Motorola's radio products and Licensee transfers ownership of the Motorola radio products to a third party, Licensee may assign its right to use the Software (other than RSS and Motorola's FLASHport® software) which is embedded in or furnished for use with the radio products and the related Documentation; provided that Licensee transfers all copies of the Software and Documentation to the transferee, and Licensee and the transferee sign a transfer form to be provided by Motorola upon request, obligating the transferee to be bound by this Agreement.

Section 8 TERM AND TERMINATION

8.1 Licensee's right to use the Software and Documentation will begin when the Primary Agreement is signed by both parties and will continue for the life of the Designated Products with which or for which the Software and Documentation have been provided by Motorola, unless Licensee breaches this Agreement, in which case this Agreement and Licensee's right to use the Software and Documentation may be terminated immediately upon notice by Motorola.

8.2 Within thirty (30) days after termination of this Agreement, Licensee must certify in writing to Motorola that all copies of the Software have been removed or deleted from the Designated Products and that all copies of the Software and Documentation have been returned to Motorola or destroyed by Licensee and are no longer in use by Licensee.

8.3 Licensee acknowledges that Motorola made a considerable investment of resources in the development, marketing, and distribution of the Software and Documentation and that Licensee's breach of this Agreement will result in irreparable harm to Motorola for which monetary damages would be inadequate. If Licensee breaches this Agreement, Motorola may terminate this Agreement and be entitled to all available remedies at law or in equity (including immediate injunctive relief and repossession of all non-embedded Software and associated Documentation unless Licensee is a Federal agency of the United States Government).

Section 9 UNITED STATES GOVERNMENT LICENSING PROVISIONS

This Section applies if Licensee is the United States Government or a United States Government agency. Licensee's use, duplication or disclosure of the Software and Documentation under Motorola's copyrights or trade secret rights is subject to the restrictions set forth in subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights clause at FAR 52.227-19 (JUNE 1987), if applicable, unless they are being provided to the Department of Defense. If the Software and Documentation are being provided to the Department of Defense, Licensee's use, duplication, or disclosure of the Software and Documentation is subject to the restricted rights set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 (OCT 1988), if applicable. The Software and Documentation may or may not include a Restricted Rights notice, or other notice referring to this Agreement. The provisions of this Agreement will continue to apply, but only to the extent that they are consistent with the rights provided to the Licensee under the provisions of the FAR or DFARS mentioned above, as applicable to the particular procuring agency and procurement transaction.

Section 10 CONFIDENTIALITY

Licensee acknowledges that the Software and Documentation contain Motorola's valuable proprietary and Confidential Information and are Motorola's trade secrets, and that the provisions in the Primary Agreement concerning Confidential Information apply.

Section 11 LIMITATION OF LIABILITY

The Limitation of Liability provision is described in the Primary Agreement.

Section 12 NOTICES

Notices are described in the Primary Agreement.

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Section 13 GENERAL

13.1. COPYRIGHT NOTICES. The existence of a copyright notice on the Software will not be construed as an admission or presumption of publication of the Software or public disclosure of any trade secrets associated with the Software.

13.2. COMPLIANCE WITH LAWS. Licensee acknowledges that the Software is subject to the laws and regulations of the United States and Licensee will comply with all applicable laws and regulations, including export laws and regulations of the United States. Licensee will not, without the prior authorization of Motorola and the appropriate governmental authority of the United States, in any form export or re-export, sell or resell, ship or reship, or divert, through direct or indirect means, any item or technical data or direct or indirect products sold or otherwise furnished to any person within any territory for which the United States Government or any of its agencies at the time of the action, requires an export license or other governmental approval. Violation of this provision is a material breach of this Agreement.

13.3. ASSIGNMENTS AND SUBCONTRACTING. Motorola may assign its rights or subcontract its obligations under this Agreement, or encumber or sell its rights in any Software, without prior notice to or consent of Licensee.

13.4. GOVERNING LAW. This Agreement is governed by the laws of the United States to the extent that they apply and otherwise by the internal substantive laws of the State to which the Software is shipped if Licensee is a sovereign government entity, or the internal substantive laws of the State of Illinois if Licensee is not a sovereign government entity. The terms of the U.N. Convention on Contracts for the International Sale of Goods do not apply. In the event that the Uniform Computer Information Transaction Act, any version of this Act, or a substantially similar law (collectively "UCITA") becomes applicable to a party's performance under this Agreement, UCITA does not govern any aspect of this Agreement or any license granted under this Agreement, or any of the parties' rights or obligations under this Agreement. The governing law will be that in effect prior to the applicability of UCITA.

13.5. THIRD PARTY BENEFICIARIES. This Agreement is entered into solely for the benefit of Motorola and Licensee. No third party has the right to make any claim or assert any right under this Agreement, and no third party is deemed a beneficiary of this Agreement. Notwithstanding the foregoing, any licensor or supplier of third party software included in the Software will be a direct and intended third party beneficiary of this Agreement.

13.6. SURVIVAL. Sections 4, 5, 6.4, 7, 8, 9, 10, 11 and 13 survive the termination of this Agreement.

13.7. ORDER OF PRECEDENCE. In the event of inconsistencies between this Exhibit and the Primary Agreement, the parties agree that this Exhibit prevails, only with respect to the specific subject matter of this Exhibit, and not the Primary Agreement or any other exhibit as it applies to any other subject matter.

13.8 SECURITY. Motorola uses reasonable means in the design and writing of its own Software and the acquisition of third party Software to limit Security Vulnerabilities. While no software can be guaranteed to be free from Security Vulnerabilities, if a Security Vulnerability is discovered, Motorola will take the steps set forth in Section 6 of this Agreement.

Exhibit B

PAYMENT SCHEDULE AND PRICING SUMMARY

Payment Schedule

Except for a payment that is due on the Effective Date, Customer will make payments to Motorola within twenty (20) days after the date of each invoice. Customer will make payments when due in the form of a check, cashier's check, or wire transfer drawn on a U.S. financial institution and in accordance with the following milestones.

1. 25% of the Contract Price due upon contract execution;
2. 60% of the Contract Price due upon shipment of equipment;
3. 15% of the Contract Price due upon Final Acceptance;

Motorola reserves the right to make partial shipments of equipment and to request payment upon shipment of such equipment. In addition, Motorola reserves the right to invoice for installations or civil work completed on a site-by-site basis, when applicable.

Pricing Summary

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Delaware County System Infrastructure: - Twelve-Site Simulcast Eight Channels with M2 Master - Ethernet Based Backhaul* - Three Network Management Terminals - Four VHF IP Simulcast Paging Sites, 1 Channel - MOSCAD Monitoring - Implementation Services including Project Management, Engineering, Systems Technologist, Factory Staging, Installation, Documentation, Optimization, and Testing	\$5,354,958.00
Delaware County Dispatch Consoles: - 16 Position MCC7500 Dispatch Consoles	\$ 1,026,254.00
Total System All Items Above: - Ohio STS Price	\$ 6,381,212.00
Delaware County Existing Licenses Credit: - Current System Licenses Credit	(\$157,201.00)
Delaware County Existing Equipment Trade-In Incentive: - After De-Commissioning	(\$625,000.00)
Delaware County Contract Incentive: - Executed Contract & Purchase Order for all Infrastructure and Consoles as proposed by December 18 th , 2013	(\$300,000.00)
Delaware County Shipment Incentive: - Executed Contract & Purchase Order for all Infrastructure and Consoles as proposed by October 18 th and shipment in December 18 th , 2013	(\$300,000.00)
Total System Cost with Incentives Met: - All items, all incentives as proposed, contract by October 18 th and December 2013 shipment.	\$ 4,999,011.00
OPTIONAL: Orange Township Back Up Consoles - 2 MCC 7500 Consoles	\$ 153,599.00
Contract Price	\$ 5,152,610.00

**Exhibit C
TECHNICAL AND IMPLEMENTATION DOCUMENTS**

**Exhibit D
SERVICE STATEMENT(S) OF WORK
and
SERVICE TERMS AND CONDITIONS (IF APPLICABLE)**

The following documents can be found in this section:

- Technical Support Statement of Work
- OnSite Infrastructure Response and Dispatch Service Statement of Work
- Infrastructure Repair with Advanced Replacement Statement of Work
- Service Terms and Conditions
-

**Exhibit E
System Acceptance Certificate**

Customer Name: Delaware County Commissioners__

Project Name: Delaware County Upgrade _____

This System Acceptance Certificate memorializes the occurrence of System Acceptance. Motorola and Customer acknowledge that:

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1. The Acceptance Tests set forth in the Acceptance Test Plan have been successfully completed.
2. The System is accepted.

<u>Customer Representative:</u>	<u>Motorola Representative:</u>
Signature: _____	Signature: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

FINAL PROJECT ACCEPTANCE:

Motorola has provided and Customer has received all deliverables, and Motorola has performed all other work required for Final Project Acceptance.

<u>Customer Representative:</u>	<u>Motorola Representative:</u>
Signature: _____	Signature: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Vote on Motion Mr. O'Brien Aye Mr. Merrell Aye Mr. Stapleton Aye

RESOLUTION NO. 13-1077

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

It was moved by Mr. Merrell, seconded by Mr. Stapleton to approve the following:

The Director of Job and Family Services recommends accepting the voluntary transfer of Nortarsha Cork, returning to an Income Maintenance Worker III from a Social Services Worker III, with the Department of Job and Family Services; effective October 25, 2013;

Therefore Be It Resolved, that the Board of Commissioners approve the voluntary transfer of Nortarsha Cork, returning to an Income Maintenance Worker III from a Social Services Worker III, with the Department of Job and Family Services; effective October 25, 2013.

Vote on Motion Mr. Merrell Aye Mr. Stapleton Aye Mr. O'Brien Aye

**Chris Franzmann, Partner Squire Sanders
– Public and Infrastructure Finance Practice Group**

RESOLUTION NO. 13-1078

IN THE MATTER OF APPROVING SUPPLEMENTAL AND TRANSFER OF APPROPRIATIONS:

It was moved by Mr. Stapleton, seconded by Mr. Merrell to approve the following:

Supplemental Appropriations		
10030301-5001	Coroner/Compensation	9,146.43
10030301-5102	Coroner/Workers Comp	91.46
10030301-5120	Coroner/County Share OPERS	1,280.50
10030301-5131	Coroner/County Share Medicare	132.62
10011103-5001	Records Center/Compensation	575.00
10011103-5102	Records Center/Workers Comp	5.00
10011103-5120	Records Center/County Share OPERS	68.00
20683201-5001	Law Library Resource Board/Compensation	3,577.50
20683201-5102	Law Library Resource Board /Workers Comp	51.87
20683201-5120	Law Library Resource Board /County Share OPERS	500.85
20683201-5131	Law Library Resource Board /Medicare	35.78

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Transfer of Appropriations

From	To	
10011106-5228 County Garage/Vehicle Maint. Supply	10011106-5328 County Garage/Maint. & Repair Services	7,500.00
10022201-5301 Common Pleas Krueger/Contracted Services	10022201-5001 Common Pleas Krueger/Compensation	3,000.00
10022201-5308 Common Pleas Krueger/Membership	10022201-5001 Common Pleas Krueger/Compensation	700.00
10022201-5305 Common Pleas Krueger/Training	10022201-5001 Common Pleas Krueger/Compensation	300.00
10022201-5305 Common Pleas Krueger/Training	10022201-5102 Common Pleas Krueger/Workers Comp	200.00
10022201-5305 Common Pleas Krueger/Training	10022201-5120 Common Pleas Krueger/County Share OPERS	200.00
10013101-5313 Recorder/Printing Services	10013101-5201 Recorder/General Supplies	750.00
Vote on Motion Mr. Merrell Aye Mr. O'Brien Aye Mr. Stapleton Aye		

RESOLUTION NO. 13-1079**IN THE MATTER OF APPROVING TRANSFER OF FUNDS AND RETURN OF ADVANCES:**

It was moved by Mr. Stapleton, seconded by Mr. Merrell to approve the following:

Transfer of Funds

From	To	
10011102-5801 Commissioners General/Transfer Out	60111901-4601 Property & Casualty Insurance/Transfer In	500,000.00

Return of Advance

From	To	
28631323-8501 2012 Leap Grant/PY Advances Out	10011102-8401 Commissioners General /PY Advances In	52,534.16
28631335-8501 Leap Forward Grant 2011/PY Advances Out	10011102-8401 Commissioners General /PY Advances In	133,749.89
28631338-8500 Leap Forward Grant 2012/Advances Out	10011102-8400 Commissioners General /Advances In	123,816.90
22111504-8501 2012 Community Develop Grant/PY Advances Out	10011102-8401 Commissioners General /PY Advances In	10,000.00
22111502-8500 Litter Grant/Advances Out	10011102-8400 Commissioners General /Advances In	5,000.00

Vote on Motion Mr. Stapleton Aye Mr. O'Brien Aye Mr. Merrell Aye

RESOLUTION NO. 13-1080**IN THE MATTER OF APPROVING TRANSFER OF FUNDS FOR PROSECUTORS OFFICE:**

It was moved by Mr. Merrell, seconded by Mr. Stapleton to approve the following:

Transfer of Funds

From	To	
10011102-5801 Commissioners General/Transfers	23612302-4601 Victims of Crime Grant/Interfund Revenue	\$19,570.00

COMMISSIONERS JOURNAL NO. 60 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 17, 2013

Vote on Motion Mr. Merrell Aye Mr. Stapleton Aye Mr. O'Brien Aye

RESOLUTION NO. 13-1081

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF EMPLOYMENT; PROMOTION; COMPENSATION OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL AND FOR COLLECTIVE BARGAINING:

It was moved by Mr. Merrell, seconded by Mr. Stapleton to adjourn into Executive Session at 11:30AM.

Vote on Motion Mr. Stapleton Aye Mr. Merrell Aye Mr. O'Brien Aye

RESOLUTION NO. 13-1082

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. Merrell, seconded by Mr. Stapleton to adjourn out of Executive Session at 1:37PM.

Vote on Motion Mr. O'Brien Aye Mr. Merrell Aye Mr. Stapleton Aye

FOLLOW-UP TO NATURAL GAS PURCHASE AND ELECTRICAL PROCUREMENT PROGRAMS DISCUSSION

-PROCEED WITH A REQUEST FOR QUALIFICATIONS

COMMISSIONERS' COMMITTEES REPORTS

Commissioner Stapleton:

-no reports

Commissioner Merrell:

-no reports

Commissioner O'Brien:

-Attend Regional Planning Executive Meeting; items for full board that Commissioners should be aware of (1) Budget and (2) Genoa Township Duncan's Glenn Road Private vs. Public Issue

-Family Children's First Council

Tim Hansley, County Administrator, Reports and Comments

-May Be Helping, Temporarily, With A Sewer Issue Between Delaware City, Riverby Homeowners And The EPA

There being no further business, the meeting adjourned.

Gary Merrell

Ken O'Brien

Dennis Stapleton