

**COMMISSIONERS JOURNAL NO. 66 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD APRIL 10, 2017**

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

**Present:**  
**Jeff Benton, President**  
**Gary Merrell, Vice President**  
**Barb Lewis, Commissioner**

**1  
RESOLUTION NO. 17-345**

**IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD APRIL 6, 2017:**

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the “Board”) met in regular session on April 6, 2017; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.11 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              Mrs. Lewis              Aye              Mr. Benton              Aye

**2  
PUBLIC COMMENT**

**3  
ELECTED OFFICIAL COMMENT**

**4  
RESOLUTION NO. 17-346**

**IN THE MATTER OF APPROVING A RESOLUTION FROM THE DELAWARE COUNTY BOARD OF COMMISSIONERS DECLARING APRIL 9-15, 2017 AS NATIONAL PUBLIC SAFETY TELECOMMUNICATOR WEEK IN THE COUNTY OF DELAWARE, OHIO:**

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

WHEREAS, the Congress of the United States, and the President of the United States have, since 1992, established the second week of April as National Public Safety Telecommunicator Week, and;

WHEREAS, emergencies can occur at any time, and;

WHEREAS, public safety telecommunicators daily serve the citizens of Delaware County by providing that first and most critical contact between our citizens and their need for a public safety response, and;

WHEREAS, public safety telecommunicators are the single vital communications link for monitoring, dispatching, providing information and ensuring the safety of law enforcement, fire, emergency medical and emergency management responders, and;

WHEREAS, this board believes that the public safety telecommunicators that serve the citizens of Delaware County are a highly trained and dedicated corps of personnel, and;

WHEREAS, the services of public safety telecommunicators is a “silent service” that is seldom observed by the public that deserves recognition, and;

NOW THEREFORE, be it resolved by the Board of County Commissioners, Delaware County, State of Ohio, enthusiastically supports recognition of all our professional public safety telecommunicators declaring the second full week of April as the National Public Safety Telecommunicator Week in Delaware County, and that all our residents are invited to observe this event.

Vote on Motion                      Mrs. Lewis              Aye              Mr. Merrell              Aye              Mr. Benton              Aye

**5  
RESOLUTION NO. 17-347**

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**IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0407:**

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0407 and Purchase Orders as listed below:

<b>PR Number</b>	<b>Vendor Name</b>	<b>Line Description</b>	<b>Line Account</b>	<b>Amount</b>
R1703137 (line 1)	SOUTHERN SALES	REBUILD EQUIPMENT PARTS FOR FILTERS	66211903 - 5201	\$3,000.00
R1703137 (line 2)	SOUTHERN SALES	REBUILD EQUIPMENT PARTS FOR FILTERS	66211904 - 5201	\$3,000.00

  

Vote on Motion	Mr. Benton	Aye	Mr. Merrell	Aye	Mrs. Lewis	Aye
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**6**

**RESOLUTION NO. 17-348**

**IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:**

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

The Emergency Communications Department is requesting that Jeanette Adair and Jennifer Keck attend a LEADS TAC In-Service in Columbus, Ohio May 2, 2017; at no cost.

The Emergency Communications Department is requesting that Jason Hutchisson and Tricia McMunn attend a Suicide Intervention-Powerphone training in St. Maumee, Ohio April 25, 2017; at the cost of \$458.00 (fund number 21411306).

The Emergency Communications Department is requesting that Patrick Brandt and Matthew Fletcher attend an Emerging Leaders in Today’s Public Sector training in Columbus, Ohio April 25, 2017; at the cost of \$400.00 (fund number 21411306).

The Emergency Communications Department is requesting that Matthew Fletcher attend an ALERT User Group Conference in Orlando, Florida September 30-October 5, 2017; at the cost of \$2,327.00 (fund number 21411306).

The Emergency Communications Department is requesting that Patrick Roberts attend a National Emergency Number Association Conference in San Antonio, Texas June 3-8, 2017; at the cost of \$2,671.00 (fund number 21411306).

The Emergency Communications Department is requesting that Patrick Roberts attend a CMCP (Center Manager) Conference in San Antonio, Texas May 29-June 3, 2017; at the cost of \$2,544.00 (fund number 21411306).

The Commissioners’ Office is requesting that Seiji Kille attend an Emerging Leaders in Today’s Public Sector training in Columbus, Ohio April 25, 2017; at the cost of \$225.00

Vote on Motion	Mr. Merrell	Aye	Mr. Benton	Aye	Mrs. Lewis	Aye
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**7**

**RESOLUTION NO. 17-349**

**IN THE MATTER OF GRANTING THE ANNEXATION PETITION OF 5.303 ACRES OF LAND IN BERKSHIRE TOWNSHIP TO THE VILLAGE OF GALENA:**

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

Whereas, on March 13, 2017, the Clerk to the Board of the Delaware County Commissioners received an annexation petition filed by Jeffrey W. Sharp, agent for the petitioners, of 5.303 acres, more or less, in Berkshire Township to the Village of Galena; 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 Village of Galena or the Township of Berkshire;

Therefore, Be It Resolved, the Delaware County Board of Commissioners grants the annexation petition request to annex 5.303 acres, more or less, in Berkshire Township to the Village of Galena.

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Vote on Motion Mrs. Lewis Aye Mr. Benton Aye Mr. Merrell Aye

**8**  
**RESOLUTION NO. 17-350**

**IN THE MATTER OF ACCEPTING THE TREASURER’S REPORT FOR THE MONTH OF MARCH 2017:**

It was moved by Mr. Merrell, seconded by Mrs. Lewis to accept the Treasurer’s Report for the month of March 2017.

(Copy available for review at the Commissioners’ Office until no longer of administrative value.)

Vote on Motion Mr. Benton Aye Mr. Merrell Aye Mrs. Lewis Aye

**9**  
**RESOLUTION NO. 17-351**

**IN THE MATTER OF APPROVING THE MAINTENANCE SERVICE SUPPORT AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND AVIAT NETWORKS FOR THE COUNTYWIDE MICROWAVE COMMUNICATIONS SYSTEM:**

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

Whereas, the Director of Emergency Communications recommends approval of the maintenance service support agreement;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the maintenance service support agreement between The Delaware County Board of Commissioners and Aviat Networks for the Countywide Microwave Communications System.

**Aviat Care Services  
Maintenance Service Descriptions**

- 1. AviatCare Maintenance Services Coverage
- 1.1. SERVICE LEVEL SUPPORT SUMMARY

The following table summarizes the Service Level Support that will be delivered to the Customer:

ITEM	SUPPORT ELEMENT	DESCRIPTION	SLA TARGET
2	Access to Aviat Networks Customer Online Technical Support Site	Provides for self-serve on-line access and support for a variety of services such as RMA requests and Technical Support.	24 x 7
2.1	Repair Services	Covers repair or replacement of covered FRU's beyond the manufacturer standard equipment warranty period. Please note unless otherwise agreed within this Agreement the following Turnaround times represent our commitments: North America and Caribbean: - Currently manufactured products – 20 calendar days - Manufactured Discontinued products – 45 calendar days	Varies (see Section 3.1), unlimited quantities
2.2	Advance Replacement	Provides advance replacement of an FRU prior to receiving the defective FRU at one of our Customer Support Centers for repair. When included within one of our Synergy MLA programs the total number of requests received for advanced replacement units cannot exceed ten percent (10%) of the total number of Repair Service transactions during the coverage period without additional charges being incurred by the customer. NOTE – If defective FRU is not received within 30 days of RMA issuance customer will be charged the then current list price for the unit, in addition to the Advanced Replacement charges, if any. Aviat Networks is not responsible for any delays in delivery related to freight or courier delays, export or customer regulations or processes. - Standard Advanced replacement – 5 business days	Based on availability and regional shipping restrictions
2.3	Repair Logistics Program	Aviat Networks shall provide free freight to the Customer for all Units returned via the Aviat Networks Repair Logistics Program (RLP). Upon RMA request, Aviat Networks will dispatch the appropriate courier to the customer's facility to pick-up the defective Units. When the repaired or replacement unit is ready Aviat Networks will dispatch appropriate courier to the customer's facility to deliver the replaced/repaired unit.	See Section 3.3
2.4	Remote Technical Support 24/7	Service requests (SR's), remote technical support, and troubleshooting support, material dispatch service and general customer help desk.	24 x 7 Unlimited number of SRs
2.5	ProVision Support	Service requests (SR's), remote technical support, and troubleshooting support on ProVision. Includes GA releases and updates.	24 X 7 Unlimited number of SRs
2.6	Preventive Maintenance	Annual maintenance plan covering all Aviat Networks provided equipment. Includes provision of necessary test equipment and tools.	Annually per site & preventive maintenance report
2.7	Remote Monitoring Services	24x7x365 remote monitoring, diagnostics, troubleshooting, notification, dispatch, and reporting services through the Aviat Networks' Network Operations Center.	24 x 7 Monitoring

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2. SERVICE LEVEL SUPPORT DESCRIPTION

Access to Aviat Networks Customer Online Technical Support Site

The Customer will have access to the Aviat Networks Customer Online Technical Support web site 24/7 for a variety of tools and support services. Those tools/services include:

1. RMA Request & Status Updates.
2. RMA Reporting such as repair turnaround time performance.
3. Technical Support such as Service Request opening, reporting and status.
4. Information databases such as technical notes, frequently asked questions, solutions for commonly asked technical or operational issues.
5. Software Downloads.
6. Sales Order tracking and status (Eclipse Only) URL: <https://aviatcloud.com>

2.1 REPAIR SERVICES

Repair services are available to the Customer during the standard manufacturing equipment warranty period. This includes any repair or replacement of defective units during the stated warranty period. There may be additional charges during the warranty period for this service if Customers are found to be returning a high level of NFF units, require advanced replacements, or send in a non-repairable unit. Prior to the warranty period expiring, Customers may procure ongoing access to this support service through the purchase of an extended warranty program or through one of our Synergy MLA support offerings. Otherwise the Repair service is made available for out of warranty products through a Per Incident billing process that can be enabled through our regional RMA Desk. See further details on how repair services are provided below.

All equipment under this specific Maintenance Level Schedule will be covered with our standard Repair / Replace policy. There is no limit to the number of units returned for repair but Customer is subject to the same limitations for No Fault Found (NFF), damaged beyond repair units, non-returned Advanced replacement units where additional charges may apply:

a) Repair Center Support. Customer shall place all RMA requests at the following link: [https://aviatcloud.com/rma\\_tracking.asp](https://aviatcloud.com/rma_tracking.asp) . This link is available for use 24 hours a day, 7 days a week. Customers can also email or fax RMA requests to the appropriate Aviat Networks Repair Center. Aviat Networks will typically fax or email a confirmation with an RMA reference number within one (1) business day. Requests can also be made via telephone during such Aviat Networks Repair Centers Business Hours.

In order for Aviat Networks to process an RMA request, the Customer must provide the following information:  
Company name;

- Shipping and billing address;
- Part Number;
- Serial Number of the defective unit(s)
- Unit software load;
- Description of the suspected failure;
- Whether any special requirements exist;
- Maintenance Level Schedule contract number (if applicable); and
- Provide a purchase order at the applicable price for billable requests. Billable requests include any request for express service regardless of warranty status. Contact your local Aviat Networks Repair Center for price information.

Important Note: If applicable, the Customer must include associated Synergy Maintenance Level Agreement (MLA) contract number in all correspondence(s) in order to avoid being invoiced for services falling within the scope of such Synergy Maintenance Level Agreement.

b) Turnaround Time. Aviat Networks will provide a Turnaround time on repair as per the following table:

<u>EQUIPMENT TYPE</u>	<u>TAT IN</u>
<u>BUSINESS DAYS</u>	
IRU600	•
Return & Repair: 20 Calendar Days	
•	
Business Days	Advance Replacement: 5
Dehydrators	•
Return & Repair: 30 Calendar Days	

c) Turnaround Time Calculation. Turnaround time is measured from the time that a Returned Unit is received at the Aviat Networks Repair Center, which will be advised at time of issuing a RMA, until the time that it is shipped from the Aviat Networks Repair Center. Thus, the measurement of turnaround time does NOT begin when the Returned Unit is shipped from Customer's premises and does NOT include the shipping time accrued after the Returned Unit is shipped from the Aviat Networks Repair Center to Customer's premises. Additionally, Turnaround time will not be guaranteed in the following situations:

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- If more than five (5) Units of the same type or more than ten (10) Units of any type are received at the same time.
  - Missing information such as failure details, return shipping address, shipping instructions and/or any other information that may affect the start of the repair process of the shipment of the Returned Unit as the repair completed.
  - Any Returned Unit is deemed No Fault Found.
  - Any Returned Unit received due to any of the reasons listed in the Exclusions from Repair & Return Clause of this Section.
  - Any Returned Unit received improperly packaged and therefore sustained physical or electrostatic damage in shipping
  - Returned Units placed in Isolation.
  - Force Majeure Event as defined in the Master Agreement..
- d) OEM. For OEM, repair turnaround times are set by the OEM supplier. Aviat Networks close working relationship with OEM suppliers assures the best possible turnaround time. These times will be communicated to Customer at time of RMA issuance.
- e) Shipping Costs. Customer is responsible for all charges associated with shipping the Returned Unit to the designated Aviat Networks Repair Center, which shall be made pursuant to the delivery term DDU (Delivered Duty Unpaid) Aviat Networks Repair Center (Incoterms:2000). Aviat Networks is responsible for the charges associated with shipping the Returned Unit back to the Customer, which shipment shall be made pursuant to the delivery term DDU (Delivered Duty Unpaid), Customer's premises (Incoterm:2000).
- f) Packaging and Shipping Procedures. Both Aviat Networks and the Customer are obligated to ensure that all deliveries are packaged in such manner as to achieve suitable mechanical and environmental protection during storage, handling and transport to the delivery address. Electrostatic Discharge (ESD) precautions should be followed during handling and packaging of all Units delivered. For each consignment of Units shipped to Aviat Networks, the Customer must provide a detailed Packing List and Commercial (Proforma) Invoice to support the delivery. Each Commercial Invoice must clearly state the full description, the value of each Unit and the RMA Number. Once a Unit has been repaired and shipped to the Customer at the address provided by the Customer upon RMA request, Aviat Networks will send a pre-alert notification to the Customer comprising a faxed copy of the Commercial Invoice and Airway Bill Number pertaining to the shipment.
- g) Exclusions from Repair & Return. The services to be rendered by Aviat Networks under this Schedule shall not comprise any damage, defects, malfunctions or failures caused by one or more of the following:
- Damage caused by mishandling, Customer or third-party negligence, abuse or operation outside the Aviat Networks environment specifications, or due to a cause not solely attributed to Aviat Networks.
  - Modifications, alterations, or repairs made other than by Aviat Networks.
  - Damages by persons other than Aviat Networks or its authorized service providers.
  - Any modification, removal or obliteration of a serial number or other identifying mark or any attempts thereof other than by Aviat Networks' authorized personnel.
  - Damage that occurs during shipment from the Customer premises to Aviat Networks' premises outside the RLP (if applicable).
  - Installed, stored, used, handled or maintained contrary to Aviat Networks' written instructions.
  - Used in conjunction or combination with third-party material or equipment without the consent of Aviat Networks.
  - Units returned for repair where there has been misuse, neglect, power failures, surges, accident or acts of nature such as fire, lightning strikes or flood.
- Repairs necessitated by any of the above causes may be made by Aviat Networks, and the Customer shall pay Aviat Networks' standard charges for time and materials, together with all shipping and handling charges arising from such repairs.
- h) Stockpiling of Failed Units. The Customer agrees to obtain an RMA Number for all failed Units from an Aviat Networks Repair Center immediately following a failure and return the Units for repair immediately after receipt of the RMA Number from Aviat Networks. The Customer agrees that this Schedule will not apply retrospectively to cover any Units failed and in the Customers possession prior to the Effective Date of this Schedule, and will not apply to any Units for which RMA Numbers had already been obtained from Aviat Networks prior to the Effective Date of this Schedule. Following the Effective Date of this Schedule, the Customer agrees not to stockpile failed Units and accepts that Aviat Networks will not be required to meet the Turnaround Times outlined in this Schedule if the Units are not returned to Aviat Networks on receipt of an RMA Number or if they are stockpiled.
- i) No Fault Found Fee. If the number of Returned Units that the Customer reports are defective, but are thereafter tested by Aviat Networks and found to meet the applicable Aviat Networks Product specifications, exceeds ten percent (10%) of the total number of Returned Units received by Aviat Networks from the Customer during each year of the Support period, then Aviat Networks will charge the Customer the then-current No Fault Found inspection fee for each such non-defective Returned Units in excess of such ten percent (10%).
- j) Damaged Beyond Repair. Returned Units that Aviat Networks (in its sole discretion) determined are damaged Beyond Repair or have been repaired (or otherwise modified) by a party other than Aviat Networks will

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be placed in Isolation. The Customer shall be advised by fax or e-mail, within ten (10) days working days, of the nature and extent of the damage. The Customer shall be responsible for informing Aviat Networks of the next course of action. If the Customer decides to replace the Unit(s), they must follow the usual purchasing process. Note: If the Returned Unit is no longer in current manufacture and/or is OEM, Aviat Networks will not guarantee availability of a Unit for sale.

## 2.2 ADVANCE REPLACEMENT

Advance Replacement provides the Customer with shipments of a limited number of Units intended as an advanced replacement of Returned Units, upon the Customer's request. The service encompasses the following:

a) **Repair Center Support.** Customer shall place Advance Replacement requests at the following link: [https://aviatcloud.com/rma\\_tracking.asp](https://aviatcloud.com/rma_tracking.asp). This link is available for use 24 hours a day, 7 days a week. Customers can also email or fax the RMA request to the Aviat Networks Repair Center. Aviat Networks will typically fax or email a confirmation with an RMA Number within one (1) business day. Requests can also be made via telephone during such Aviat Networks Repair Center's Business Hours.

b) **Shipping Costs.** Customer is responsible for all charges associated with shipping the Returned Unit to the designated Aviat Networks Repair Center, which shall be made pursuant to the delivery term DDU (Delivered Duty Unpaid) Aviat Networks Repair Center (Incoterms:2000) Aviat Networks is responsible for the charges associated with shipping the Returned Unit back to the Customer, which shipment shall be made pursuant to the delivery term DDU (Delivered Duty Unpaid), Customer's premises (Incoterm:2000).

c) **Packaging and Shipping Procedures.** Both Aviat Networks and the Customer are obligated to ensure that all deliveries are packaged in such manner as to achieve suitable mechanical and environmental protection during storage, handling and transport to the delivery address. Electrostatic Discharge (ESD) precautions should be followed during handling and packaging of all Units delivered. For each consignment of Units shipped to Aviat Networks, the Customer must provide a detailed Packing List and Commercial (Proforma) Invoice to support the delivery. Each Commercial Invoice must clearly state the full description, the value of each Unit and the RMA Number. Once a Unit has been repaired and shipped to the Customer at the address provided by the Customer upon RMA request, Aviat Networks will send a pre-alert notification to the Customer comprising a faxed copy of the Commercial Invoice and Airway Bill Number pertaining to the shipment.

d) **Returned Unit.** If this Schedule entitles the Customer to the RLP Program and the Customer elects to use it for the Returned Unit, the Customer will be invoiced for the List Price of the Advance Replacement Unit(s) if Aviat Networks does not receive notification to pick-up the pertinent Returned Unit, at most, ten (10) days after Customer's receipt of the Advance Replacement Unit. In the event that the Customer is not entitled to the RLP Program or the Customer elects to return the Returned Unit to Aviat Networks via a freight forwarder outside of the RLP Program, the Customer will be invoiced for the List Price of the Advance Replacement Unit if Aviat Networks does not receive the pertinent Returned Unit at the Aviat Networks Repair Center within, at most, thirty (30) days after receipt of the Advance Replacement Unit. The Returned Unit will become the property of Aviat Networks. The Customer agrees that the Returned Unit must be repairable and does not fall into any of the categories listed in the EXCILLsion from Advance Replacement clause.

e) **Exclusion from Advance Replacement** The services to be rendered by Aviat Networks under this Schedule shall not comprise any damage, defects, malfunctions or failures caused by one or more of the following:

- Damage caused by mishandling, Customer or third-party negligence, abuse or operation outside the Aviat Networks environment specifications, or due to a cause not solely attributed to Aviat Networks.
  - Modifications, alterations, or repairs made other than by Aviat Networks.
- Damages by persons other than Aviat Networks, or its authorized service providers.
- Any modification, removal or obliteration of a serial number or other identifying mark or any attempts thereof other than by Aviat Networks' authorized personnel.
  - Damage that occurs during shipment from the Customer premises to Aviat Networks' premises outside the RLP (if applicable). Installed, stored, used, handled or maintained contrary to Aviat Networks' written instructions.
  - Used in conjunction or combination with third-party material or equipment without the consent of Aviat Networks.
  - Units returned for repair where there has been misuse, neglect, power failures, surges, accident or acts of nature such as fire, lightning strikes or flood.

f) **No Fault Found Fee.** If the number of Returned Units that the Customer reports are defective, but are thereafter tested by Aviat Networks and found to meet the applicable Aviat Networks Product specifications, exceeds ten percent (10%) of the total number of Returned Units received by Aviat Networks from the Customer during each year of the Support period, then Aviat Networks will charge the Customer the then-current No Fault Found inspection fee for each such non-defective Returned Units in excess of such ten percent (10%).

g) **Limits.** Customer is entitled to receive a limited number of Advance Replacement Units per year This number is not to exceed ten percent (10%) of the total Repair & Return requests during that year. Accrued Advance Replacement Units that have not been requested by the Customer may not be carried over to the next year Additional Advance Replacement Units will be provided at Aviat Networks' then current prices, terms and conditions.

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h) Unavailability. If an Advance Replacement Unit is not available, then Aviat Networks will repair the Returned Unit within a mutually agreed Turnaround time. Customer agrees that repair of the Returned Unit shall be Aviat Networks' sole obligation, and the Customer's sole remedy, if an Advance Replacement Unit requested by the Customer is not available.

i) Turnaround Time Commitments. Standard Advanced Replacement service ensures Customer will receive a comparable unit to the one being returned within 3 to 5 business days from date of RMA. If Customer requires a replacement unit in a shorter period of time there is an added charge for this and based on replacement unit availability will be delivered on a next business day basis. Customer will be informed at time of RMA request whether this service can be provided or not depending on component availability.

### 2.3 REPAIR LOGISTICS PROGRAM (RLP)

Aviat Networks shall provide free freight to the Customer for all Units returned via the Aviat Networks Repair Logistics Program (RLP). In the event that the Customer returns Units to Aviat Networks via a freight forwarder outside of this Program, all freight expenses and damage liability will be the responsibility of the Customer. Aviat Networks is responsible for all tariffs, duties, or taxes associated with importing Units for repair. After the repair, the Units shall be returned to the Customer DDU (Delivered Duty Unpaid) Customer's premises (Incoterms 2000). To implement the return of a Unit via this Program the Customer shall request an RMA for the Unit using the link in the Repair Services or Advance Replacement Sections or the contact information as listed in the Aviat Networks Contacts Section.

a) Liability of Units Damaged During Shipping. Aviat Networks will assume responsibility for insuring the Units against loss or damage that is moving via the RLP. The Customer shall examine the condition of all shipments returned from Aviat Networks via the RLP at the time of delivery. Visible signs of damage shall be brought to the attention of the carrier and the contents shall be examined for damage immediately. Aviat Networks will not be liable for any direct reports by the Customer for Units that are found to be damaged upon receipt by the Customer that are made over seven (7) days after the Units have been delivered. Units damaged through transit shall be returned for repair at Aviat Networks through the normal return process. Damage or loss incurred to Units shipped to Aviat Networks by the Customer outside the RLP shall be the responsibility of the Customer.

### 2.4 REMOTE TECHNICAL SUPPORT 24 X 7

Customer 24 X 7 Remote Support

24 X 7 Remote Support provides around-the-clock (24 X7) telephone access to Aviat Networks' Technical Assurance Center in order to resolve Critical Service Requests, Major Service Requests, Minor Service Requests and Inquiry Service Requests.

a) Telephone Number. Customer may contact Aviat Networks' Technical Assistance Center (TAC) regarding such Service Requests via telephone at any time during the day or night. For night support services (after business hours in the local time zone), Aviat Networks will handle all such requests that are Critical or Major that the Customer reasonably categorizes as being High Priority. In addition with this service Customer can pre-schedule after hours support when doing a new software installation or a network upgrade related to covered equipment.

b) Rapid Response Time. Aviat Networks will route Critical Service Requests to the appropriate TAC subject matter expert within fifteen (15) minutes of call receipt.

c) Service Request Number. Aviat Networks will assign, to each Service Request, a number that will be logged, tracked and stored in our Case Management database.

d) Service Request Management. Aviat Networks will dedicate continuous attention to Critical and Major Service Requests until service is restored or request is closed. Aviat Networks will work to resolve the Service Request until Customer accepts the proposed solution, at which point the TAC will close the Service Request.

e) Documented Escalation Procedures. Aviat Networks will implement internal escalation and notification procedures in order to facilitate the timely resolution of Service requests by a TAC Engineer with an adequate level of expertise. The technical support process includes rigid managerial escalations that are intended to facilitate the appropriate handling of recovery efforts and Customers being regularly updated on the status of the Service Request. Additional information on this escalation process is available in our Global Network Service Customer Support guidelines document available on our website at [www.aviatnetworks.com](http://www.aviatnetworks.com).

f) Service Request Submission. Under this Schedule, there is no limit to the number of Service Requests that Customer may submit for resolution. Customer may also define and authorize specific users within its organization to have access to this Service Request Submission Service. To ensure appropriate management of this support Aviat Networks has implemented a Support Assurance Program where an Express PIN will be assigned to each Customer which clearly identifies the level of service a customer is entitled to receive. All Service Request Submissions will require Express PIN information prior to being submitted.

Service Request Severity Classifications

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There are four (4) Service Request severity classifications: (a) Critical; (b) Major; (c) Minor; and (d) Inquiry. Critical, Major and Minor Service Requests pertain to problems in the Product. Inquiry Service Requests pertain to questions about the Product or Services. The four (4) Service Request severity classifications are defined as follows:

- a) Critical Service Requests are those that severely affect service, traffic, billing and/or maintenance capabilities, and require immediate corrective action (regardless of the time of day or day of the week).
- b) Major Service Requests are those that cause conditions that seriously affect Product operation, maintenance and/or administration, and require immediate attention. The urgency is less than in Critical Service Requests because of a lesser immediate or impending effect on Product performance, Customer and/or network operation and revenue
- c) Minor Service Requests are problems that are tolerable during Product use, do not significantly impair the functioning of the Product and do not significantly affect service to Customers.
- d) Inquiry Service Requests are questions about technical details concerning the usage or behavior of the Product.

#### 2.5 PROVISION SUPPORT 24 X 7

Aviat Networks shall provide remote technical support to the Customer on ProVision. The remote technical support 24 X 7 shall be provided as per the terms outlined in the Remote Technical Support 24 X 7 section of this Agreement.

Aviat Networks shall provide support on the current and previous ProVision production release and will investigate all reproducible product anomalies for the supported version. Aviat Networks shall also provide general availability releases and product updates to the Customer free of charge during the coverage period.

##### 2.5.1 Customer Responsibility

To enable the Aviat Networks TAC to fully investigate ProVision issues, the Customer shall provide the TAC the appropriated logs and remote access where possible. The Customer will provide the capability to allow Aviat Networks to remotely access the Customer's network by means of a secure internet connection to the Customer's site. This connection process will need to be defined at time of agreement such that any issues arising after Agreement closure can be addressed expeditiously.

##### 2.5.2 Exclusion from ProVision Support 24 X 7

The services to be rendered on ProVision by Aviat Networks under this Agreement shall not comprise any services, which are required as a result of one or the more of the following:

- Customers using old versions of ProVision. The ProVision Agreement provides regular updates; customers are required to have the current GA release or the previous GA release installed and commissioned before they can obtain Aviat Networks technical support
- Customer's lack of basic user training. It is expected that all users will have received basic user training when the ProVision system was installed.
- Network Planning; NMS Integration; Training courses; Installation and Commissioning; On Site Support. These are separate Aviat Networks service offerings, which are not delivered under this Agreement.
- Due to the complex nature of ProVision issues, which may be network related rather than ProVision related, not all Customer-defined level three product anomalies can be rectified within the commercial bounds in which Aviat Networks operates. Aviat Networks will require that all product anomalies are reproducible, prior to the commencement of any detailed fault analysis or potential product re-engineering. Aviat Networks undertakes to provide a response on all logged product issues and will provide work-around's where possible.

#### 2.6 CORRECTIVE MAINTENANCE

Corrective maintenance provides for the dispatch of the necessary support personnel and test equipment for the purposes of diagnosing a problem, restoring service or correcting a service request that Aviat Networks has unsuccessfully attempted to resolve remotely from one of our Technical Assistance Centers.

All sites under maintenance must have undergone full commissioning and proven to be in good working condition. The Customer shall make available site commissioning and acceptance data if requested by Aviat Networks.

The service is provided according to the following Service Level Agreement (SLA):

CRITICAL FAULTS	4 Hours
MAJOR FAULTS	Next Business Day

Aviat Networks shall use its best effort to be onsite within four (4) hours of the Aviat Networks first level support personnel receiving emergency onsite support requests Notwithstanding anything contained herein to the contrary, all services provided may be performed by Aviat Networks directly or through



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one or more qualified Subcontractors Aviat Networks shall coordinate, supervise, manage and be responsible for the services of all the Subcontractors.

Exclusion: Climbing Towers/Antennas is excluded from scope of work and pricing

Limitations: In order to meet the on-site SLA response requirements, the Customer is responsible for providing access to difficult to reach sites (i.e. site not accessible by public road using 2 wheel-drive vehicles or those requiring specialized transport vehicles) or to sites that require customer presence. The customer is responsible for provisioning and making available spare parts.

- If customer elects to perform their own network monitoring, then customer is responsible for troubleshooting and fault isolation, prior to calling Aviat to dispatch an Onsite Corrective Maintenance technician.

**2.7 PREVENTIVE MAINTENANCE**

Preventative Maintenance provides a resource to work with the customers in reviewing operational aspects related to the performance of Microwave equipment and associated software within the customer's network. A resource will come on-site to all customer locations covered under the associated agreement for this service. Once analysis is complete, Aviat Networks will provide a written summary of findings and recommendations related to the work that has taken place.

An engineer is deployed to site as per the customer and Aviat agreed upon schedule commitment for this service. A system health check on all equipment under this agreement will be completed, which includes performance testing and an analysis of historical data. A visual site audit is included under this service offering, which includes the following:

- Spot check Internal and external grounding
- Visual inspection of indoor and outdoor equipment
- Visual inspection of all cables, connectors, weather proofing
- Visual inspection of antenna installations
- Verify DC power levels

During the on-site time, the Aviat Networks' resource may recommend routine maintenance to the customer. Upon customers agreement, Aviat will perform the recommended maintenance action. The Aviat Networks resource may, with the customer's agreement, perform routine upgrades to operating firmware or software that do not require network downtime.

A final report will be presented to the customer stating findings, conclusions and any further recommendations. This preventative service work includes one day of time to visit with customer and review in detail the findings from preventative analysis effort.

Exclusion: Climbing Towers/Antennas is excluded from scope of work and pricing

**3. PAY-PER-INCIDENT SERVICES & PRICING**

Customer may purchase, subject to availability, one (1) or more Pay-Per-Incident Services for any Aviat Networks Product. A summary of the current pricing applicable to the Pay-Per-Incident Services is set forth further in this Section. The current pricing may be revised by Aviat Networks at any time.

<b>PAY-PER-INCIDENT SERVICE</b>	<b>PRICING APPLICABLE TO IN-WARRANTY (PER UNIT)</b>	<b>PRICING APPLICABLE TO SYNERGY MLA COVERED (PER UNIT)</b>	<b>PRICING APPLICABLE TO OUT-OF WARRANTY (PER UNIT)</b>
Repair	Free of charge	Free of charge	Fixed Repair price based on the current list price of the defective unit. Contact the local Aviat Networks Repair Center.
Advance Replacement'	Based on list price of the unit for standard Advanced Replacement requests, Expedited Advanced Replacement is an additional \$750/FRU	Subject to terms in the Agreement - Can be no additional charge	Fixed Replacement price Contact the local Aviat Networks Repair Center.
No Fault Found	No Charge, as long as total NFF does not exceed 10% of returns	Free of charge providing quantity does not exceed ten percent (10%) of the total number of Returned Units received by Aviat Networks from Customer during each year of the Support Period.	Standard Unit Repair price Contact the local Aviat Networks Repair Center.
On-Site Technical Support	Varies. Based on availability, labor & related expenses. Contact local Aviat Networks Technical Assistance Center.	As per Pay-Per-Use Pricing in the Sunport Cot section OR Varies. Based on availability, labor & related expenses. Contact the local Aviat Networks Technical Assistance Center.	Varies. Based on availability, labor & related expenses. Contact the local Aviat Networks Technical Assistance Center.

**4. AVIAT NETWORKS CONTACTS**

Outlined below is the process to contact Aviat Networks once the Agreement is in effect.

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For Support, please contact the appropriate Support function:

**NORTH AMERICA**

Repairs, Returns & Advance Replacements

Phone: 1-800-227-8332 OR (210-561-7400) selecting Option 2, then I

FAX: 210-561-7399

E-mail: rma.americas@aviatnet.com

Online RMA Request:

[https://aviatcloud.com/rma\\_tracking.asp](https://aviatcloud.com/rma_tracking.asp)

**NORTH AMERICA**

Technical Assistance

Phone: 1-800-227-8332 OR (210-561-7400) selection Option 3

FAX: 210-561-7399

E-mail: TAC.AM@aviatnet.com

Online Technical Assistance Request: <https://aviatcloud.com>

**5. ADDITIONAL TERMS AND CONDITIONS**

This agreement is between the party purchasing services described herein (the Customer") and, for Customers located in the United States or outside of the United States, with Aviat U.S., Inc., a wholly owned subsidiary of Aviat Networks Inc., with offices at 860 N McCarthy Blvd, Suite 200, Milpitas, CA 95035 hereinafter referred to as Aviat Networks".

**5.1 SCOPE OF SERVICES**

Aviat Networks will furnish the services outlined in the Service Level Sppprt Section of this Agreement hereinafter referred to as Services" for the Products for Customer as may be required from time to time for the period specified in the OLJ ration of SLJppojpod Section providing receipt and acceptance of the Customer's purchase order. The Services will be provided in conformity with the terms, conditions, specifications and other requirements of this Agreement and each request for Services will be governed by the terms and conditions stated herein.

The Customer must ensure that the Products to be included in this Agreement be in good operating condition prior to the commencement of this Agreement. Aviat Networks reserves the right to inspect any and all of the Products to be included in the Agreement prior to the commencement of the Agreement, and if the Product is found to be defective, the Customer shall be responsible for the cost of repair of the defective units.

An authorization to return Units to Aviat Networks under this Agreement must be obtained from an Aviat Networks representative prior to making shipment to the Aviat Networks' Repair Center. Aviat Networks warrants that each Unit that is repaired or replaced under this Agreement, shall, at the time of return to Customer, for a period of ninety (90) days thereafter or until the expiration or termination of this Agreement, whichever is longer, be free from defects in materials and workmanship. Such warranty shall not include any consumable components to which a specific manufacturer's guarantee applies. If any Unit shall prove to be defective in materials or workmanship under normal intended usage, operation and maintenance during the term of this Agreement, as determined by Aviat Networks after examination of the Unit claimed to be defective, then Aviat Networks shall repair or replace, at Aviat Networks' sole option, such defective Unit, in accordance with procedures specified herein, at no additional cost, exclusive, however, of the cost of labor by the Customer's own employees, agents or contractors in identifying, removing or replacing the defective part(s) of the Units.

Liability of Aviat Networks for breach of any and all warranties hereunder is expressly limited to the repair or replacement of defective Units as set forth in this Agreement, and in no event shall Aviat Networks be liable for special, incidental or consequential damages by reason of any breach of warranty or defect in materials or workmanship. Aviat Networks shall not be responsible for repair or replacement of Products which have been subjected to neglect, accident (including fire, flood, storm, lightning strike, or other act of God), Customer's fault or negligence or improper use, or Products which have been altered by anyone other than Aviat Networks or an agent authorized by Aviat Networks or Products that are not repairable due to component availability.

Expedited Services such as Emergency Repair may be requested and will be executed based on inventory availability only. Expedited Services such as but not limited to Emergency Repair, etc. are not included in the Program and will be quoted at time of service request

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER ORAL, WRITTEN, EXPRESSED, IMPLIED, OR STATUTORY. IN PARTICULAR, THE IMPLIED WARRANTIES OF FITNESS FOR PARTICULAR PURPOSE AND MERCHANTABILITY ARE HEREBY DISCLAIMED AND SHALL NOT BE APPLICABLE EITHER FROM AVIAT NETWORKS OR ANY OTHER EQUIPMENT MANUFACTURER. AVIAT NETWORKS' WARRANTY OBLIGATIONS AND CUSTOMER'S REMEDIES THEREUNDER ARE SOLELY AND EXCLUSIVELY AS STATED HEREIN. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS CONTRACT, UNDER NO CIRCUMSTANCES SHALL AVIAT NETWORKS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY CLAIMING UNDER CUSTOMER FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR LOSS OF CAPITAL, REVENUE OR PROFITS AS A RESULT OF

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A BREACH OF ANY PROVISION OF THIS CONTRACT. IN NO EVENT SHALL AVIAT NETWORKS LIABILITY TO CUSTOMER, OR ANY PARTY CLAIMING THROUGH CUSTOMER EXCEED THE LESSER OF \$100,000.00 USD OR THE ACTUAL SALES PRICE PAID BY CUSTOMER FOR ANY ITEMS SUPPLIED HEREUNDER

#### 5.2 PRICES/PAYMENT/TAXES/SHIPPING

All payments shall be made via bank transfer to the accounts specified on the invoice, in full in Advance of the commencement of each year of service/coverage. The total amount is due and payable to Aviat Networks within thirty (30) days of the invoice date, subject to credit approval. In the event any payment due by Customer hereunder is past due, Aviat Networks reserves the right to withhold Services until such payment is received. Prices and payment terms for Services or Products not included in this Agreement, such as Emergency Repair, etc., will be established on a case-by-case basis subject to the mutual agreement of the parties.

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 shall pay, or upon receipt of invoice from Aviat Networks, shall reimburse Aviat Networks for all such taxes or charges levied or imposed on Customer, or required to be collected by Aviat Networks, resulting from this transaction or any part thereof.

All shipments made by Aviat Networks under this Agreement are made via the methods (as applicable) outlined in the Repair Services and/or Advance Replacement Sections or the Repair Logistics Program Section (if purchased) of this Agreement. Unless instructed otherwise, Aviat Networks will arrange for standard commercial shipping. In the event Customer requires other than standard commercial shipping, Customer will be responsible for any additional costs incurred. Responsibilities regarding the export of items delivered under this Agreement are detailed in the Export and Re-Export Restrictions and Export Documents Sections below.

Late payments shall result in the assessment of a late charge equal to one and one-half percent (1 1/2 %) per month on any outstanding balance, or the maximum amount of interest chargeable by law, whichever is less.

#### 5.3 EXPORT AND RE-EXPORT RESTRICTIONS

Performance and delivery of the equipment, documents, Services and Software sold or delivered hereunder are subject to export control laws and regulations of the United States, as applicable, and conditioned upon receipt of required U.S. Government licenses and approvals by Aviat Networks. Customers shall not export or re-export Products or technical data delivered hereunder from the United States without complying with regulations of the Bureau of Export Administration of the United States Department of Commerce, as applicable. Customers shall not re-export the Products and technical data delivered hereunder from the country of delivery or to any facility engaged in the design, development, stockpiling, manufacturing or use of missile, chemical or biological weapons without fully complying with the regulations of the above United States government agencies. Customer warrants that it will comply with the United States Foreign Corrupt Practices act of 1997, as amended.

#### 5.4 EXPORT DOCUMENTS

Customer shipments, under this Agreement, to Aviat Networks shall be made via the methods (as applicable) outlined in the Repair Services and/or Advance Replacement Sections or the [Repair Logistics Program Section (if purchased) of this Agreement. Customer shall be responsible for insurance and for clearing incoming Products through customs in their country.

Customers shall be responsible for obtaining any necessary import licenses into the country of delivery. Aviat Networks shall provide certificates of delivery, affidavits of origin, and other information under its control which is necessary for Customer to import Products.

Customers shall provide all information, certificates and Letters of Assurance necessary for Aviat Networks to obtain any export licenses required for Aviat Networks to export Products out of the country for repair, as applicable. Aviat Networks shall be responsible for selection and/or approval of freight forwarder(s). In the event that Customer wishes to utilize a freight forwarder that is not acceptable to Aviat Networks, Customer shall be the shipper of record and shall be responsible for obtaining required export licenses which shall be in the name of the Customer.

#### 5.5 EXCUSABLE DELAY

Aviat Networks shall be excused from performance under this 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 a public enemy, labor difficulties or disputes, 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 God, or Customer's fault or negligence.

In the event of an excusable delay, Aviat Networks shall make reasonable efforts to notify Customer of the nature and extent of such a delay and Aviat Networks (i) will be entitled to a schedule extension on at least a day-for-day basis, (ii) in the event of Customer's fault or negligence, will be also entitled to an equitable adjustment in the price of this contract.

#### 5.6 TERMINATION

Either party may terminate this Agreement upon ninety (90) days written notice without cause. In such event, Aviat Networks shall refund to Customer a pro-rated amount of the annual fee paid based on the complete months

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remaining in the term. In the event Customer terminates the Agreement without cause earlier than the ninth (9th) month of each year of the Agreement, Aviat Networks reserves the right to retain the pro-rated amount of the annual fee through the month of termination or the actual cost incurred by Aviat Networks hereunder, whichever is greater.

Either party may terminate this Agreement immediately upon notice in writing to the other party if the other party shall breach any provision of this Agreement in any respect and such breach remains un-remedied thirty (30) days after notice thereof from the non-breaching party. In the event this Agreement is terminated due to the breach of Customer, Aviat Networks shall retain the entire amount of the annual fee paid by Customer.

The right of termination provided herein is absolute and neither party shall be liable to the other for damages or otherwise by reason of such termination.

#### 5.7 ASSIGNMENT

Customer may not assign this Agreement in whole or in part without the prior written consent signed by an officer of Aviat Networks. Such consent shall not be unreasonably withheld.

#### 5.8 GOVERNING LAW, VENUE AND JURISDICTION

This Agreement will be governed by and construed in accordance with the laws of the State of Ohio. The parties agree that any action to enforce any provision of this Agreement or arising out of or based upon this Agreement or the business relationship between Aviat Networks and Customer will be filed in and heard before the courts of Delaware County, Ohio.

#### 5.9 ENFORCEABILITY

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall in no way be affected or impaired.

#### 5.10 LIMITATION OF LIABILITY

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY CLAIMING UNDER THE OTHER PARTY FOR SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, AND CONSEQUENTIAL OR LOSS OF PROFIT TYPES OF DAMAGES AS A RESULT OF A BREACH OF ANY PROVISION OF THIS CONTRACT.

#### 5.11 COMPLIANCE WITH LAW

Customer agrees to assist Aviat Networks to comply with any applicable conventions, laws, rules, regulations, and bylaws incident to its activities under this Agreement, including, without limitation, United States export control regulations, the United States Foreign Corrupt Practices Act, and the United States anti-boycott regulations. Customer will promptly deliver to Aviat Networks a copy of any notice or instrument alleging a violation of any of these laws.

#### 5.12 ENTIRE AGREEMENT

This Agreement supersedes all previous communications, transactions, 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 deletion of, or addition to these terms shall be binding on either party unless made in writing and signed by a duly authorized representative of both parties.

#### 5.13 INSURANCE

5.13.1. AVIAT NETWORKS SHALL MAINTAIN COMMERCIAL GENERAL LIABILITY INSURANCE OF \$1,000,000 EACH OCCURRENCE WITH AN ANNUAL AGGREGATE OF \$2,000,000. IDENTICAL COVERAGE SHALL BE REQUIRED TO BE PROVIDED BY ALL SUBCONTRACTORS, IF ANY.

5.13.2. AVIAT NETWORKS SHALL MAINTAIN AUTOMOBILE LIABILITY INSURANCE OF \$1,000,000 EACH ACCIDENT. SUCH COVERAGE SHALL INCLUDE COVERAGE FOR OWNED, HIRED AND NON-OWNED AUTOMOBILES. IDENTICAL COVERAGE SHALL BE REQUIRED TO BE PROVIDED BY ALL SUBCONTRACTORS, IF ANY.

5.13.3. AVIAT NETWORKS SHALL MAINTAIN WORKERS' COMPENSATION COVERAGE AS REQUIRED BY THE LAWS OF THE STATE OF OHIO. IDENTICAL COVERAGE SHALL BE REQUIRED TO BE PROVIDED BY ALL SUBCONTRACTORS, IF ANY.

5.13.4. CUSTOMER, ITS ELECTED OFFICIALS AND EMPLOYEES, SHALL BE NAMED AS ADDITIONAL INSURED WITH RESPECT TO ALL ACTIVITIES UNDER THIS AGREEMENT IN THE POLICIES REQUIRED BY SUBSECTIONS 14.14.1 AND 14.14.2. AVIAT NETWORKS SHALL REQUIRE ALL OF ITS SUBCONTRACTORS TO PROVIDE LIKE ENDORSEMENTS.

5.13.5. Prior to the commencement of any work under this Agreement, Aviat Networks, and all of its subcontractors, shall furnish the Customer with properly executed certificates of insurance for all insurance required by this Agreement, as well as properly executed endorsements indicating the additional insureds as required by subsection 14.14.4. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the Customer. Aviat Networks will replace certificates for any insurance expiring prior to completion of work under this Agreement.

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5.14 INDEPENDENT CONTRACTOR

Aviat Networks agrees that no agency, employment, joint venture, or partnership has been or will be created between the parties hereto pursuant to the terms and conditions of this Agreement. Aviat Networks also agrees that, as an independent contractor, it assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums which may accrue as a result of compensation received for services or deliverables rendered hereunder.

6. SIGNATURES

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective names.

**SUPPORT COSTS:**

S/O A44924 13 Sites, 13 Hops  
Renews Contract 101126

start date 4/10/2017

Part Numbers	Qty.	LP	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	DISCOUNT
Warranty Plus Out of Warranty IRU 600	26	\$407.00	\$6,878.30	\$6,878.30	\$6,878.30	\$6,878.30	\$6,878.30	35%
SWW-OMEW000012AN (Dehydrators)	13		\$1,477.00	\$1,477.00	\$1,477.00	\$1,477.00	\$1,477.00	NA
ProVision Software	1	\$3,000.00	\$1,950.00	\$1,950.00	\$1,950.00	\$1,950.00	\$1,950.00	35%
Corrective and Preventive Maintenance	13		\$28,333.00	\$28,333.00	\$28,333.00	\$28,333.00	\$28,333.00	NA
<b>TOTALS:</b>			<b>\$38,638.30</b>	<b>\$38,638.30</b>	<b>\$38,638.30</b>	<b>\$38,638.30</b>	<b>\$38,638.30</b>	<b>\$193,192</b>

**Annual Invoice \$38,638**

**Pricing Notes:**

- Prices quoted and payable in US Dollars
- Any Purchase Order resulting from this proposal shall be subject to Aviat Networks Terms and Conditions of Sale
- Prices reflect scope of work as specified within this proposal
- Only the equipment listed in the above table shall be eligible to receive support; this includes any spare units purchased under the above Aviat Networks Sales Order Numbers. All consumable items such as cables or batteries are excluded
- Pricing calculated assumes sites under maintenance have undergone full commissioning and proven to be in good working condition prior to the start date of this Agreement.
- Pricing calculated assumes no failed units are in the Customer's possession prior to the start date of this Agreement. If there are failed units in the Customer's possession prior to the start date of this Agreement, the Customer agrees that this Agreement will not apply retrospectively to those units, and will not apply to any units for which RMA Numbers had already been obtained from Aviat Networks prior to the start date of this Agreement.
- The Aviat Networks maintenance agreement requires that all similar products within the network be covered under similar service levels
- Products in warranty and products out of warranty will receive the same contracted support level. Warranty services address product defects only. When a product under warranty is contracted for a Support Service, the service level will in essence be uplifted and the Support Services plan pricing will be based on the enhanced coverage of the Support Service plan.

Vote on Motion                      Mr. Merrell                      Aye                      Mrs. Lewis                      Aye                      Mr. Benton                      Aye

**10**

**RESOLUTION NO. 17-352**

**IN THE MATTER OF APPROVING THE AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS, DELAWARE COUNTY EMERGENCY COMMUNICATIONS AND THE COMMISSION ON ACCREDITATION FOR LAW ENFORCEMENT AGENCIES, INC., (CALEA) FOR ACCREDITATION FOR THE COMMUNICATION CENTER:**

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

Whereas, the Director of Emergency Communications recommends approval of the CALEA agreement;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the agreement between The Delaware County Board of Commissioners, Delaware County Emergency Communications And The Commission On Accreditation For Law Enforcement Agencies, Inc., (CALEA) For Accreditation for the Communication Center:

**THE ACCREDITATION PROGRAM FOR COMMUNICATIONS  
ACCREDITATION AGREEMENT**

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This Agreement is entered into between the Delaware County Emergency Communications with principal offices at 10 Court Street, Delaware, Ohio 43015 telephone number 7408330257 hereafter referred to as the "Agency," and the Commission on Accreditation for Law Enforcement Agencies, Inc., a Maryland Corporation, with principal offices at 13575 Heathcote Boulevard, Suite 320, Gainesville, Virginia 20155, telephone number (703) 352-4225, hereafter referred to as "CALEA."

**WITNESSETH**

The Agency and CALEA, for and in consideration of the mutual covenants set forth in this Agreement and the compensation to be paid to CALEA as hereafter specified, covenant and agree to be bound by the provisions, terms, and covenants contained herein, WHEREFORE, each party covenants and agrees as follows:

**1. PURPOSE OF THIS AGREEMENT:**

1.1 The purpose of this Agreement is to establish the relationships between, and set the responsibilities of, the parties of the Agreement (a) by CALEA's assessing the Agency's compliance with applicable standards established by CALEA in order for CALEA to determine if the Agency is eligible for designation as accredited, and (b) by the Agency's maintaining compliance with those standards by which they were accredited.

**2. AGENCY'S RESPONSIBILITIES:** The Agency agrees to:

2.1 Provide all information, documents, files, records, and other data as required by CALEA so far as the same may be provided in accordance with laws, regulations, and ordinances of the state, county, locality, or municipality in which the agency is located.

2.2 Fully and accurately respond to all communications from CALEA within ten (10) business days from the receipt thereof.

**3. CALEA'S RESPONSIBILITIES:** CALEA agrees to:

3.1 Provide necessary documentation, forms, and instructions regarding the accreditation process. 3.2 Provide CALEA-trained Assessors for the purpose of conducting an on-site assessment of the Agency's compliance with applicable standards.

CALEA will not accept this agreement if it is not executed by June 30, 2017.

3.3 Promptly analyze compliance data and advise the Agency of the results of the on-site assessment and the need for additional information, if any.

3.4 Conduct a hearing and certify the Agency as accredited if the relevant standards are complied with.

3.5 If the Agency is accredited (a) provide a certificate, and (b) make available indicia of accreditation.

3.6 If the Agency is not accredited following an examination of compliance with applicable standards, provide the Agency with reasons for CALEA's decision.

**4. TIME PERIOD COVERED BY THIS AGREEMENT:**

4.1 This Agreement shall take effect when the Agency's Chief Executive Officer, or authorized representative, and the Executive Director of CALEA, acting on its behalf, signs the Agreement. This Agreement shall be effective upon signing by the second party, the "Effective Date."

4.2 The terms and covenants of this Agreement shall terminate in the following circumstances:

(a) Upon expiration of the 24 month for accreditation following the effective date of this Agreement unless a successful on-site assessment is completed within that period of time or the non-payment of an annual contract extension fee for additional time; or

(a) Upon written notice by the Agency that it withdraws from the accreditation process; or

Upon termination pursuant to Section 5.2 or 6.1 hereof; or

Upon expiration or revocation of the Agency's accredited status; or

Notwithstanding any other provisions herein, at the option of either the Agency or CALEA, upon at least sixty (60) days prior notice by such party to the other specifying the date of termination.

4.3 CALEA may, at its discretion, upon request by the Agency, extend this Agreement in accordance with the terms and provisions of the CALEA Process and Programs Guide.

**5. MODIFICATION:**

5.1 There shall be no modifications of this Agreement except in writing, signed by both parties, and executed with the same formalities as this document.

5.2 The Agency recognizes and acknowledges that it will be necessary for CALEA to make reasonable modifications and amendments to this Agreement, fees and other related documents, including but not limited to the accreditation standards and procedures thereto and hereby agrees to endorse all modifications and amendments which the Agency deems reasonable. In the event the Agency deems such modifications or amendments unreasonable, CALEA reserves the right to terminate this Agreement after due consideration thereof by giving notice by registered or certified mail, return receipt requested, that in the event the Agency refuses to accept and execute such modifications or amendments, then and in such event, this Agreement will be terminated.

**6. TIME AND MANNER OF PAYMENT:**

6.1 The Agency may elect several options for payment of the initial accreditation fee, which is not refundable. The initial accreditation fee includes access to CALEA PowerDMS Accreditation Tool software. The software log in credential will be provided after this Agreement is executed. All accreditation fees must be paid in full prior to requesting on-site assessment. CALEA reserves the right to terminate this Agreement if an installment payment is

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delinquent by more than sixty days.

6.1 (a) Accreditation Payment Option

Our agency elects Lump Sum (s) accreditation payment option. The amount of \$6550 is herein remitted to CALEA. Purchase Order, is herein remitted with Agreement.

AND

The Agency will be billed for CALEA's projected on-site assessment charge and payment will be required prior to the on-site assessment.

6.2 If the Agency is determined ineligible to apply for participation in the accreditation program, a full refund of all sums paid will be returned to the Agency.

6.3 One month after the initial accreditation award, the agency will be billed the Annual Continuation Fee. The Continuation Fee of \$3235 is defined as the Service Charge and estimated On-site Assessment Charge for reaccreditation subject to change after each reaccreditation award with the limitations contained in this Section 6.3. The Continuation Fee will be billed to the Agency and paid in annual installments, due by the 1st, 13th, 25th, and 37th months following the initial award and each subsequent awards thereafter. Any adjustments to annual Continuation Fees will be made at the beginning of each reaccreditation award period.

6.4 CALEA reserves the right to terminate this Agreement if any payment required of Agency is delinquent by more than sixty (60) days.

7. CALEA AS AN INDEPENDENT CONTRACTOR:

7.1 In all matters pertaining to this Agreement, CALEA shall be acting as an independent contractor and neither CALEA nor any officer, employee, or agent of CALEA will be deemed an employee of the Agency. The selection and designation of the personnel of CALEA in performance of its responsibilities under this Agreement shall be made by CALEA.

7.2 In all matters pertaining to this Agreement and the relationship between the parties thereto, the Executive Director of CALEA will act in the name of CALEA.

8. AUTHORITY:

8.1 The person signing on behalf of the Agency hereby represents and warrants that he or she has the power and authority to execute this Agreement and to bind said Agency to all terms and covenants contained herein including, but not limited to, the provisions of this Section 8.

9. INTEGRATION:

9.1 This instrument embodies the whole Agreement of the parties. The parties warrant that there are no promises, terms, conditions, or obligations other than those contained herein. This Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto.

10. SEVERABILITY:

10.1 If any provision of this Agreement or the application of such provision to any person or circumstance shall be held invalid, the remainder of this Agreement and the application of such provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

11. WARRANTY NOT INTENDED OR IMPLIED:

11.1 It is understood that CALEA's award of accreditation does not constitute a warranty, express or implied, of total or continued compliance by the Agency with all applicable standards of accreditation and, further, that it is not a substitute for the Agency's ongoing and in-depth monitoring and evaluation of its activities and the quality of its services.

12. WAIVER:

12.1 Any waiver by CALEA or any breach of this Agreement by the Agency shall relate only to that particular breach and shall not amount to a general waiver.

13. NOTICE:

13.1 Any notice between the parties shall be in writing and sent postage prepaid, to the addresses as specified in the preamble of this Agreement or to such other address as either party may specify in writing in accordance with this section.

14. HEADINGS:

14.1 The headings of this Agreement shall not be deemed part of it and shall not in any way affect its construction.

15. CONSENT TO BE BOUND:

15.1 The Agency accepts CALEA's decisions as the final authority on all matters relating to CALEA's standards and accreditation program.

16. APPROPRIATE COPYRIGHT USE OF COMMISSION MATERIALS:

16.1 CALEA Publications are protected by U.S. and International Copyright Laws. Copyright-protected materials may not be copied, reproduced, changed, altered, distributed, used in the creation of derivative works, stored in a retrieval system, or transmitted in any form, or by any means – electronic, mechanical, photocopying, recording or otherwise – without the express written permission of CALEA.

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17. APPROPRIATE TRADEMARK USE OF COMMISSION MATERIALS:

17.1 CALEA's trademarks and trade dress may not be used in connection with any product or service that is not CALEA's in any manner that is likely to cause confusion among customers, or in any manner that disparages or discredits CALEA or that otherwise dilutes any of CALEA's trademarks.

18. POWERDMS DOCUMENT ACCREDITATION MANAGEMENT SOLUTION:

18.1 CALEA recognizes PowerDMS, Inc. ("PowerDMS") as exclusive provider for CALEA accreditation management software.

19. CONFIDENTIALITY:

19.1 The Commission shall receive and hold confidential any and all reports, files, records, and other data obtained from the Agency pursuant to this Agreement. The Commission shall not disclose, distribute, or release to any person or organization contents thereof, either provided by the Agency or developed by the Commission in the furtherance of its responsibilities under this Agreement.

Exceptions to this confidentiality clause include valid court orders issued by any federal or state court directing the release of such information. Additionally, the Commission shall be authorized by the agency to conduct an open meeting regarding the Agency's candidacy for accreditation, or, its continued compliance with applicable standards. This shall include but not be limited to all factual matters relating to the assessment of the agency for accreditation, and all comments which form a basis for the opinion either in favor of or against accreditation.

Requests to waive the open meeting exclusion must be made by the Agency in writing and define the specific content or information held by the Commission that shall not be disclosed.

Notwithstanding specific instructions of the Agency, any agent or employee of the Commission shall be authorized to receive information, either provided by the Agency or developed by the Commission in furtherance of its responsibilities under the agreement.

**COMMUNICATIONS ENROLLMENT FORM**

Agency Name: Delaware County Emergency Communications  
Street Address: 10 Court Street  
P.O. Box No:  
City: Delaware  
Zip/Postal Code: 43015  
P.O. Box Zip/Postal Code State/Province: Ohio

Agency Telephone: 7408330257      Agency Fax: 740-833-2159

Special Shipping Instructions:

Agency's Chief Executive Officer

Name: Patrick V. Brandt

Title: Director

Telephone: 7408330257      E-mail: [pbrandt@co.delaware.oh.us](mailto:pbrandt@co.delaware.oh.us)

Agency's Accreditation Contact

Name: Jeanette Adair

Title: Tour Commander

Telephone: 7408332174      E-mail: [jadair@co.delaware.oh.us](mailto:jadair@co.delaware.oh.us)

The commitment our agency must make in working with CALEA toward accreditation is understood and accepted. Also, we are prepared to provide information promptly concerning our agency that CALEA requires in making its determination for awarding accreditation. It is also understood that our agency is entering into a nonadversarial working relationship with CALEA and that our agency can terminate its status at any time upon notice as indicated in the aforementioned Agreement, Section 4.2.

**Addendum B**

**The Parties hereto agree to the following amendments to the Publications Subscription and Access Agreement:**

Section III(b) shall be deleted and replaced with the following:

III. Fees

(b) BILLING -Licensee shall be billed annually, in advance, at rates set forth by CALEA on an invoice. Payment shall be due and payable upon receipt of the invoice. Accounts not paid in full within 30 days of customer receiving the invoice shall be considered delinquent and may result in a disruption of licensed materials access. NOTE: This disruption will impact the functionality of PowerDMS services for those entities subscribing to that service.

Section XV shall be deleted and replaced with the following:

XV. Indemnity

Licensor shall indemnify and hold Licensee harmless for any losses, claims, damages, awards, penalties, or injuries incurred by and third party, including reasonable attorney's fees, which arise from any alleged breach of Licensor's representations and warranties made under this Agreement, provided that Licensor is promptly notified of any such claims. Licensor shall have the sole right to defend such claims at its own expense. Licensee shall provide, at Licensor's expense, such assistant in investigating and defending



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such claims as the Licensor may reasonably request. This indemnity shall survive the termination of this Agreement.

Section XXI shall be deleted and replaced with the following:

XXI. Governing Law

Laws will be governed by the state of Ohio regarding disputes arising from this agreement.

Section 8 of Addendum A to the Agreement shall be deleted in its entirety.

Section 10 of Addendum A to the Agreement shall be deleted and replaced with the following:

Addendum A

10. Choice of Law; Jurisdiction

These Terms will be interpreted in accordance with the laws of the State of Ohio and applicable federal law, without any strict construction in favor of or against either party. Any action arising under or relating to these Terms shall lie within the exclusive jurisdiction of the State and Federal Courts located in Delaware County, Ohio

**PUBLICATIONS SUBSCRIPTION AND ACCESS AGREEMENT**

**TERMS & CONDITIONS**

**FOR SUBSCRIBERS TO THE ELECTRONIC PUBLICATIONS**

THIS SUBSCRIPTION AND ACCESS AGREEMENT ("Agreement") by and between CALEA®, Inc., a Maryland Corporation, located at 13575 Heathcote Boulevard, Suite, 320 Gainesville, Virginia 20155-6660 ("Licensor"); and Delaware County Emergency Communications, located at 10 Court Street, Delaware, Ohio 43015 43015 ("Licensee") intending to be legally bound, for CALEA to provide to Licensee, subject to this Agreement, access to CALEA's electronic publications for the purpose of CALEA Accreditation, research, general resource, or other approved purpose.

**I. Content of Licensed Materials; Grant of License**

The materials that are the subject of this Agreement shall consist of electronic information published or otherwise made available by Licensor which includes the following:

- (a) CALEA Standards for Law Enforcement Agencies;
- (b) CALEA Standards for Public Safety Communications Agencies;
- (c) CALEA Standards for Public Safety Training Academies;
- (d) CALEA Standards for Campus Security Agencies; and
- (e) CALEA Process and Programs Guide (hereinafter referred to as the "Licensed Materials").

Licensee and its Authorized Users acknowledge that the copyright and title to the Licensed Materials and any trademarks or service marks relating thereto remain with Licensor and/or its suppliers. Neither Licensee nor its Authorized Users shall have right, title or interest in the Licensed Materials except as expressly set forth in this Agreement. Licensor hereby grants to Licensee non-exclusive use of the Licensed Materials and the right to provide the Licensed Materials to Authorized Users in accordance with this Agreement. In the event Licensee elects to export data from any of the electronic publications, all of the terms contained within this agreement will apply, with the provision to include downloading of the data to a Licensee electronic file. Data exported will be used for public safety accreditation management or scholarly, educational use only and these data cannot be resold or used for other commercial purposes, posted on a subscription or free site, or forwarded beyond the initial export/download, without the written permission from CALEA. Licensee acknowledges CALEA® copyright and agrees to cite CALEA when using data from the publication(s).

**II. Delivery/Access of Licensed Materials to Licensee**

Licensor will provide the Licensed Materials to the Licensee through Networked Access or Local Access via an application developed and supported by PowerDMS, Inc. (PowerDMS). The Licensed Materials will be stored at one or more Licensor locations in digital form accessible by telecommunications links between such locations and authorized networks of Licensee. Any use of PowerDMS's application or other services shall be subject to the terms and conditions set forth in Addendum A.

**III. Fees**

(a) **SUBSCRIPTION FEES** – The annual Subscription Fees are determined by CALEA customer type. Licensee shall select one of the following CALEA customer types:

**CALEA Enrolled Agencies**

Organizations currently enrolled in one of the four CALEA Accreditation Programs (Law Enforcement, Public Safety Communications, Public Safety Training Academy and CALEA Campus Security Accreditation). Each CALEA Accreditation Program comes with automatic enrollment in the applicable PowerDMS/CALEA Assessment Tool(s). Subscription payments, including the fees applicable to the PowerDMS/CALEA Assessment

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Tool(s) in which the organization is enrolled, are included in accreditation payment installments.

Non-Enrolled Agencies

Organizations currently not enrolled in one of the four CALEA Accreditation Programs. The annual subscription fee is \$900 (payments may be applied to accreditation fees after CALEA Enrollment on a prorated basis determined by CALEA).

Non-Public Safety Academic Institutions

Organizations that primarily serve for the purpose of providing education support and research. Libraries are an example of this customer type. The annual subscription fee is \$200.

Individuals

Persons not associated with a CALEA Enrolled, Non-Enrolled or Non-Public Safety Academic Institution. Individuals are not eligible for site licenses. The annual subscription fee is \$80.

CALEA reserves the right to change a Licensee's customer type at any time during the duration of Agreement.

(b) BILLING -Licensee shall be billed annually, in advance, at rates set forth by CALEA on an invoice. Payment shall be due and payable upon receipt of the invoice. Accounts not paid in full within 30 days of the invoice date shall be considered delinquent and may result in a disruption of licensed materials access. NOTE: This disruption will impact the functionality of PowerDMS services for those entities subscribing to that service.

(c) BILLING ENTITY CALEA shall serve as the billing entity and, with exception of CALEA Enrolled Agencies, all invoices associated with this agreement are separate and apart from other services provided by CALEA, including but not limited to accreditation services, other software services, conference services, and other products. When applicable, fees associated with the PowerDMS/CALEA Assessment Tool(s) shall be reflected as a separate line item on the invoice for collection by CALEA and remittance to PowerDMS.

IV. CALEA Commitment to Customer Service

In order to support its customers and maintain contemporary publications, and to leverage technology, CALEA may periodically make changes to the content, design and delivery of its Publications and Services. This includes the updating of standards and the respective manuals.

CALEA will make reasonable efforts to notify Licensee of changes when they are material through corporate website notices, but in any case Licensee continued use of the Subscription Services shall constitute Licensee assent to this Agreement as it is then in effect. If Licensor changes this Agreement, Licensor will make notification through electronic transmittal, and the changes will become immediately effective. Accordingly, Licensee should visit the Site periodically to review the then-current services.

IV. Authorized Use of Licensed Materials

(a) Authorized Users - Authorized Users are Persons Affiliated with Licensee directly or through a subscribing entity in which they are employed or directly affiliated for a specific purpose that supports the entity's mission. This may include full or part-time employees of the subscribing entity. A licensee may not share access to the publications with other entities or affiliates of other entities, or other individuals. This includes the sharing of access among public safety organizations.

(b) Authorized Uses. Licensee and Authorized Users may make all use of the Licensed Materials as is consistent with the Fair Use Provisions of United States and international law. Nothing in this Agreement is intended to limit in any way whatsoever Licensee's or any Authorized User's rights under the Fair Use provisions of United States or international law to use the Licensed Materials. The Licensed Materials may be used for purposes of CALEA Accreditation, research, education or other noncommercial use as follows:

1. Display - Licensee and Authorized Users shall have the right to electronically display the Licensed Materials as necessary to support the use intent of the materials.
2. Digitally Copy - Licensee and Authorized Users may download and digitally copy a reasonable portion of the Licensed Materials for the licensee's use and not for redistribution in any manner.
3. Print Copy - Licensee and Authorized Users may print a reasonable portion of the Licensed Materials for redistribution within the non-commercial environment, but not for redistribution outside of the licensed entity.
4. Databases - Authorized Users shall be permitted to extract or use information contained in the database for accreditation, educational, scientific, or research purposes, including extraction and manipulation of information for the purpose of illustration, explanation, example, comment, criticism, teaching, research, or analysis.
5. Electronic Links - Licensee may provide electronic links to the Licensed Materials from Licensee's intranet (internal to the entity) page(s), and is encouraged to do so in ways that will increase the usefulness of the Licensed Materials to Authorized Users. Licensor staff will assist Licensee upon request in creating such links effectively. Licensee may make changes in the appearance of such links and/or in statements accompanying such links as reasonably requested by Licensor.
6. Caching - Licensee and Authorized Users may make such local digital copies of the Licensed Materials as are necessary to ensure efficient use by Authorized Users by appropriate browser or other software.

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7. Scholarly Sharing - Authorized Users may transmit to a third party colleague in hard copy or electronically, minimal, insubstantial amounts of the Licensed Materials for personal use or scholarly, educational, or scientific research or professional use but in no case for re-sale. In addition, Authorized Users have the right to use, with appropriate credit, figures, tables and brief excerpts from the Licensed Materials in the Authorized User's own scientific, scholarly and educational works.

VI. Access by and Authentication of Authorized Users

Licensee and its Authorized Users shall be granted access to the Licensed Materials. This access will be established by CALEA or PowerDMS as necessary to ensure the seamless delivery of publication services to the licensee, under protocol established by CALEA or PowerDMS. The development of specific connection protocols shall be identified and authenticated by such means as may be developed during the term of this Agreement to meet the service delivery requirements of this agreement.

VII. Specific Restrictions on Use of Licensed Materials

(a) Unauthorized Use - Except as specifically provided elsewhere in this agreement, Licensee shall not knowingly permit anyone other than Authorized Users to use the Licensed Materials.

(b) Modification of Licensed Materials - Licensee shall not modify or create a derivative work of the Licensed Materials without the prior written permission of Licensor.

(c) Removal of Copyright Notice - Licensee may not remove, obscure or modify any copyright or other notices included in the Licensed Materials.

(d) Commercial Purposes - Other than as specifically permitted in this Agreement, Licensee may not use the Licensed Materials for commercial purposes, including but not limited to the sale of the Licensed Materials or bulk reproduction or distribution of the Licensed Materials in any form.

VIII. Licensor Performance Obligations

(a) Availability of Licensed Materials – Within 30 days, Licensor shall make the Licensed Materials available to Licensee and Authorized Users.

(b) Support – General access support will be provided by CALEA staff and technical support will be provided by PowerDMS where required.

(c) PowerDMS services – Licensees using PowerDMS services will receive all technical support from PowerDMS as defined within the PowerDMS licensing agreement.

IX. Licensee Performance Obligations

(a) Provision of Notice of License Terms to Authorized Users - Licensee shall make reasonable efforts to provide Authorized Users with appropriate notice of the terms and conditions under which access to the Licensed Materials is granted under this Agreement including, in particular, any limitations on access or use of the Licensed Materials as set forth in this Agreement.

(b) Protection from Unauthorized Use - Licensee shall use reasonable efforts to inform Authorized Users of the restrictions on use of the Licensed Materials. In the event of any unauthorized use of the Licensed Materials by an Authorized User, (1) Licensor may terminate such Authorized User's access to the Licensed Materials, (2) Licensor may terminate the access of the Internet Protocol ("IP") address(es) from which such unauthorized use occurred, and/or (3) Licensee may terminate such Authorized User's access to the Licensed Materials upon Licensor's request. Licensor shall take none of the steps described in this paragraph without first providing reasonable notice to Licensee (in no event less than sixty (60) days and cooperating with the Licensee to avoid recurrence of any unauthorized use.

(c) Maintaining Confidentiality of Access - Where access to the Licensed Materials is to be controlled by use of passwords, Licensee shall issue log-on identification numbers and passwords to each Authorized User and use reasonable efforts to ensure that Authorized Users do not divulge their numbers and passwords to any third party. Licensee shall also maintain the confidentiality of any institutional passwords provided by Licensor.

X. Mutual Performance Obligations

(a) Confidentiality of User Data - Licensor and Licensee agree to maintain the confidentiality of any data relating to the usage of the Licensed Materials by Licensee and its Authorized Users. Such data may be used solely for purposes directly related to the Licensed Materials and may only be provided to third parties in aggregate form. Raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided to any third party.

(b) Implementation of Developing Security Protocols - Licensee and Licensor shall cooperate in the implementation of security and control protocols and procedures as they are developed during the term of this

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Agreement.

XI. Term

This Agreement shall take effect when the authorized representative of Licensee and the Executive Director of CALEA signs the Agreement. This Agreement shall be effective upon signing by the second party and payment of appropriate subscription fees, the "Effective Date." The Term of this Agreement shall be one (1) year, commencing on the Effective Date. Sections of this Agreement specific to the authorized use and users will survive any expiration, cancellation or termination of this Agreement.

XII. Early Termination

In the event that either party believes that the other materially has breached any obligations under this Agreement, or if Licensor believes that Licensee has exceeded the scope of the License, such party shall so notify the breaching party in writing. The breaching party shall have sixty (60) days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the sixty (60) days, the non-breaching party shall have the right to terminate the Agreement without further notice.

Upon Termination of this Agreement for cause access to the Licensed Materials by Licensee and Authorized Users shall be terminated. Authorized copies of Licensed Materials may be retained by Licensee or Authorized Users and used subject to the terms of this Agreement.

In the event of early termination permitted by this Agreement, Licensee shall not be entitled to a refund of any fees or pro-rata portion thereof paid by Licensee for any remaining period of the Agreement from the date of termination.

XIII. Warranties

Subject to the Limitations set forth elsewhere in this Agreement:

Licensor warrants that it has the right to license the rights granted under this Agreement to use Licensed Materials that it has obtained any and all necessary permissions from third parties to license the Licensed Materials, and that use of the Licensed Materials by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright of any third party. The Licensor shall indemnify and hold Licensee and Authorized Users harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any claim by any third party of an alleged infringement of copyright or any other property right arising out of the use of the Licensed Materials by the Licensee or any Authorized User in accordance with the terms of this Agreement. This indemnity shall survive the termination of this agreement. **NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.**

XIV. Limitations on Warranties

Notwithstanding anything else in this Agreement:

Neither party shall be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, arising out of the use of or the inability to use the Licensed Materials. Licensor makes no representation or warranty, and expressly disclaims any liability with respect to the content of any Licensed Materials, including but not limited to errors or omissions contained therein, libel, infringement of rights of publicity, privacy, trademark rights, moral rights, or the disclosure of confidential information. Except for the express warranties stated herein, the Licensed Materials are provided on an "as is" basis, and Licensor disclaims any and all other warranties, conditions, or representations (express, implied, oral or written), relating to the Licensed Materials or any part thereof, including, without limitation, any and all implied warranties of quality, performance, merchantability or fitness for a particular purpose. Licensor makes no warranties respecting any harm that may be caused by the transmission of a computer virus, worm, time bomb, logic bomb or other such computer program. Licensor makes no representation or warranty, and expressly disclaims any liability with respect to any services provided by PowerDMS. Licensor further expressly disclaims any warranty or representation to Authorized Users, or to any third party. Except for the express warranties stated herein, the Licensed Materials are provided on an "as is" basis, and Licensor disclaims any and all other warranties, conditions, or representations (express, implied, oral or written), relating to the Licensed Materials or any part thereof, including, without limitation, any and all implied warranties of quality, performance, merchantability or fitness for a particular purpose. Licensor makes no warranties respecting any harm that may be caused by the transmission of a computer virus, worm, time bomb, logic bomb or other such computer program. Licensor further expressly disclaims any warranty or representation to Authorized Users, or to any third party.

XV. Indemnities

Each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries incurred by any third party, including reasonable attorney's fees, which arise from any alleged breach of such indemnifying party's representations and warranties made under this Agreement, provided that the

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indemnifying party is promptly notified of any such claims. The indemnifying party shall have the sole right to defend such claims at its own expense. The other party shall provide, at the indemnifying party's expense, such assistance in investigating and defending such claims as the indemnifying party may reasonably request. This indemnity shall survive the termination of this Agreement.

XVI. Assignment and Transfer

Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

XVII. Entire Agreement

This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

XVIII. Amendment

No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of Licensor and Licensee.

XIX. Severability

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

XX. Waiver of Contractual Right

Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

XXI. Governing Law

Laws will be governed by the state of Virginia regarding disputes arising from this agreement.

Vote on Motion Mrs. Lewis Aye Mr. Merrell Aye Mr. Benton Aye

**11**  
**RESOLUTION NO. 17-353**

**IN THE MATTER OF APPROVING SUPPLEMENTAL APPROPRIATIONS FOR THE LAW ENFORCEMENT DRUG FUND:**

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

**Supplemental Appropriations:**

77112104-5001	Salary	\$ 66,282.44
77112104-5101	Health insurance	\$ 17,064.60
77112104-5102	Workers comp	\$ 662.82
77112104-5120	OPERS	\$ 9,279.54
77112104-5131	Medicare	\$ 961.10

Vote on Motion Mr. Benton Aye Mr. Merrell Aye Mrs. Lewis Aye

**12**  
**RESOLUTION NO. 17-354**

**RESOLUTION OF NECESSITY FOR PURCHASE OR LEASE OF AUTOMOBILE FOR THE USE OF THE DELAWARE COUNTY OFFICE OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT:**

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

WHEREAS, pursuant to section 307.41 of the Revised Code, the Board of Commissioners of Delaware County, Ohio (the "Board") may find, by resolution of necessity, that it is necessary to expend county monies for the purchase or lease of a new automobile to be used by the County Commissioners, by any county department, board, commission, office or agency, or by any elected county official or his or her employees; and

WHEREAS, the Board has before it a request from the Director of the Office of Homeland Security and

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Emergency Management to expend county monies for the purchase of two (2) new automobiles; and

WHEREAS, the automobiles are available for purchase through the State of Ohio’s cooperative purchasing program (the “Program”);

WHEREAS, the purchase of the vehicles has been budgeted for and approved by the Delaware County Office of Homeland Security and Emergency Management Executive Committee;

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

Section 1. The Board hereby declares that it is necessary to expend county monies for the purchase of two (2) new automobiles to be used by the Delaware County Office of Homeland Security and Emergency Management for the following reasons: (1) existing automobiles have reached the end of their useful service life; (2) new automobiles are necessary to provide safe and reliable transportation for the Homeland Security and Emergency Management employees.

Section 2. The Board hereby approves the purchase of one (1) 2017 Ford F-150 vehicle at a cost of \$26,282.15 per vehicle from Middletown Ford and one (1) Jeep Cherokee vehicle at a cost of \$23,764.00 per vehicle from George Byers Son Holding Inc. and declares that the purchase of said vehicles shall be in accordance with the State of Ohio’s cooperative purchasing program, pursuant to the contract and terms and conditions set forth in Contract # RS901017, which is, by this reference, fully incorporated herein and of which the purchase orders approved herein shall be made a part.

Section 3. The Board hereby authorizes the Director of Homeland Security and Emergency Management to initiate the necessary purchase order(s) to one or more approved vendors and hereby approves the purchase order(s) from fund number 21581301-5450.

Section 4. The Clerk of the Board is hereby directed to certify a copy of this Resolution to the Director of Homeland Security and Emergency Management and the County Auditor.

Vote on Motion                      Mr. Merrell              Aye              Mr. Benton              Aye              Mrs. Lewis              Aye

**13**  
**RESOLUTION NO. 17-355**

**IN THE MATTER OF APPROVING THE SANITARY SEWER IMPROVEMENT PLANS FOR NORTHLAKE SUMMIT, SCIOTO RIDGE CROSSING SECTION 2, AND THE RESERVE AT SCIOTO GLENN OFFSITE SANITARY SEWER AND FORCE MAIN IMPROVEMENTS PHASE 2:**

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve the following sanitary sewer improvement plans for submittal to the Ohio EPA for their approval.

WHEREAS, the Sanitary Engineer recommends approval of the sanitary sewer improvement plans.

THEREFORE BE IT RESOLVED, that the Board of Commissioners approve the sanitary sewer improvement plans for Northlake Summit, Scioto Ridge Crossing Section 2, and The Reserve at Scioto Glenn Offsite Sanitary Sewer and Force Main Improvements Phase 2 for submittal to the Ohio EPA for their approval.

Vote on Motion                      Mrs. Lewis              Aye              Mr. Benton              Aye              Mr. Merrell              Aye

**14**  
**RESOLUTION NO. 17-356**

**IN THE MATTER OF APPROVING AMENDMENT NO. 3 TO THE CONTRACT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND HAZEN & SAWYER P.C. FOR THE ALUM CREEK WATER RECLAMATION FACILITY RAPID SAND FILTER UPGRADE PROJECT:**

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

Whereas, the Board of Commissioners previously entered into a contract with Hazen & Sawyer P.C. for the Alum Creek Water Reclamation Facility Rapid Sand Filter Upgrade Project; and

Whereas, on October 12, 2016, Regional Sewer District staff and Hazen & Sawyer P.C. conducted a workshop to discuss preliminary findings and alternatives for the ACWRF Rapid Sand Filter Upgrade Project; and

Whereas, the findings of the workshop resulted in the need for a revised scope of services to design the proposed modifications to the aeration system and replacement of certain PLCs to modernize the control system at ACWRF; and

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Whereas, upon approval of Amendment No. 3, the name of the Project shall be changed to the "Alum Creek Water Reclamation Facility Process Improvements Upgrade Project" to reflect the changes in the project scope: and

Whereas, there is an increase to the contract cost in the amount of \$157,703.00; and

Whereas, the Sanitary Engineer recommends approval of Amendment No. 3.

Now Therefore Be It Resolved that that Delaware County Board of Commissioners approve Amendment No. 3 to the Professional Services Contract for the Alum Creek Water Reclamation Facility Rapid Sand Filter Upgrade.

Furthermore, Be it Resolved that the Delaware County Board of Commissioners approve an increase to Purchase Order P1702531 in the amount of \$157,703.00.

**AMENDMENT NO. 3  
ALUM CREEK WATER RECLAMATION FACILITY RAPID SAND FILTER UPGRADE**

This Amendment No. 3 to the Original Agreement dated September 8, 2014 is made and entered into this 10<sup>th</sup> day of April, 2017, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 101 North Sandusky Street, Delaware, Ohio 43015 ("County"), and Hazen & Sawyer P.C., 150 E. Campus View Blvd Suite 133, Columbus, Ohio 43235 ("Consultant") (hereinafter collectively referred to as the "Parties").

**ARTICLE 1 – AMENDMENT**

Pursuant to Section 13.3 of the Original Agreement, the Parties mutually agree to amend the Original Agreement by approving additional design services as set forth in Attachment D attached to and, by this reference, fully incorporated into this Amendment No. 3. Due to the adjustments to the project scope, the name of the project shall be changed to ALUM CREEK WATER RECLAMATION FACILITY PROCESS IMPROVEMENTS UPGRADE PROJECT.

**ARTICLE 2 – REMAINING PROVISIONS**

All other terms and conditions of the Original Agreement not specifically amended herein shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 3.

Vote on Motion                      Mr. Benton              Aye              Mr. Merrell              Aye              Mrs. Lewis              Aye

**15  
RESOLUTION NO. 17-357**

**IN THE MATTER OF APPROVING A TRANSFER OF APPROPRIATION FOR THE REGIONAL SEWER DISTRICT:**

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

<b>Transfer of Appropriation</b>			
<b>From:</b>	<b>To:</b>		
66611904-5410	66611904-5301		\$146,065.18
ACWRF/URF/Building and Improvements	ACWRF/URF/Professional Services		

Vote on Motion                      Mr. Merrell              Aye              Mrs. Lewis              Aye              Mr. Benton              Aye

**16  
ADMINISTRATOR REPORTS**

- Ferzan Ahmed, County Administrator
- Would like to thank all of our dispatchers in the 911 center for all of their hard work.
- The Department of Defense has notified the county of a nomination for the Freedom Award for support of county employees who are members of the National Guard or Armed Forces Reserves.

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COMMISSIONERS' COMMITTEES REPORTS**

Commissioner Lewis  
-No Reports

Commissioner Merrell  
-No reports

Commissioner Benton  
-The Finance Authority has cancelled their meeting for tomorrow evening.  
-The Family & Children's First Council will meet on Wednesday morning.  
-Would like to promote the Central Ohio Symphony's "Hear Ohio" concert on April 22<sup>nd</sup>.

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MINUTES FROM REGULAR MEETING HELD APRIL 10, 2017

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There being no further business, the meeting adjourned.

**10:30 AM WORK SESSION**

**Bob Lamb, Director Of Economic Development  
-Discussion On Economic Development Action Plan**

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Gary Merrell

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Barb Lewis

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Jeff Benton

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Jennifer Walraven, Clerk to the Commissioners