



Aviat U.S., Inc. – San Bernardino County - Technology Refresh Purchase Contract

This Technology Refresh Purchase Contract (the “Contract”) is entered into as of the 6th day of August 2019 (“Effective Date”), by and between County of San Bernardino, with a place of business at 670 East Gilbert Street, San Bernardino, CA 92415, (hereinafter referred to as “Customer”), and Aviat U.S., Inc., a wholly owned subsidiary of Aviat Networks, Inc., located at 860 N. McCarthy Blvd Suite 200 Milpitas, CA 95035, duly incorporated under the laws of Delaware (hereinafter referred to as “Aviat US”).

Whereas, Customer desires to purchase microwave transmission equipment (“Equipment”), software and/or services (“Services”) under this Contract, and

Whereas, Aviat US is willing to sell such Equipment and Services to Customer upon the terms and conditions as set forth herein and the various annexes attached hereto and incorporated into this document (“Contract”),

Now, therefore, in consideration of the mutual covenants set forth below, Customer and Aviat US hereby agree as follows:

1. DEFINITIONS

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

- a) “Contract” means this Contract and its related annexes or other incorporated documentation., all as acknowledged by Aviat US on its standard acknowledgement form;
- b) “Conditions” means these terms and conditions as set forth herein.
- c) “Customer” means the purchaser of Equipment, Software, or Services from Aviat US;
- d) “Equipment” means any hardware and excludes any Software or Services;
- e) “Order” means any separate transaction document utilized to implement this Contract.
- f) “Quote” means the price quotation of Aviat US itemizing the purchase price and includes all exhibits referred to within such Quote, including but not limited to the technical proposal, technical specifications, scope of work, schedule, the Agreement and any maintenance agreement specifically included in the purchase price;
- g) “Services” means installation, warranty, maintenance support, integration, or other services to be provided to Customer as part of this Contract.
- h) “Software” means software and/or firmware, including all copies provided to Customer.
- i) “United States” means the United States of America and its territories.

2. TERM. This Contract shall remain in effect from the Effective Date through August 5, 2029. The Contract shall automatically expire at the end of the Term unless mutually extended in writing at least (60) days prior to the expiration of the Term.

3. VALIDITY OF QUOTE

A Quote is an invitation for an offer and a notice to Customer of these terms and conditions. For the purposes of this Contract, the Quote has been included as Annex A and shall be valid during the Contract term. The Quote includes Equipment, Software, Services and freight, for a total amount not-to-exceed \$13,195,778.00 (“Contract Price”). Any increase to this total cost shall require a formal amendment to this Contract, dually signed by the parties.

4. ORDER ACCEPTANCE

- a) Any Customer Order, regardless of any contrary wording, will constitute an offer to purchase only on these terms and condition herein (which shall be deemed incorporated into any such Order) and as set forth in the Contract. If any Customer Order or signed Quote should contain any terms and conditions in addition to or in conflict with those contained in this Contract, Customer, by submission of the Order or signed Quote, specifically agrees that such additional or conflicting terms are rejected by Aviat US and will be void, unless expressly accepted in writing and signed by an authorized representative of Aviat US. The failure of Aviat US to object reasonably to any such term and condition in any Customer Order or signed Quote will not constitute a waiver of these Conditions. Any Customer Order shall be deemed accepted by Aviat US only when Aviat US transmits to Customer its standard acknowledgement form.
- b) In case of any inconsistency between the terms and conditions of the this Contract and any Customer Order, acknowledgment or form of contract sent from the Customer to Aviat US, or contained in any other communications between the Customer and Aviat US, or any terms implied by trade, custom, practice or prior course of dealings between the parties, the terms of this Contract shall control.
- c) The only obligation of Aviat US under this Contract will be to provide the Equipment, Software and Services as listed in Annex B. The technical requirements of the Equipment, Software and Services shall be only as specified in Annex A or if not so specified as set forth in Aviat US’ standard technical specifications for such Equipment, Software and Services.
- d) Model, nomenclature and the mechanical and electrical design of Equipment described herein are subject to change without notice, provided that they do not affect the fit, form, or function of the Equipment in the application originally agreed to with the Customer.
- e) Customer acknowledges and has placed any Customer Order upon (i) signing the Quote in the space provided or (ii) providing Aviat US with Customer’s Order.
- f) The timely securing of permits, licenses or other local, state or federal governmental approvals required in connection with any purchases hereunder shall be the sole responsibility of Customer and Customer shall bear the cost thereof.

5. PRICES

Unless otherwise agreed in writing, all prices are in United States Dollars. All prices are indicated in Annex A and shall not exceed the prices indicated in Annex A. Shipping (including Aviat US internal

handling charges) and insurance charges indicated in Annex A are estimates and will be invoiced separately.

6. TAXES

There are no taxes included in Annex A. Customer will be responsible for any applicable sales or use taxes with respect to its purchase of Equipment, Software, Services and freight. Customer will be obligated to self-accrue and remit such sales or use taxes directly to the relevant tax jurisdictions and will deliver to Aviat US a direct pay permit prior to delivery of the Equipment, Software and Services. Aviat US agrees to cooperate with Customer to provide all the pertinent and necessary information for Customer to complete or fill out any sales or use tax forms with the State of California. Customer will designate a “ship to” address and a “for use at” (i.e. ultimate destination) address. Customer hereby designates the following:

Ship to address:

An unincorporated area of San Bernardino County to be determined by Customer at the time the order is placed.

For use at/ultimate destination address:

Multiple locations to be determined by Customer during each phase. Use tax will be directly reported and remitted by Customer to the relevant tax jurisdictions.

7. CHANGES/CANCELLATION

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

- a) Aviat US shall not be obligated to accept any change requested by Customer.
- b) All changes will result in extra charges to Customer.
- c) Cancellation of any Software, Services, Equipment that was custom manufactured to Customer’s specifications or any resale equipment ordered for Customer’s requirements may include a termination charge of up to 100% of the listed selling price depending upon the level of customization.
- d) Except as otherwise expressly provided herein, cancellation of any Customer Order in whole or in part by Customer shall in all cases be subject to Aviat US’ reasonable cancellation charges.

For this Contract, Customer cancellation capability is limited as follows, due to the impracticality of cancellation of all or part of the project during key periods under the Annex A implementation when major portions of Equipment are being replaced and installed. During these periods, it is impractical in maintaining the operational integrity of Customer’s system to discontinue work, which would leave a “mixed” system of old and upgraded Equipment in the Customer system: These periods where Customer will not exercise cancellation under this Section 7 are as follows:

(Refer to Table 4.1 in Annex A)

Each of these specific segments of the work under Annex A may not be cancelled by Customer during the start and end times indicated. Future work beyond each of these segments may be cancelled until any time periods for prohibition of cancellation are indicated for such future work.

- i. DS1 to IP/MPLS Migration using CTR Standalone From: start of the 7th quarter Q4CY2020 To: end of the 16th quarter Q4CY22.
 - ii. Upgrade of 38 Loop Links to NEXT GEN IRU600 and RAC Card From: start of the 17th quarter Q1CY23 To: end of the 24th quarter Q4CY24
 - iii. Upgrade of 72 Spur Links to NEXT GEN IRU600 and RAC Card From: Start of the 25th quarter Q1CY25 To: end of the 36th quarter Q4CY27.
- e) Additionally, if Customer cancels the contractual commitment at any time before the end of the 10-year term, for any reason other than default by Aviat US, then Customer will pay to Aviat US a cancellation fee over and above any called for elsewhere in this Contract equal to the management discount applied to the 10-year

tech refresh program as stated in Annex A, Section 3. Payment Plan of this Contract. If customer terminates this service and contractual commitment before the end of the 10-year term, for any reason other than default by Aviat US, then Aviat will retain all Customer payments through the effective date of a notice of cancellation.

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

8. DELIVERY

a) Scheduled Delivery Date. The date Customer has committed to take delivery of the Equipment, Software, or Services as stated in the Contract shall be the “Scheduled Delivery Date.” SCHEDULED DELIVERY DATES INDICATED HEREIN AND AS MAY BE SUBSEQUENTLY ACKNOWLEDGED TO CUSTOMER ARE APPROXIMATE AND SUBJECT TO CUSTOMER’S SECURING FINANCING AND AVAILABILITY OF INVENTORY. Aviat US shall exercise reasonable efforts to comply with Customer’s requested shipping schedule if Customer furnishes all information necessary, including sufficient detail to complete the technical specifications, to permit Aviat US to complete the Order. Aviat US shall have the right to adjust the Scheduled Delivery Date as of the date Customer secures financing. Aviat US shall have the right to make, and Customer agrees to accept, shipments in more than one lot, and payment for each lot shall be due accordingly.

b) Customer Delay.

i. If Customer, through Customer’s actions or inactions, delays the Scheduled Delivery Date specified in the Contract, payments are nevertheless to be made by Customer as though shipment had been made or Services performed as scheduled. If so delayed, Aviat US will ship the Equipment to either a storage facility designated by the Customer within ten (10) business days, or if Customer fails to designate, to any storage facility designated by Aviat US and all expenses for storage at such facility shall be paid by Customer. Title and risk of loss for Equipment placed in storage shall pass to Customer upon placement of the Equipment into storage and the warranty will start on that date.

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

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

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

9. FREIGHT CHARGES AND TRANSPORTATION INSURANCE

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

10. RISK OF LOSS AND TITLE

- a) Shipments Within the United States. Risk of loss for Equipment and Software media (except as reserved in clause 13 below) sold under the Contract shall transfer to Customer at the F.O.B. Destination delivery point and Title to Equipment and Software media shall transfer to Customer at the FOB Origin Texas facility..
- b) Shipments Outside the United States. Title to Equipment and Software media (except as reserved in clause 13 below) shall transfer to Customer upon shipment; risk of loss in Equipment shall transfer in accordance with the delivery term 'Ex-Works' (Incoterms 2010), subject to Customer's rights with respect to any transit insurance purchased by Aviat US as provided above.

11. PAYMENT TERMS

- a) Domestic Orders. Customer shall make payment of the purchase price net sixty (60) days from the date of invoice, unless otherwise specified in the Contract or agreed to in writing by Aviat US. Aviat US will invoice Customer per Annex A, Section 3 – Payment Plan.
- b) International Orders. [Deliberately omitted as not applicable.]
- c) Past Due Invoices. In the case that Customer fails to pay Aviat US in accordance with Article 11 of this Contract, such non-payment shall be considered a material breach of this Contract. Such breach shall result in damage to the interests of Aviat US, and Aviat US will notify Customer in writing to pay the overdue payment within ten (10) days from the notification. Aviat US shall have the right, without incurring any penalties, to (i) stop all pending and future shipments of the Equipment and Software; and/or (ii) stop performing Services until such payment in full is made by Customer. Aviat US, in its sole discretion, may not accept new Purchase Orders from Customer until the outstanding balance, including interest, is paid to Aviat US.

12. EQUIPMENT RETURN POLICY

- a) Immediate Customer Inspection of Equipment. Upon receipt of shipments, Customer must open and inspect all boxes immediately for possible freight damage or missing items of Equipment. If Customer finds an issue, Customer is responsible for immediately contacting Aviat US to request a return authorization and further instructions, as applicable. Failure to notify Aviat US in writing within thirty (30) days of delivery of the affected shipment in the case of damaged or missing Equipment will result in Customer's waiver of any right to claim for remedy.
 - i. Equipment Damaged in Shipment. Customer must immediately notify the delivering carrier and request an inspection.
 - ii. Items Shipped in Error. Equipment shipped in error is not subject to a restocking fee, provided that it is returned without damage and in complete and unused condition.
 - iii. Defective Equipment under Warranty. If the Equipment Customer receives is defective, it is covered under the Aviat US or manufacturer's standard equipment warranty.
 - iv. Custom Manufactured or Special Order Items. Customer may not return custom manufactured or special order items unless they are found to be damaged in shipment or shipped in error.

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

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

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

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

13. WARRANTY PROVISIONS

The then-current version of "Aviat Networks Global Support (GSS) Guidelines" shall apply to this Contract for operational terms for the warranty provided for Aviat products provided under this Contract. The current version of this document can be found at: <http://aviatnetworks.com/services/aviatcare/support-services/>, and as attached hereto.

a) EQUIPMENT WARRANTY.

- i. This warranty is extended to Customer and applies to all Aviat US manufactured Equipment purchased, installed, and used for the purpose for which such Equipment was originally designed.
- ii. Aviat US warrants that the Equipment i) is free from defects in materials and workmanship and ii) substantially conforms to Aviat US' published specifications. If the Equipment does not function as warranted during the warranty period, Aviat US will determine to either i) make it do so, or ii) replace it with equivalent Equipment.
- iii. Items not manufactured by Aviat US to be utilized in conjunction with or independently of Aviat US manufactured Equipment shall be only covered by the specific warranty terms of the supplier or manufacturer of those items.
- iv. Aviat US does not warrant, provides no guarantee and is not responsible for:
 - (1) Defects or failures caused in whole or in part by (A) power failures, surges, fires, floods, accidents, actions of third parties, or other events outside of Aviat US' control, (B) Customer's abuse, mishandling, misuse, negligence, improper storage, servicing or operation, or unauthorized attempts to repair or alter the Equipment in any way, (C) items normally consumed during the Equipment operation, or (D) failures caused by non-Aviat US Equipment. Customer must provide qualified technical personnel to operate maintain and handle the Equipment.
 - (2) Consequential expenses incurred for transportation, removal, replacement, evaluation, or for testing, repair, or other services not performed by Aviat US personnel. Consequential damages from any causes such as downtime costs, costs for substituting

Equipment or loss of anticipated profits or revenue are not covered.

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

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

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

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

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

v. Warranty on Replacement Parts and Repair of Aviat US Manufactured Items Outside the Equipment Warranty Period.

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

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

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

b) **SERVICE WARRANTY.**

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

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

iii. Aviat US will not be responsible for paths that it does not survey or for changes in path design (beyond those specifically allowed in the path survey report or in writing) after the field survey is completed, including, but not limited to: (1) any change in path design; (2) any movement of site locations; (3) any building or

other structure built on-path; (4) any change to or disturbance of the terrain which may cause blockage or reflection; (5) any additional frequency interference source; (6) any change of available antenna mounting space on tower; or (7) installation of non-Aviat US radio equipment. Any one or more of the above changes will nullify this warranty. Customer will in such case bear the total cost of determining that such change was the cause. When non-Aviat US radio equipment is installed on a surveyed path, or when the installation is not performed by Aviat US or a Aviat US certified Value Added Service Provider, Aviat US' responsibility under the terms of this warranty will be limited to re-surveying the path.

iv. Aviat US will not be responsible for degraded path performance when such degradation is due to anomalous propagation conditions such as: (1) long-term loss of fade margin due to antenna decoupling misalignment caused by widely varying k-factor changes; (2) long-term loss of fade margin due to Atmospheric Boundary Layering (ABL) causing wavefront defocusing (beam spreading), signal entrapment, "blackout" fading, and other such occurrences; (3) excessive rain outage rates beyond those published in the agreed to standards used in the calculations (Crane, ITU, regional, etc.); (4) degradation resulting from certain types of multipath interference attributed to unidentifiable off-path terrain features and/or structures; or (5) any other technological or atmospheric condition not foreseeable through the exercise of prudent engineering knowledge and judgment.

v. **THE MICROWAVE PATH DESIGN IS BASED UPON ENGINEERING PRACTICES AND STANDARDS COMMON IN THE INDUSTRY. SELECTION OF A TRANSMISSION CONFIGURATION IS BASED UPON THE MOST ECONOMICAL METHOD FOR MEETING THE PATH PERFORMANCE OBJECTIVES. WHEN PATH LOSS OR RELIABILITY PERFORMANCE IS NOT ACHIEVED, EXCLUSIVE OF ANOMALOUS PROPAGATION OR PATH CHANGES AS DESCRIBED ABOVE, THEN CUSTOMER'S SOLE REMEDY, AND AVIAT US' EXCLUSIVE LIABILITY IN CONNECTION WITH PATH ENGINEERING, WILL BE THAT AVIAT US WILL PROVIDE INCREMENTAL LABOR AND MATERIAL TO OPTIMIZE THE ANTENNA SYSTEM BEYOND WHAT WOULD HAVE BEEN REQUIRED DURING INITIAL INSTALLATIONS AND WILL DO SO WITHIN THE CONSTRAINTS OF THE EXISTING FACILITIES (E.G., TOWERS, SITES). ALL INCREMENTAL MATERIAL, HARDWARE OR SUPPORTING STRUCTURES REQUIRED FOR THE OPTIMIZATION WILL BE THE RESPONSIBILITY OF THE CUSTOMER. IN THE CASE OF NEW TOWERS, AVIAT WILL SPECIFY A TOWER HEIGHT/CONFIGURATION AND WILL WARRANTY PATH PERFORMANCE, ASSUMING THE COUNTY'S TOWER MEETS THAT SPECIFICATION.**

vi. Where anomalous propagation is suspected on an installed microwave path, Aviat US will work with Customer to obtain reasonable evidence that such condition exists. The total retroactive costs for such study will be the responsibility of Customer with Aviat US providing in-office engineering support. The cost of relocating towers, antennas, passive reflectors or other measures required to remedy this type of problem will be the sole responsibility of Customer.

c) **SOFTWARE WARRANTY.**

i. Aviat US warrants all physical media ("Software Media") for the Licensed Programs (as defined in Article 13.e), including custom software and traffic translators to be free of defects in material or workmanship (the "Software Warranty Period"):

(1) for a period of ninety (90) days from the date of completed installation, or

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

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

e) **LIMITATIONS ON EQUIPMENT, SOFTWARE AND SERVICES WARRANTIES**

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

v. ANY WARRANTY CLAIM NOT SENT TO AVIAT US IN WRITING DURING THE APPLICABLE WARRANTY PERIOD IS WAIVED BY CUSTOMER. REPLACEMENT EQUIPMENT, SERVICES, SOFTWARE MEDIA AND LICENSED AVIAT US PROGRAMS ARE WARRANTED ONLY FOR THE BALANCE OF THE UNEXPIRED PORTION OF THE ORIGINAL WARRANTY PERIOD, IF ANY.

14. LICENSES.

- a) Aviat US grants to Customer, and Customer hereby accepts, a nontransferable (except as expressly provided in this Article 14), nonexclusive license to use Licensed Aviat US Programs solely in connection with the use of the Equipment purchased by Customer.
- b) If the Customer utilizes the Licensed Aviat US Programs with other Equipment, then an additional license fee may be assessed by Aviat US.
- c) The Licensed Aviat US Programs furnished with the Equipment shall be Aviat US' latest commercial generation available at the time of shipment of the Equipment, and Aviat US shall be under no obligation to supply updates to such Licensed Programs (as defined below) except where so stated in writing.
- d) In addition to the Licensed Aviat US Programs, other Software or documentation provided by Aviat US may originate from third party licensors ("Licensed Third Party Programs"), and may require that the terms of their respective licenses be accepted prior to use. Such license terms, if any, may be attached or may appear as part of the delivered or downloaded Software and may require acceptance by Customer prior to installation of the Licensed Third Party Programs. Third party licensors shall be deemed to be third party beneficiaries with respect to any Licensed Third Party Programs. The terms of the third party licenses shall be controlling with respect to any Licensed Third Party Programs provided hereunder.
- e) The term "Licensed Programs," as used herein, refers to both the Licensed Aviat US Programs and the Licensed Third Party Programs. Customer's license for the Licensed Programs shall be subject to the following additional rules:
 - i. Unless expressly stated, the Licensed Aviat US Programs are limited to object code programs and related documentation only and do not apply to any of the corresponding source code or program listings. Title in and to the Licensed Aviat US Programs is and shall continue to be solely and exclusively vested in Aviat US and the third party licensors, as the case may be.
 - ii. Customer acknowledges that Aviat US and the third party licensors have and shall continue to have valuable intellectual property rights in the Licensed Aviat US Programs and the Licensed Third Party Programs, as the case may be, and that such intellectual property rights are and shall continue to be the sole and exclusive property of Aviat US or the third party licensors, as the case may be.
 - iii. Customer shall keep the Licensed Aviat US Programs confidential by affording access only to those of Customer's employees, agents, or consultants having a need to know and shall require such individuals agree in writing to the obligations contained herein. In addition, Customer shall employ reasonable measures to prevent any unauthorized use, copying, publishing, reproduction, or disclosure of the Licensed Aviat US Programs and shall not treat such with lesser care than Customer's own confidential information. Customer shall not make copies of the Licensed Aviat US Programs without the prior written permission of Aviat US.
 - iv. Customer may copy machine-readable Licensed Aviat US Programs to the extent reasonably necessary for normal use with the Equipment. All originals and copies of the Licensed Aviat US Programs shall be and shall remain the property of Aviat US.
 - v. Customer shall label each copy of the Licensed Aviat US Programs with the copyright, trademark, and proprietary notices,

in the same form, which appear on the Licensed Aviat US Programs delivered to Customer by Aviat US. All copies of the and Licensed Aviat US Programs, when not in use, shall be destroyed or maintained in a secure place within Customer's business premises under access and use restrictions compatible with this Article 13. Customer shall be deemed to own only the magnetic or other physical media in which the Licensed Aviat US Programs (original and all copies) are recorded.

- vi. The Licensed Aviat US Programs and Licensed Third Party Programs may be used solely in connection with the Equipment or Software system purchased by Customer and on which the Licensed Programs were originally installed. Customer may not rent, lease, assign, transfer, network, display, or distribute the Licensed Aviat US Programs except as specifically provided herein or in the third party license terms, nor may Customer reverse engineer, disassemble, decompile, modify, alter, translate, or adapt the Licensed Programs or create any derivative thereof, except as permitted by the option selections contained within the Licensed Aviat US Programs or as permitted in the third party license terms. The licenses granted herein to the Licensed Aviat US Programs exclude the use of any functionality resident in the software application, unless specifically identified in the Order. Customer agrees to not use any functionality which is not specifically identified in the Order without first obtaining Aviat US' written consent to expand the license grant to cover such functionality.
- vii. Customer agrees that a violation of the license terms would cause irreparable injury to Aviat US or the third party licensor, and that Aviat US or the third party licensor, as a third party beneficiary, shall be entitled, in addition to any other rights and remedies it may have, at law or in equity, to an injunction enjoining and restraining Customer from doing or continuing to do any such act and any other violations or threatened violations of the licenses granted herein. Furthermore, Customer agrees that if Aviat US or the third party licensor should waive any breach of any provision of the license terms it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision of the license terms.
- viii. The terms and conditions of the licenses granted herein shall apply to any and all upgrades, enhancements, updates and modified versions of the Licensed Aviat US Programs which may be provided by Aviat US to Customer in connection with the Contract. Aviat US may provide such versions of the Licensed Programs via electronic download or on media, such as CDs or diskettes. If required by Aviat US, Customer agrees to substitute such version for the previous version being used with the Equipment and to delete and destroy any previous version and all copies thereof.
- ix. The term of the licenses to the Licensed Aviat US Programs shall be coextensive with Customer's ownership of the Equipment, subject to early termination by Aviat US upon notice to Customer in the event of a material breach of the terms of these Conditions or of the Contract. The term of the license to any Licensed Third Party Programs may be different. Upon any such termination, Customer shall immediately discontinue use of the Licensed Aviat US Programs, shall comply with the terms of the license applicable to the Licensed Third Party Programs, and in the case of any termination other than a permitted transfer to a subsequent owner, promptly shall return to Aviat US all copies of the Licensed Aviat US Programs. In the event of non-payment by Customer, Aviat US reserves the right to deactivate or remove the Software.
- x. Aviat US represents that its Equipment may contain software duly licensed from Cisco ("Cisco Software"). It is a condition of the Customer's right to use the Cisco Software as an end user that Customer accepts the terms of the End User Software License

Agreement set forth at <http://www.cisco.com/go/eula>, as attached hereto. By signing this Contract, Customer acknowledges and agrees that Customer has reviewed the terms and conditions of the Cisco End User License Agreement and agrees to abide by them.

15. DISCONTINUED AVAILABILITY/LAST TIME BUY

- a) Customer acknowledges that Aviat US has made no representation about the continued availability of the Equipment listed in the Contract. Aviat US reserves the right, in its absolute discretion, with or without notice, without incurring any liability to Customer or otherwise, whether in contract or tort, to discontinue manufacturing or selling any of the Equipment listed in the Contract at any time or from time to time. Upon notice, Aviat US will provide Customer with an opportunity to purchase such quantities of the Equipment within six (6) to twelve (12) months of said notice ("Last Time Buy"). Customer's Last Time Buy rights are limited to products available in Aviat US' inventory at the time of Customer's request. Standard Aviat warranty provisions will apply to Equipment that has been discontinued and is no longer manufactured.
- b) For a period of five (5) years from the date of Aviat US' notice that the Equipment has been discontinued and subject to continued availability of components, hardware defect repair and replacement services will be available including the repair and/or replacement of component parts. However, such services shall only be provided if Customer has extended and converted its standard warranty coverage to an AviatCare Extended Warranty or Extended Warranty Plus Support Program.

16. CHANGES IN THE WORK. From time to time changes within the Products may occur consisting of additions or reconfigurations of the Products, including those required by Change Orders to any prime agreement issued subsequent to the execution of this Contract. The following procedures will apply to changes in the work:

- a) Any Change Order shall be issued in accordance with the Change Order Form (**Annex B**) and shall be subject to the same terms and conditions described herein.
- b) A Change Order shall apply:
 - i. If Customer, using reasonable judgment, determines that a change to the timing or scope of work to be performed by Aviat US under this Contract is necessary or appropriate; or
 - ii. If Aviat US, using reasonable judgment, determines that a change to the timing or scope of work to be performed by Aviat US under this Contract is necessary or appropriate or that an out of scope change is necessary or appropriate to correct path, system or product deficiencies, or to improve path, system or product efficiency or performance, Aviat US shall contact a Customer Authorized Representative to discuss appropriate changes and to finalize a Change Order as soon as possible. No work shall commence until the Change Order is duly signed by both Parties.
- c) Aviat US shall not perform any out of scope work unless and until a Change Order is received by Aviat US, signed by an Authorized Representative of Customer. Aviat US shall be entitled to schedule relief and shall not be responsible for delays caused because of the unavailability or inaccessibility of Customer's Authorized Representatives, or by the failure of the Parties to finalize and execute, using reasonable, good faith efforts, any Change Order.
- d) At the time of signing the Contract, Customer and Aviat US shall designate the necessary number of authorized representatives ("Authorized Representatives") who shall have full authority to approve and execute, on behalf of Customer, Change Orders, and shall agree to make the Authorized Representatives available, either

by phone or in person (on site) at all times during the term of this Contract. The respective Authorized Representatives shall be as follows:

Customer's Authorized Representatives:

Name: Jennifer Hilber, Chief Information Officer

Phone: (909) 388-5500

Email: cody.barnes@isd.sbcounty.gov

Aviat US's Authorized Representatives

Name: George Thibeault, Contracts Manager

Phone: 408-941-7149

Email: George.Thibeault@aviatnet.com

Name: Homer Decano, Territory Manager

Phone: 408-941-7164

Email: Hermogenes.Deceano@aviatnet.com

e) Customer and Aviat US may appoint new or additional Authorized Representatives at any time by identifying such individuals in writing to the other Party.

f) In the event the Authorized Representatives of Customer and Aviat US cannot reach an agreement on the Change Order, the scope of work to be performed or any other matter related to the Change Order, the matter shall be examined by the senior representatives of each Party responsible for the technical aspects of the project. In case the matter remains unsolved, the matter shall be referred to the senior executives of each of the Parties.

17. BACKGROUND CHECKS FOR CONSULTANT PERSONNEL

Aviat US shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform services; (b) do not use legal or illegal substances in any manner which will impact their ability to provide services to Customer; and (c) are not otherwise disqualified from performing the services under applicable law. If requested by Customer and not in violation of applicable law, Aviat US shall conduct a background check, at Aviat US's sole expense, on all its personnel providing services. If requested by Customer, Aviat US shall provide a summary of the results of the background check of each individual to verify that the individual meets Aviat US's standards for employment. Such background check shall be in the form generally used by Aviat US in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Aviat US personnel who do not meet Customer's hiring criteria, in Customer's sole discretion, shall not be assigned to work on Customer property or services, and Customer shall have the right, at its sole option, to refuse access to any of Aviat US's personnel to any Customer facility.

18. DAMAGE TO CUSTOMER PROPERTY. Aviat US shall repair, or cause to be repaired, at its own cost, all damages to Customer vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Aviat US employees or agents. Such repairs shall be made immediately after Aviat US becomes aware of such damage, but in no event later than thirty (30) days after the occurrence. If Aviat US fails to make timely repairs, Customer may make any necessary repairs. Aviat US, as determined by the Customer, shall repay all costs incurred by Customer for such repairs, by cash payment upon demand, or Customer may deduct such costs from any amounts due to Aviat US from Customer, as determined at Customer's sole discretion.

19. DRUG AND ALCOHOL-FREE WORKPLACE. In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Agreement, Aviat US agrees that Aviat US's employees, while performing

service for Customer, on Customer's property, or while using Customer's equipment shall not: (i) be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance; (ii) possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance; or (iii) sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Aviat US's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs. Aviat US shall inform all employees that are performing service for Customer on Customer property, or using Customer equipment, of Customer's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for Customer. Customer may terminate for default or breach of this Agreement and any other Agreement Customer has with Aviat US, if Aviat US's employees are determined by Customer not to be in compliance with this section.

20. INSURANCE

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

b) Aviat US agrees to provide insurance set forth in accordance with the requirements herein. If Aviat US uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Aviat US agrees to amend, supplement or endorse the existing coverage to do so. Without in anyway affecting the indemnity herein provided and in addition thereto, Aviat US shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

i. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of Aviat US and all risks to such persons under this contract. If Aviat US has no employees, it may certify or warrant to the Customer that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

ii. Commercial/General Liability Insurance – Aviat US shall carry General Liability Insurance covering all operations performed by or on behalf of Aviat US providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

iii. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one

million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. If Aviat US is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If Aviat US owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

iv. **Umbrella Liability Insurance** – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

v. **Professional Liability** – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits, or

Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits.

vi. **Cyber Liability Insurance** - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.

c) If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the state of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

d) **Additional Insured** – All policies, except for Worker’s Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming Customer and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for Customer to vicarious liability but shall allow coverage for Customer to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

e) **Waiver of Subrogation Rights** – Aviat US shall require the carriers of required coverages to waive all rights of subrogation against Customer, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit Aviat US and Aviat US employees or agents from waiving the right of subrogation prior to a loss or claim. Aviat US hereby waives all rights of subrogation against Customer.

f) **Policies Primary and Non-Contributory** – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by Customer.

g) **Severability of Interests** – Aviat US agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between Aviat US and Customer or between Customer and any other insured or additional insured under the policy.

h) **Proof of Coverage** – Aviat US shall furnish Certificates of Insurance to the County Department administering the Contract

evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Aviat US shall maintain such insurance from the time Aviat US commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, Aviat US shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

i) **Acceptability of Insurance Carrier** – Unless otherwise approved by Customer’s Risk Management Department, insurance shall be written by insurers authorized to do business in the State of California and with a minimum “Best” Insurance Guide rating of “A-VII”.

j) **Deductibles and Self-Insured Retention** - Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Customer’s Risk Management.

k) **Failure to Procure Coverage** – In the event that any policy of insurance required under this Contract does not comply with the requirements, is not procured, or is canceled and not replaced, Customer has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by Customer will be promptly reimbursed by Aviat US or Customer payments to Aviat US will be reduced to pay for Customer-purchased insurance.

l) **Insurance Review** – Insurance requirements are subject to periodic review by Customer. Customer’s Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of Customer. In addition, if Customer’s Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, Customer’s Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against Customer, inflation, or any other item reasonably related to the Customer’s risk.

m) Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Aviat US agrees to execute any such amendment within thirty (30) days of receipt.

n) Any failure, actual or alleged, on the part of Customer to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of Customer.

21. INTELLECTUAL PROPERTY INDEMNIFICATION

a) Customer agrees to promptly notify Aviat Networks in writing of any notice, suit, or other action against Customer based upon a claim that any Equipment or Licensed Aviat Networks Program infringes a U.S. patent, copyright, trademark, or trade secret of a third party. Provided that Customer: (i) promptly notifies Aviat Networks of the claim; and (ii) gives Aviat Networks a copy of each communication relating to the claim, Aviat Networks will defend at its expense any such action, except as excluded below, and shall have full control of such defense, including all appeals and negotiations, and will pay all settlement costs or damages finally awarded against Customer.

b) In the event of such notice, suit, or action, Aviat Networks will at its expense procure for Customer the right to continue using the

Equipment and Licensed Aviat Networks Programs, or modify the Equipment and Licensed Aviat Networks Programs to render the same non-infringing, or accept return of the Equipment and Licensed Aviat Networks Programs and replace the same with substantially equivalent non-infringing Equipment and Software, or accept return of the Equipment and Licensed Aviat Networks Programs and refund or credit to Customer the amount of the original purchase price, less a reasonable charge for depreciation and damage.

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

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

22. TECHNICAL DATA AND INVENTION

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

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

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

23. EXCUSABLE DELAY

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

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

24. COMPLIANCE WITH APPLICABLE LAWS

d) Each Party warrants that it shall comply with any and all applicable US federal and state laws, and shall operate in good faith to comply with other laws and regulations and industry best practices, applicable to its performance hereunder, and shall promptly act to correct any noncompliance once identified.

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

f) **ANTICORRUPTION LAWS.** Each Party warrants that it will comply with the United States Foreign Corrupt Practices Act of 1997, as amended.

g) **WASTE RECYCLING LAWS.** Customer acknowledges and agrees that the supply of the Equipment by Aviat US to the Customer may give rise to obligations for Aviat US and the Customer under the Environmental Laws as hereinafter defined. "Environmental Laws" means any law or regulation pertaining to the use of hazardous substances, or the recycling or treatment of waste equipment. The term "Laws" as used in the term "Environmental Laws" shall include any and all national laws and regulations, whether civil, criminal, or administrative, in any jurisdiction giving effect to that meaning including, but not limited to, statutes and subordinate legislation, ordinances, permits, common law, local laws, judgments, and any notices, orders, directions, instructions or decisions of any competent authority. The Customer shall be responsible for the collection, recycling, reuse and disposal of the Equipment in compliance with the Environmental Laws unless Customer returns waste electrical and electronic equipment ("WEEE") to Aviat US's approved treatment facility..

25. LIMITATION OF LIABILITY

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

b) **IN NO EVENT SHALL AVIAT US' TOTAL LIABILITY TO CUSTOMER EXCEED THE ACTUAL SALES PRICE PAID**

BY CUSTOMER FOR ANY EQUIPMENT, SOFTWARE OR SERVICES SUPPLIED HEREUNDER.

c) THIS ARTICLE SHALL NOT APPLY TO CLAIMS ARISING UNDER THE INDEMNITY OBLIGATIONS OR FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AVIAT US, AND SHALL SURVIVE THE TERM OR EXPIRATION OF THE CONTRACT.

26. APPLICABLE LAW, VENUE, AND JURISDICTION

The Contract, and any disputes related thereto, shall be governed by and interpreted in accordance with the laws of the State of California, USA, regardless of any conflict of law principles requiring the application of any other law. The parties specifically exclude the application of the United Nations Convention on Contracts for the International Sale of Goods to the Contract, to the contractual relationship created under the Contract, and to the construction, validity, enforcement, and interpretation of the Contract.

27. ASSUMPTION OF RISK

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

28. RELIANCE ON COUNSEL AND OTHER ADVISORS

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

29. GENERAL PROVISIONS

a) Assignment. Neither party shall assign any of its rights under this Contract, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law or any other manner without the prior written consent of the other party, which shall not be unreasonably withheld. Any purported assignment of rights in violation of this Article is null and void.

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

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

d) Notices. All notices must be in writing and will be effective when received by (i) personal delivery, (ii) registered, certified, or nationally recognized overnight mail, proof of receipt requested, and (iii) facsimile, if confirmed within three (3) business days by one of the other methods herein, at the addresses or facsimile numbers indicated or to such other addresses or facsimile numbers as the parties may specify by giving notice pursuant hereto. A copy of all legal notices must be sent to Aviat US, Inc., 860 McCarthy Blvd, Suite 200 Milpitas, CA 95035, Attn: Legal Department, facsimile no. 1-408-567-7111. A copy of all notices will be sent to the Customer at the address provided on the Customer's purchase order.

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

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

g) Aviat US may audit Customer's books and records relating to Customer's purchase and/or use of Equipment, Software and Services provided hereunder, upon reasonable prior notice to Customer, but (a) may not conduct more than one (1) such audit in any given calendar year; (b) may only audit the books and records for the two (2) year period prior to the date of such audit; and (c) may not audit any records more than once. The audit may be conducted by Aviat US employees, agents, or representatives at Customer's designated location during normal business hours, for the sole purpose of determining the accuracy of the payments required to be made to Aviat US pursuant to the provisions of this Contract. Aviat US shall be solely responsible for the costs of any audit. All books and records required to be retained by Customer hereunder shall be retained by Customer for at least two (2) years after the expiration or termination of this Contract.

h) Surviving Provisions. Notwithstanding the expiration or early termination of this Contract, the provisions regarding Warranties in Articles 13 and 14, Order Acceptance in Article 4, Intellectual Property Indemnification in Article 18, Limitation of Liability in Article 22, due and outstanding cancellation fees pursuant to Article 7, the General provisions in this Article 27, and payment obligations resulting from any outstanding invoice(s) will each survive in accordance with their terms..

i) Amendments. Aviat US agrees that any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Aviat US and Customer.

j) Customer Representative. Customer's Chief Information Officer or his/her designee shall represent Customer in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work by Aviat US. If this contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

30. CLAUSES INCORPORATED BY REFERENCE

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

31. ENTIRE CONTRACT

The Contract, including Annex A and B supersedes all previous proposals, negotiations, conversations, and understandings, whether

oral or written, and constitutes the sole and entire agreement between the parties pertaining to the subject matter hereof. No modification

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

The Effective Date of this Contract is August 6, 2019, provided that both parties execute this Contract in the signature block below on or prior to August 6, 2019.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized representatives as of the day and year first stated above.

CUSTOMER: COUNTY OF SAN BERNARDINO

AVIAT U.S., INC.

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: Curt Hagman, Chairman, Board of Supervisors

TITLE: _____

DATE: _____

DATE: _____

ANNEX A

Ten Year Technology Refresh Program

NA170303-47226, Release 1.6, dated 7/11/2019

(See attached)

ANNEX B
CHANGE ORDER FORM

Aviat Networks
860 N. McCarthy Blvd. Suite 200
Milpitas, CA 95035

CHANGE ORDER FORM

COUNTY OF SAN BERNARDINO
Information Services Department
Finance and Administration
670 E. Gilbert Street
San Bernardino, CA 92415-0915

This amendment hereby modified and amends the contract/purchase order ("Contract") between Aviat Networks, COUNTY OF SAN BERNARDINO, also referred to as "Parties" as follows:

These products <and/or> services are hereby <added/deleted> to the Contract between the Parties at the specified prices and all other terms and conditions remain unchanged.

Customer:	COUNTY OF SAN BERNARDINO	Contract #:	
Phone:		Contract Date:	
Fax:		Change Order #:	
Email:		Aviat SO #:	

Line #	Description	QTY +/-	Unit Price	Ext Price +/-
gg1				
2				
3				
4				
5				
6				
7				
8				
Subtotal Booking				\$
Tax (as applicable)				\$
Freight				\$
Other				\$
TOTAL THIS CHANGE				\$

Aviat Networks Authorized Representative		COUNTY OF SAN BERNARDINO Authorized Representative	
Approved By:		Approved By:	
Print Name:		Print Name:	
Title:		Title:	
Date:		Date:	