

**PURCHASE  
AGREEMENT**

**THIS PURCHASE AGREEMENT** ("Agreement") is made and entered into and shall be effective as of the date of execution by all parties, by and among Sarasota County, a political subdivision of the State of Florida, hereinafter referred to as "Sarasota County," Manatee County, a political subdivision of the State of Florida, hereinafter referred to as "Manatee County," and Airbus DS Communications Inc., a California corporation authorized to do business in the State of Florida, hereinafter referred to as "Contractor." Sarasota County and Manatee County are together referred to as the "Counties."

**WITNESSETH:**

**WHEREAS**, the Counties intend to purchase a P25 Radio System (the "System" or the "Project") from the Contractor; and,

**WHEREAS**, the Counties entered into that certain Interlocal Agreement for the creation of the Suncoast Regional Communications Network approved by the Manatee County Commission on May 6, 2014 and the Sarasota County Commission on May 12, 2014; and

**WHEREAS**, pursuant to the Interlocal Agreement Sarasota County issued Request for Proposal No. 142842TM on behalf of the Counties on June 24, 2014 (the "RFP"); and,

**WHEREAS**, the Counties evaluated the responses received and found the Contractor to have submitted a responsive and responsible proposal which was determined by the Counties to be the most advantageous; and,

**WHEREAS**, Sarasota County issued a Notice of Recommended Award on October 3, 2014; and,

**WHEREAS**, the Contractor has reviewed the products and services to be supplied pursuant to this Agreement and is qualified, willing and able to provide all such products and services in accordance with its terms.

**NOW, THEREFORE**, the Counties and the Contractor, in consideration of the mutual covenants contained herein, do agree as follows:

**I. RECITALS**

The above recitals are true and correct and are hereby incorporated in this Agreement.

## **II. PRODUCTS AND SERVICES**

The Contractor agrees to diligently provide the design, coordination of permitting, engineering, required equipment, implementation services, training, and maintenance services for the System and in accordance with the specifications generally set forth in this Agreement and Exhibit A, Scope of Work, and addressed in more detail in other exhibits, all such exhibits being listed in Section XXIX(V) and all of which are hereby incorporated and made a part of this Agreement. The Counties shall directly pay the permitting agency for the cost of permit applications, and modifications if necessary.

## **III. TERM AND DELIVERY**

- A. This Agreement shall commence immediately upon execution by both of the Counties and the Contractor, and shall continue through the delivery and acceptance of the System and the warranty and maintenance periods as described in this Agreement.
- B. All products and services shall be delivered by Contractor in accordance with the terms and conditions of this Agreement.

## **IV. COMPENSATION AND PAYMENT**

- A. Sarasota County shall pay the Contractor an amount not to exceed \$19,474,301.00 for the System, including warranty and maintenance as set forth in greater detail herein, (the "Sarasota Total System Price") in accordance with the terms and conditions of this Agreement, and further described in the Pricing Summary set forth in Exhibit N. The Sarasota Total System Price is inclusive of all costs necessary to provide those products and services to Sarasota County as described in this Agreement. The Sarasota Total System Price consists of (i) the Sarasota Total System Turnkey Price plus (ii) the Sarasota Total Maintenance Service Price plus (iii) a contingency amount of \$100,000.00. "The Sarasota Total System Turnkey Price" means the capital expenditure by Sarasota County, in an amount not to exceed \$13,432,579.00. The Sarasota Total Maintenance Service Price is \$5,941,722.00.
- B. The Sarasota County contingency amount may be used only as authorized by the Sarasota County Project Administrator.
- C. Manatee County shall pay the Contractor an amount not to exceed \$20,826,070.00 for the System, including warranty and maintenance as set forth in greater detail herein, (the "Manatee Total System Price") in accordance with the terms and conditions of this Agreement, and further described in the Pricing Summary set forth in Exhibit N. The Manatee Total System Price is inclusive of all costs necessary to provide those products and services to Manatee County as described in this Agreement.

The Manatee Total System Price consists of (i) the Manatee Total System Turnkey Price plus (ii) the Manatee Total Maintenance Service Price plus (iii) a contingency amount of \$1,255,909.00. "The Manatee Total System Turnkey Price" means the capital expenditure by Manatee County, in an amount not to exceed \$13,521,173.00. The Manatee Total Maintenance Service Price is \$6,048,988.00.

- D. The Manatee County contingency amount may be used only as authorized by the Manatee County Project Administrator.
- E. Notwithstanding the preceding, Contractor shall not make any deliveries or perform any work under this Agreement until receipt of Notices to Proceed from Sarasota County and from Manatee County. Contractor acknowledges and agrees that no minimum order or amount of product or work is guaranteed under this Agreement and the Counties may elect to issue no Notices to Proceed.
- F. The Counties' performance and obligation to pay under this Agreement is contingent upon appropriations by the Sarasota County Board of County Commissioners and by the Manatee County Board of County Commissioners. Each County shall promptly notify the Contractor and the other county if the necessary appropriation is not made.
- G. Retainage shall be withheld on the Sarasota Total System Turnkey Price and the Manatee Total System Turnkey Price from each milestone payment request, in an amount of two and a half percent (2.5%) of the request. The Counties have no obligation to reduce the retainage but may do so, after the successful completion of Factory Acceptance Testing. All remaining retainage shall be included in the final payment request following Final System Acceptance by the Counties.
- H. Upon Final System Acceptance the Counties and the Contractor shall evaluate the effect of all changes to the System. In the event the parties agree that the net result of such changes requires a change to either the Sarasota or Manatee Total Maintenance Service Price, the Counties and the Contractor shall recognize such change by execution of an amendment to the Agreement or other document deemed appropriate by the Counties.
- I. Notwithstanding anything to the contrary in this Agreement, the "not to exceed" requirement as set forth in Sections IV(A) and (C) above apply only to the Total System Prices, and not the individual line items within Exhibit N that comprise that Total System Price. The Project Administrators shall have the authority to make adjustments to the various dollar amounts set forth in Exhibit N provided such adjustments do not affect the Total System Prices. Such adjustments shall be documented by an Interim Field Change Agreement as described in

Exhibit B Interim Field Change Agreements and Use of Contingency Amounts.

**V. ADDITIONAL PURCHASES**

- A. No changes to this Agreement or the performance contemplated hereunder shall be made unless the same are in writing and signed by both the Contractor and the authorized agents of the Counties, as set forth below.
- B. If, upon written instruction by a County's Project Administrator and written agreement by the Contractor, the Contractor shall provide additional products and services related to the System, and if such products and services are not required as a result of error, omission or negligence of Contractor, then in such event the Contractor shall be entitled to additional compensation. The additional compensation shall be computed by the Contractor on a revised fee quotation proposal and submitted to the County's Project Administrator for review and approval by the County. The fee shall be agreed upon before the provision of any additional products and services and shall be incorporated into this Agreement by written Amendment. Any additional products or services provided before a written Amendment to this Agreement shall not be compensated by the County.

**VI. METHOD OF PAYMENT**

- A. Each County shall pay the Contractor through payment issued by the Clerk of the Circuit Court in accordance with the Local Government Prompt Payment Act, §218.70, et seq. F.S., upon receipt of the Contractor's invoice and written approval of same by the County's Project Administrator indicating that the products and services have been provided in conformity with this Agreement.
- B. The Contractor shall submit an invoice for payment to each County upon successful completion of each milestone as set forth in this Agreement for those specific products and services as described in Exhibit N (and the corresponding fees as described in Exhibit N) that were provided to such County during that invoicing period.
- C. The Contractor's invoices shall be in a form satisfactory to the respective Counties' Clerk of the Circuit Court, who shall initiate disbursements. The Contractor is responsible for providing all reasonably necessary documentation that may be required by the applicable County.

## **VII. LIABILITY OF CONTRACTOR**

- A. The Contractor shall indemnify and hold harmless the Counties, their officers and employees, from liabilities, damages, losses, and costs, including but not limited to reasonable attorney's fees to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of this Agreement.
- B. The obligation of Contractor set forth in Section VII.A. shall survive the expiration or termination of this Agreement.
- C. Notwithstanding anything to the contrary in this Agreement, Contractor's obligation to indemnify a County is subject to: (i) Contractor receiving prompt written notice of the claim; (ii) Contractor having sole control of the defense and any negotiations for settlement (provided that such settlement does not require the Counties to admit fault or pay damages); and (iii) the limitation of liability set forth in Section XXVI of this Agreement.
- D. Contractor will perform its maintenance obligations with respect to the Motorola EOC Gold Elite Consoles (the "Gold Elite Consoles") as set forth in Exhibit L, Part 2. However, Counties acknowledge that the Gold Elite Consoles are not manufactured by Contractor and agree that the Gold Elite Consoles are refurbished and out of support by the original manufacturer. Moreover, the Counties acknowledge and agree that the radio system that the Gold Elite Consoles will be used on is not provided by, or maintained in any manner by Contractor. Therefore, except to the extent arising out of Contractor's failure to meet its limited technical support obligations as set forth in Exhibit L, Part 2, Contractor shall not be responsible for claims in any way associated with, or related to, the Gold Elite consoles.

## **VIII. CONTRACTOR'S INSURANCE**

Before providing any products or services pursuant to this Agreement, Contractor shall procure and maintain, during the life of this Agreement unless otherwise specified, insurance as specified in Exhibit D, Insurance Requirements, attached hereto and made a part of this Agreement.

## **IX. RESPONSIBILITIES OF THE CONTRACTOR**

- A. Contractor acknowledges that it is familiar with the technical specifications of the RFP, including any addenda, and that it will provide the products and services as required.

- B. The Contractor shall be responsible for the quality and functionality of all products supplied and services performed by or at the behest of the Contractor under this Agreement. Subject to the Maintenance and Warranty terms as set forth in Exhibit L, Parts 1 and 2, the Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its products, or if directed by a County, supply a comparable replacement product or service.
- C. The Contractor will coordinate securing all necessary building and site development permits in a timely manner from all governmental authorities having jurisdiction. The Counties shall directly pay the permitting agency for the cost of permit applications, and modifications if necessary.
- D. The Contractor warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Contractor), to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.
- E. The Contractor agrees that it and its employees shall communicate with each County's employees and members of the public in a civil manner. All aspects of a Contractor's performance, including complaints received from a County's employees or members of the public, may impact that County's decision to renew or terminate this Agreement in accordance with the provisions contained herein. Each County further reserves the right to suspend or debar the Contractor from consideration for award of future contracts.
- F. The Contractor covenants and agrees that it and its employees shall be bound by the Standards of Conduct of §112.313, F.S., as it relates to work performed under this Agreement. The Contractor agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.
- G. Pursuant to §287.133(a), F.S., a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in §287.017 for

CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

- H. The Contractor shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof, including, as applicable, those portions of the Sarasota County and Manatee County Codes of Ordinances relating to procurement and ethics.
- I. Contractor shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- J. The Contractor shall maintain books, records, documents, and other evidence directly pertaining to the purchases under this Agreement which shall be available and accessible at the Contractor's offices, upon three days' prior written notice, for the purpose of inspection, audit, and copying, at the applicable County's sole cost and expense, during normal business hours by the County, or any of its authorized representatives, provided that the inspection, audit, and copying does not interfere with Contractor's normal business operations. Such records shall be retained for a minimum of three (3) years after completion of this Agreement.
- K. §287.135, F.S., prohibits agencies from contracting with companies for goods or services of \$1,000,000 or more, that are on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Both lists are created pursuant to §215.473, F.S. Contractor certifies that the organization is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and understands that pursuant to §287.135, F.S., the submission of a false certification may subject company to civil penalties, attorney's fees, and/or costs.
- L. The Contractor shall notify each County's Project Administrator at least one (1) day in advance of any meeting between the Contractor and any stakeholder, including, but not limited to, County Commissioners, regulatory agencies or private citizens.
- M. The Contractor shall take all necessary precautions to prevent damage to public and private property. Damage to public or private property, to the extent caused by any act, omission, neglect, or misconduct in the performance of this Agreement by Contractor, or its subcontractors, or agents, shall be restored at the Contractor's expense, to its original or better condition existing at the time damage was done, or the Contractor shall make good the damage in another manner reasonably acceptable to the Counties.

- N. Not later than the date of issuance of the Notices to Proceed, Contractor shall provide a performance and payment bond satisfactory to the Counties in the total amount of the Sarasota Total System Turnkey Price plus the Manatee Total System Turnkey Price plus the contingency amounts for each County all as set forth in Section IV above. This bond shall remain in force until the date of Final System Acceptance by the Counties.

**X. PUBLIC RECORDS ACT COMPLIANCE**

Pursuant to Florida Statutes § 119.0701, to the extent Contractor is performing services on behalf of the Counties, Contractor must:

- A. Keep and maintain public records that ordinarily and necessarily would be required by the Counties in order to perform the service.
- B. Provide the public with access to public records on the same terms and conditions that the Counties would provide the records and at a cost that does not exceed the cost provided in Florida Statutes Chapter 119 or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- D. Meet all requirements for retaining public records and transfer, at no cost, to the Counties all public records in possession of Contractor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Counties in a format that is compatible with the Counties' information technology systems.

**XI. OWNERSHIP OF PRODUCTS**

It is understood and agreed that except for any software provided or licensed by Contractor, all other products provided under this Agreement and paid for by each County, shall become the property of the respective County as they are received by that County.

**XII. TIMELY DELIVERY OF PRODUCTS AND PERFORMANCE OF SERVICES**

- A. The timely delivery of the products and services provided for hereunder is vitally important to the interest of the Counties.
- B. The Contractor shall ensure that all of its staff, contractors and suppliers involved in the production or delivery of the products are fully qualified and capable to perform their assigned tasks.

- C. The Contractor shall commence preparation of the products for manufacture, shipment or delivery, as appropriate, promptly upon the Contractor's receipt of a Counties' Notices to Proceed. The time limits set forth in Exhibit G, Project Management Plan, Implementation Schedule, and Cutover Plan, shall commence to run on the date of the Notices to Proceed.
- D. The Contractor specifically agrees that all products shall be delivered within the time limits as set forth in this Agreement and Exhibit G, the Project Management Plan, Implementation Schedule, and Cutover Plan , subject only to delays caused by force majeure, or as otherwise defined herein. "Force majeure" shall be deemed to be any cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the parties.
- E. The personnel assigned by the Contractor to perform the services of this Agreement shall comply with the information presented in the RFP. The Contractor shall ensure that all key personnel, support personnel, and other agents are fully qualified and capable to perform their assigned tasks. Any change or substitution to the Contractor's key personnel must receive a County's Project Administrator's written approval before said changes or substitution can become effective.
- F. Contractor specifically agrees that all work performed under the terms and conditions of this Agreement shall be completed within the time limits as set forth in the Project Management Plan, Implementation Schedule, and Cutover Plan described in Exhibit G, subject only to delays caused by force majeure.

### **XIII. LIQUIDATED DAMAGES**

- A. The parties to this Agreement agree that time is of the essence in the performance of the work provided herein and that a precise determination of actual damages which would be incurred by the Counties for delay in the completion of the work provided for herein, aside from the additional cost of inspection and supervision, would be difficult to ascertain. Accordingly, the parties agree that the liquidated damages for those items not otherwise specified herein, for each and every day that the time consumed in completing the delayed work exceeds the time(s) allowed therefor, shall be the amount(s) stated below per day, including Saturdays, Sundays, and legal holidays. The parties specifically agree that: (i) the liquidated damages provided for herein do not constitute a penalty; (ii) Contractor's obligation to pay liquidated damages applies (a) only to the extent the delay is caused by Contractor; (b) the Counties notify Contractor of the delay in writing; and (c) Contractor is provided a reasonable amount of time to otherwise mitigate or cure the delay; (iii)

the payment of any liquidated damages is the exclusive remedy for the Counties for the delay, thereby precluding the Counties from seeking any other damages related to that delay; and (iv) under no circumstances will the amount of liquidated damages to be paid exceed 10% of the Sarasota Total System Turnkey Price and the Manatee Total System Turnkey Price listed in the Pricing Summary as set forth in Exhibit N.

- B. Furthermore, since the additional cost of inspection and supervision arising from a delay is not difficult to ascertain, it is agreed that the Contractor shall pay, in addition to the liquidated damages provided for herein, all expenses for inspection and supervision occasioned by the failure to complete the work within the time(s) fixed for completion herein, provided that Contractor's responsibility for the cost of inspection and supervision is limited to the extent that the failure is caused by Contractor. The amount(s) of liquidated damages together with the additional costs for inspection and supervision occasioned by the Contractor's delay will, upon prior written notice to Contractor, be deducted and retained out of the monies payable to the Contractor. Notwithstanding anything to the contrary the combined sum of any liquidated damages in addition to any expenses associated with inspection and supervision, shall be subject to the limitation of liability set forth in Section XXVI of this Agreement.
- C. The amount of liquidated damages to be assessed for each calendar day that Substantial Completion is delayed beyond the required date of Substantial Completion shall be TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) per day. "Substantial Completion" means that point in the project at which (i) the System has been completely designed, (ii) the System has been staged and successfully tested at Contractor's factory facility, and (iii) all System infrastructure and coverage acceptance testing has been successfully completed to the satisfaction of the Counties. For each calendar day that Final System Acceptance is delayed beyond the required date of Final System Acceptance the Contractor shall be assessed FIVE HUNDRED DOLLARS (\$500) per day as liquidated damages. "Final System Acceptance" means Contractor has (i) achieved Substantial Completion; (ii) completed any punchlist items to the reasonable satisfaction of the Counties; and (iii) has successfully completed the "Performance Period" as described in Exhibit A, Section 10.11.1.

#### **XIV. OBLIGATIONS OF COUNTIES**

- A. The Counties' Project Administrators are jointly designated to do all things necessary to properly administer the terms and conditions of this Agreement, including, but not limited to:
1. Examination of all products delivered or supplied by Contractor for conformance with the terms of this Agreement; and

2. Periodic reviews of the work of the Contractor as necessary for the completion of the Contractor's services during the period of this Agreement; and
  3. Review of all Contractor documents and payment requests for approval or rejection.
- B. The Counties shall not provide any services to the Contractor in connection with any claim brought on behalf of or against the Contractor.
- C. The Counties' obligations set forth in the Agreement and all Exhibits hereto shall be performed by the Counties in a timely and proper manner in order to permit Contractor to perform its obligations timely under this Agreement and all Exhibits hereto.

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**XV. DELIVERY, TITLE AND RISK OF LOSS**

- A. The Contractor shall be responsible for transportation and storage of all Hardware and Software components of the System as described in this Agreement prior to delivery. All risk of loss or damage to Contractor-provided Hardware and Software while in transit, or in storage, prior to delivery, shall be the responsibility of the Contractor. The Counties shall in no circumstances assume liability for Contractor-provided Hardware and Software until the Contractor has made delivery to the Counties.
- B. The Contractor will prepare for shipment, transport, and install the System at the Counties' designated installation sites.
- C. Except as otherwise provided for in this Agreement, full and complete title for their respective portions of the System will pass from the Contractor to each County upon Final System Acceptance, except for software and other products for which title does not transfer. The Contractor warrants that each County shall have clear title in and to its portion of the System, free and clear of all encumbrances, upon Final System Acceptance.

**XVI. INSPECTION AND EXAMINATION OF THE WORK**

- A. The Counties and/or authorized designee(s), shall, at the Counties' sole cost and expense if travel is required, have free access to the work of the Contractor at any time for purposes of inspection and testing, and shall be reasonably assisted by the Contractor in conducting such inspections and testing for the work performed and the nature of same. Such assistance of the Contractor shall, if necessary, include the uncovering, testing or removal of portions of finished work.
- B. The Counties will not supervise, direct, control, or have authority over or be responsible for the Contractor's means, methods, techniques,

sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of the Contractor to comply with laws and regulations applicable to the performance of the work.

- C. All materials and equipment manufactured by Contractor, shall at each County's sole cost and expense if travel is required, be subject to inspection, examination and testing by the Counties at any time during manufacture, and at places where manufacturing of the materials and equipment is taking place. The Counties may reject defective materials and equipment manufactured by Contractor, during manufacture or before or after they have been incorporated into the System.
- D. No final inspections, acceptance of work, materials or equipment or final and interim acceptance of same by the Counties or certification of authorities having jurisdiction shall relieve the obligation of the Contractor to the Counties to do work in a good, workmanlike manner, and to furnish proper, specified equipment and materials, and to perform properly all terms and obligations of this Agreement.

**XVII. RIGHT TO REJECT DEFECTIVE WORK**

- A. The Counties have the authority to reject work which is defective or will not produce the System conforming to the final design or that will prejudice the integrity of the final design of the System as a functioning whole. The Counties also have authority to require special inspection or testing of work whether or not the work is fabricated, installed, or completed.
- B. The Counties shall provide prompt notice to the Contractor of all defective work of which the Counties have actual knowledge.

**XVIII. SALE AND GRANT OF LICENSE**

Contractor agrees to provide the System in accordance with this Agreement and concurrently herewith grants to each County a license to use the computer software identified therein (the "Software") in accordance with the terms and conditions of this Agreement and Contractor's End User License Agreements attached hereto and incorporated herein as Exhibits P-1 and P-2.

**XIX. ACCEPTANCE**

The process governing Final System Acceptance is set forth in Exhibit K, System Acceptance Plan attached hereto and incorporated herein.

**XX. INTERFERENCE**

The Counties acknowledge and agree that (i) radio system coverage and performance are subject to degradation due to anomalous propagation and

interference beyond the reasonable control of Contractor; and (ii) Contractor is not responsible for degradation or disruption of service caused by: (a) operation of other radio systems; (b) natural phenomena; or (c) other interference for which Contractor has no reasonable control. Contractor will provide engineering support to each County, at each County's sole cost and expense, to support each County's effort to resolve any interference or degradation due to an outside party.

## **XXI. TERMINATION**

- A. The Counties shall have the right at any time upon thirty (30) calendar days' prior written notice to the Contractor to terminate the services of the Contractor. The Counties shall pay to the Contractor and the Contractor shall accept as full payment for its performance, (1) a sum of money equal to the cost of the work completed and any commenced but incomplete services, including the price for each properly delivered and accepted product, plus (2) the actual amount of any true and documented cost Contractor incurs as a direct result of the termination, less (3) all previous payments in accordance with Section IV.
- B. Any failure of the Contractor to satisfy the requirements of this Agreement, as documented by the Project Administrators, shall be considered a default of the Agreement and sufficient reason for termination. The Contractor shall be notified in writing by the Counties and shall have an opportunity to cure such default within thirty (30) calendar days after notification.
- C. In the event that the Contractor has abandoned performance under this Agreement, then the Counties may terminate this Agreement upon seven (7) calendar day's written notice to the Contractor indicating its intention to do so. Payment for products supplied and services performed prior to the Contractor's abandonment shall be as stated above.
- D. The Contractor shall have the right to terminate this Agreement in the event of either County failing to pay the Contractor's properly documented and submitted invoice within ninety (90) calendar days of the approval by that County's Project Administrator.
- E. The Counties reserve the right to terminate and cancel this Agreement in the event the Contractor shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

## **XXII. RESOLUTION OF DISPUTES BETWEEN SARASOTA COUNTY AND CONTRACTOR**

- A. In the event of a dispute or claim arising out of this Agreement, Contractor and Sarasota County agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, Contractor and

Sarasota County agree to enter into mediation in Sarasota County, Florida, and share equally in the cost of such mediation.

- B. In the event mediation is unsuccessful in resolving a dispute, Contractor and Sarasota County may proceed to litigation as set forth in Section XXIX.

**XXIII. RESOLUTION OF DISPUTES BETWEEN MANATEE COUNTY AND CONTRACTOR**

Disputes between Contractor and Manatee County shall be resolved in accordance with § 2-26-63 and § 2-26-64 of the Manatee County Code. Any dispute resolution constituting a material change in this Agreement will not be final until an Amendment to this Agreement has been approved and executed by the Manatee County Purchasing Official. If such dispute involves the percentage of the work completed by Contractor, Manatee County shall, as promptly and reasonably as possible after resolution of such dispute, forward payment to Contractor of any amount determined to be due and owing.

**XXIV. STOP WORK ORDER**

The Counties' Project Administrators, may at any time, by written order to the Contractor, require the Contractor to stop all or any part of the work called for by this Agreement. Any order shall be identified specifically as a stop work order issued pursuant to this clause. This order shall be in effect for a specified period after the order is delivered to the Contractor. Upon receipt of such an order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. The Contractor shall not resume work unless specifically so directed in writing by the Counties. Before the stop work order expires unless it is extended, the Project Administrators may take one of the following actions:

1. Cancel the stop work order; or
2. Terminate the work covered by the order; or
3. Terminate the Agreement in accordance with provisions contained in Section XXI.

In the event the Counties determine to not direct the Contractor to resume work, the stop work order may be converted into a notice of termination for convenience pursuant to Section XXI. The notice period for such termination shall be deemed to commence on the date of issuance of the stop work order.

## **XXV. CONFIDENTIALITY AND NONDISCLOSURE**

### **A. Definitions:**

1. "Business Information" includes, but is not limited to, information relating to intellectual property, business plans, financial information, products, services, manufacturing processes and know-how, technical information, sources of supply, strategic plans, advertising and marketing plans, customer lists, sales, profits, pricing methods, personnel and business relationships.
2. "Confidential Information" includes, but is not limited to, a party's Intellectual Property Information, Business Information and Trade Secrets, whether or not reduced to writing or other tangible expression, which party may disclose to the Receiving Party provided however that Confidential Information shall not include any information which (a) was already known to the Receiving Party prior to the time of disclosure by a party as evidenced by written records, (b) is available or becomes generally available to the public other than through a breach of this Agreement by the Receiving Party, (c) is acquired or received rightfully and without confidential limitation by the Receiving Party from a third party, or (d) is independently developed by the Receiving Party without breach of this Agreement. This Agreement shall not be considered Confidential Information, except for those portions that are exempt or confidential under Florida or Federal law. Contractor specifically asserts that Exhibits E, H, K, and N are Trade Secrets.
3. "Intellectual Property Information" includes, but is not limited to, information relating to research and development, discoveries, improvements, processes, know-how, drawings, blueprints, specifications, samples, formulae, notes, patents, copyrights, trademarks, trade names, and patent, trademark and copyright applications.
4. "Trade Secrets" is as defined in §812.081, Florida Statutes, as may be amended.
5. "Receiving Party" means the party receiving Confidential Information of another party.

- B. Nondisclosure. The parties agree, unless otherwise provided in this Agreement or required by law, not to use or make each other's Confidential Information available to any third party for any purpose other than as necessary to perform under this Agreement. The parties agree to limit disclosure to only that necessary under this Agreement. The Receiving Party shall protect Confidential Information from disclosure by using the same degree of care, but no less than a

reasonable degree of care, that it uses to protect its own Confidential Information of a like nature to prevent its unauthorized use, dissemination, or publication by its employees or agents. The parties agree, both during the term of this Agreement and for a period of three (3) years after termination of this Agreement, or for as long is required by law, whichever is greater, to hold each other's Confidential Information in confidence. The Counties agree that they shall not reverse-engineer, decompile or disassemble any portion of the System and shall not remove, overprint or deface any notice of copyright, trademark, logo, legend, or other notices of ownership from any originals or copies of Confidential Information obtained from Contractor.

- C. Compliance with Law. A party is permitted to disclose Confidential Information when required by law. The Counties are required to comply with Florida's public records law, which may require disclosure of Confidential Information records. In the event a County receives a public records request for records marked confidential or trade secret, County shall attempt to notify Contractor of the request, so that Contractor may assert an exemption that is provided by Florida or Federal law. If County agrees that the asserted exemption is available, it will assert such exemption in response to the records request. If County does not agree that such record is exempt, Contractor must seek a judicial determination as to the availability of the exemption within three business days of the public records request being made or County shall disclose the record. Such disclosure shall be deemed required by law under this Agreement. If a County is sued as a result of an exemption being asserted for Contractor's Confidential Information by either County or Contractor, Contractor shall be solely responsible for defending that assertion and shall indemnify the Counties for any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorney's fees and disbursements) that result from that assertion. In no event shall the Counties be liable for any costs, including but not limited to attorney's fees, Contractor incurs in asserting or defending an exemption from public records law.

**XXVI. LIMITATION OF LIABILITY**

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, CONTRACTOR, ITS AFFILIATES, AGENTS, SUPPLIERS OR SUBCONTRACTORS SHALL NOT BE LIABLE TO THE COUNTIES FOR ANY LOSS OF PROFITS, SERVICE LEVEL, RESPONSE TIME, MAINTENANCE, INTERRUPTION OF BUSINESS, OR FOR ANY OTHER SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES. THE COUNTIES' EXCLUSIVE REMEDY FOR CONTRACTOR'S BREACH OF WARRANTY IS PROVIDED IN SECTION IX(B). IN NO EVENT SHALL CONTRACTOR'S, ITS AFFILIATES', AGENTS', SUPPLIERS' OR SUBCONTRACTORS' COLLECTIVE TOTAL LIABILITY EXCEED THE SYSTEM PRICE FOR A CLAIM ARISING FROM THE SYSTEM OR SERVICES, OR THE RESPECTIVE MAINTENANCE SERVICES ANNUAL PAYMENT FOR A CLAIM ARISING FROM THE MAINTENANCE SERVICES, AS THE CASE MAY BE.

**XXVII. CONTRACTOR WARRANTY**

All warranty terms are set forth in the Warranty and Maintenance Service Plan set forth in Exhibit L.

**XXVIII. EXPORT CONTROLS**

Certain Contractor products are subject to export controls by the U.S. Department of Commerce ("DOC"), under the Export Administration Regulations ("EAR"). Violation of U.S. law is strictly prohibited. The Counties shall comply with the requirements of the EAR and all applicable international, national, state, regional and local laws and regulations, including any applicable import and use restrictions. The Counties shall not export or re-export, directly or indirectly, any Contractor products to any country outlined in the EAR nor to any person or entity on the DOC Denied Persons, Entities and Unverified Lists, the U.S. Department of State's Debarred List or on the U.S. Department of Treasury's lists of Specially Designated Nationals, Specially Designated Narcotics Traffickers or Specially Designated Terrorists. Furthermore, the Counties shall not export or re-export any Contractor products to any military entity not approved under the EAR or to any other entity for any military purpose.

**XXIX. MISCELLANEOUS**

- A. This Agreement constitutes the sole and complete understanding between the parties and supersedes all other contracts between them, whether oral or written with respect to the subject matter. No Amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement.
- B. Time is of the essence with regard to each and every aspect of the Contractor's performance under this Agreement.
- C. The language of this Agreement shall be construed, in all cases, according to its fair meaning and not for or against any party hereto.
- D. The parties hereto do not intend nor shall this Agreement be construed to grant any rights, privileges or interest to any third party.
- E. The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in same (whether by assignment or novation) without the prior written consent of the Counties, except that claims for the money due or to become due the Contractor from the Counties under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the Counties. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to the Counties.
- F. The failure by any party to exercise any right provided for in this Agreement shall not be deemed a waiver of any right hereunder. Waiver by any party of a default of any covenant or provision of this Agreement shall not be deemed to constitute a waiver of any preceding or subsequent default of the same or any other covenant or provision.
- G. Unless otherwise agreed in writing the Contractor shall be required to continue all obligations under this Agreement during the pendency of claim or dispute including, but not limited to, actual period of mediation or judicial proceedings.
- H. Nothing herein shall be interpreted as a waiver by either of the Counties of their respective rights, including the limitations of the waiver of immunity, as set forth in Florida Statutes § 768.28, or any other statute, and the Counties expressly reserve these rights to the full extent allowed by law.
- I. The validity of this Agreement and of any of its terms and provisions, as well as the rights and duties of the parties hereunder, shall be interpreted and enforced pursuant to and in accordance with the laws of the State of Florida without regard to its conflict of laws principles.

- J. Venue for any action or proceeding to enforce or interpret the terms of this Agreement shall be in the Twelfth Judicial Circuit of Florida or if in Federal Court, the Middle District of Florida, Tampa Division.
- K. In the event of any litigation arising under the terms of this Agreement, each party shall be responsible for its own attorney's fees, including appellate fees, regardless of the outcome of the litigation.
- L. The parties agree to waive all rights to trial by jury for any litigation undertaken concerning this Agreement.
- M. In the event there is a dispute between Contractor and the Counties jointly which cannot be resolved under the Counties' individual dispute resolution processes, the Counties reserve the right to agree upon a process to jointly resolve such Contractor disputes, which shall not include binding arbitration.
- N. If any term, condition, or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall be valid and binding on each party.
- O. The parties covenant and agree that each is duly authorized to enter into and perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.
- P. Neither the Counties' review, approval or acceptance of, nor payment for, the products and services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

Q. Any notices, invoices, reports, or any other type of documentation required by this Agreement shall be sufficient if sent by the parties via United States mail, postage paid, to the addresses listed below:

Contractor's Representative:		Sarasota County Project Administrator:	
Name:	<u>Chris Faircloth</u>	Name:	<u>Gerald A. Wheeler</u>
Title:	<u>Regional Sales Director</u>	Title:	<u>Manager – Public Safety Communications</u>
Address:	<u>1301 West President George Bush Highway; Suite 150 Richardson, TX 75080</u>	Address:	<u>6050 Porter Way Sarasota, FL 34232</u>
Telephone:	<u>919-338-2567</u>	Telephone:	<u>941-861-5482</u>
Facsimile:	<u></u>	Facsimile:	<u></u>
E-mail:	<u>Chris.Faircloth@airbus-dscomm.com</u>	E-Mail:	<u>gwheeler@scgov.net</u>

Manatee County Project Administrator:

Name: Wilfredo Miranda

Title: Radio System Manager

Address: 1112 Manatee Avenue West (PO Box 1000) Bradenton, FL 34205

Telephone: 941-799-1211

Facsimile:

E-Mail: Wilfredo.miranda@mymanatee.org

- R. Any change in Project Administrators will require prompt notification by the party making the change.
- S. Paragraph headings are for the convenience of the parties and for reference purposes only and shall be given no legal effect.
- T. The parties agree that where the context of any provision indicates an intent that it shall survive the term of this Agreement then it shall survive.

U. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument.

V. The following is a list of all exhibits to this Agreement:

1. Exhibit A – Scope of Work;
2. Exhibit B – Interim Field Change Agreements and Use of Contingency Amounts;
3. Exhibit C – Project Management Information System, Reports and Project Schedules;
4. Exhibit D – Insurance Requirements;
5. Exhibit E – System Description;
6. Exhibit F – Equipment List;
7. Exhibit G – Project Management Plan, Implementation Schedule, and Cutover Plan;
8. Exhibit H – Coverage Description and Contract Maps;
9. Exhibit I – Site Development and Installation SOW;
10. Exhibit J - Training Plan;
11. Exhibit K – System Acceptance Plan;
12. Exhibit L – Warranty and Maintenance Service Plan – Part 1
13. Exhibit L – Warranty and Maintenance Service Plan – Part 2;
14. Exhibit M – System Acceptance Certificate;
15. Exhibit N – Pricing Summary;
16. Exhibit O – Product Specification Sheets;
17. Exhibit P-1 – End User License Agreement, Sarasota County;
18. Exhibit P-2 – End User License Agreement, Manatee County;
19. Exhibit Q – Intentionally Omitted; and
20. Exhibit R – Emergency Preparedness Plan

W. In the event of conflicts or inconsistencies, the following documents shall be given precedence in the following order:

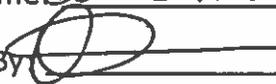
1. This Agreement and any amendments hereto
2. All exhibits to this Agreement which shall be construed as a whole so as to achieve the stated purpose of this Agreement
3. The Counties' Notices to Proceed

[The remainder of this page left blank intentionally]

**IN WITNESS WHEREOF**, the parties have executed the Agreement as of the dates below written.

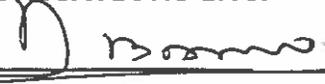
WITNESS:

Print Name: DONALD A. BOYD III

Signed By: 

Date: 05/26/2015

**AIRBUS DS COMMUNICATIONS INC.**

Print Name: 

Signed By: LOUIS ALBATRO

Title: TREASURER/ASST. SECRETARY, AND CFO

Date: 05/26/2015

**SARASOTA COUNTY**

**BOARD OF COUNTY COMMISSIONERS  
OF SARASOTA COUNTY, FLORIDA**

BY: Carolyn A. Mason  
CHAIRMAN

DATE: 6-2-15

**ATTEST:**

KAREN E. RUSHING, Clerk of the Circuit  
Court and Ex-Officio Clerk of the Board  
of County Commissioners

BY: Chad Meloy  
DEPUTY CLERK

Approved as to form and correctness:

BY: Steph De...  
COUNTY ATTORNEY TRW

**MANATEE COUNTY**

BOARD OF COUNTY COMMISSIONERS  
OF MANATEE COUNTY, FLORIDA

BY:   
Melissa M. Wendel, CPPO  
Manatee County Purchasing Official

DATE: 6-14-2015