

ARLINGTON COUNTY, VIRGINIA  
OFFICE OF THE PURCHASING AGENT  
2100 CLARENDON BOULEVARD, SUITE 500  
ARLINGTON, VIRGINIA 22201

**NOTICE OF AWARD OF CONTRACT**

Telecommunications Systems, Inc. 275 West Street Suite 400 Annapolis, MD 21401-3466	DATE ISSUED:	09/08/2015
	CONTRACT NO:	808-15
	CONTRACT TITLE:	Standard Messaging Services to 911 Services Solution

**THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.**

This contract term covered by this rider is effective immediately and expires on February 28, 2017. Fairfax County may elect to renew this agreement under the same contract unit prices for not more than five (5) twelve (12) month periods from March 1, 2017 to February 28, 2022.

CONTRACT PRICING:

**See attached Rider Contract**

ATTACHMENTS:

**Fairfax County Contract 4400005651**

EMPLOYEES NOT TO BENEFIT:

**NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.**

VENDOR CONTACT: Tom Hagel	PHONE:	206-792-2118
VENDOR PAYMENT TERMS: NET 30 DAYS	EMAIL:	thagel@telecomsys.com
COUNTY CONTACT: Jeffrey Horwitz	PHONE:	703-228-4001
	EMAIL:	jhorwitz@arlingtonva.us

CONTRACT AUTHORIZATION

  
Robert W. Jenkins, CPPB  
Assistant Purchasing Agent

09/14/15  
Date

**ARLINGTON COUNTY, VIRGINIA  
OFFICE OF THE PURCHASING AGENT  
2100 CLARENDON BOULEVARD, SUITE 500  
ARLINGTON, VA 22201**

**AGREEMENT NO. 808-15**

THIS RIDER AGREEMENT (hereinafter "Agreement") is made, on the date of its execution by the County, between *TeleCommunication Systems, Inc., 275 West Street, Suite 400, Annapolis, MD 21401-3466*, a Maryland corporation, for itself and on behalf of its wholly-owned subsidiary, NextGen Communications, Inc., authorized to transact business in the Commonwealth of Virginia ("Contractor" or "TCS"), and the County Board of Arlington County, Virginia ("County" or "Customer"). The County and the Contractor, for the consideration and quantity(ies) specified herein or specified in a County Purchase Order referencing this Agreement, agree as follows:

**1. CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement and Exhibit A (Arlington County Statement of Work), and Exhibit B (County of Fairfax, Virginia Contract No. 4400005651) (collectively, "Contract Documents" or "Contract").

This Agreement rides a competitive procurement process conducted by County of Fairfax, Virginia. The Contractor desires to extend to the County the same pricing and other terms as the Contractor's agreement with County of Fairfax, Virginia.

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement shall prevail over the other Contract Documents and the remaining Contract Documents shall be complementary to each other and if there are any irreconcilable conflicts the following order of precedence shall apply: (1) this Agreement, (2) Exhibit A, (3) Exhibit B.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either of them has made any representation or promise with respect to the parties' agreement which is not contained in the Contract Documents.

**2. CONTRACT TERM**

The Contractor's provision of goods or services for the County ("Work") shall commence on the date of execution of this Agreement by the County and shall be completed no later than February 28, 2017 ("Initial Contract Term"), subject to any modifications as provided for in the Contract Documents.

Upon satisfactory performance by the Contractor, and with the concurrence of the Contractor, if County of Fairfax, Virginia renews their agreement identified in Exhibit A, the County may elect to renew this Agreement under the same contract unit prices for not more than five (5) twelve (12) month periods from March 01, 2017 to February 28, 2022 ("Subsequent Contract Term"). However, if County of Fairfax, Virginia does NOT renew their agreement identified in Exhibit A, this Agreement shall automatically expire on the date of County of Fairfax, Virginia's contract expiration date.

**3. CONTRACT PRICING**

The County will pay the Contractor in accordance with the terms of the Payment Terms paragraph below, at the unit prices set forth in Exhibit A for Work provided by the Contractor, as described and required in the Contract Documents, and accepted by the County.

#### **4. SCOPE OF WORK**

The Contractor agrees to provide the services described in the Contract Documents. The primary purpose of the Work is to provide standard messaging services to 9-1-1 services solution.

The Contract Documents set forth the minimum work estimated by the County and the Contractor to be necessary to complete the work. It shall be the Contractor's responsibility, at the Contractor's sole cost, to provide the specific Work set forth in the Contract Documents sufficient to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of the Work.

#### **5. PROJECT OFFICER**

The performance of the Contractor is subject to the review and approval of the County Project Officer ("Project Officer"), who shall be appointed by the Director of the Arlington County department or agency requesting the work under the Contract Documents. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its work pursuant to the Contract Documents.

#### **6. PAYMENT TERMS**

Payment terms will be recorded by the County as Net thirty (30) days. The County will pay the Contractor within thirty (30) calendar days after the date of receipt of a correct, as reasonably determined by the Project Officer, invoice approved by the Project Officer describing Work which is allocable to the Contract. Payments will be made by the County for accepted goods or services, subject to applicable payment terms. See Exhibit A for Pricing details. The number of the County Purchase Order pursuant to which authority shipments have been made or services performed shall appear on all invoices. Invoices shall be submitted in duplicate. Except as otherwise specified in Exhibit A, payment shall not be made prior to delivery and acceptance of the entire order by the County.

#### **7. PAYMENT OF SUBCONTRACTORS**

The Contractor is obligated to take one of the two following actions within seven (7) days after receipt of amounts paid to the Contractor by the County for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven (7) calendar days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements as those contained herein with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

## **8. NON-APPROPRIATION**

All funds for payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia. In the event of non-appropriation of funds by the County Board of Arlington County, Virginia for the goods or services provided under this Contract or substitutes for such goods or services which are as advanced or more advanced in their technology, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the services covered by this Contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the County shall not be obligated under this Contract beyond the date of termination specified in the County's written notice.

## **9. COUNTY PURCHASE ORDER REQUIREMENT**

County purchases are authorized only if a County Purchase Order is issued in advance of the transaction, indicating that the ordering agency has sufficient funds available to pay for the purchase. Such a Purchase Order is to be provided to the Contractor by the ordering agency. The County will not be liable for payment for any purchases made by its employees without appropriate purchase authorization issued by the County Purchasing Agent. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and sole expense. Any County purchase order or other acknowledgment, acceptance, counteroffer or confirmation used by the County may not contain any additional, different or inconsistent terms or conditions from those provided herein and, in the event of any such additional, different or inconsistent terms or conditions, such additional, different or inconsistent terms or conditions provided by the County shall be of no force or effect, and shall not be binding on Contractor unless specifically agreed to in writing by an officer of Contractor. Failure by Contractor to specifically object to any provisions contained in any purchase order or any other acknowledgment, acceptance, counteroffer or confirmation used by the County shall not in any way be deemed an alteration to or waiver of the terms and conditions stated above.

## **10. DELIVERY**

All goods are purchased F.O.B. destination in Arlington County as designated in this Contract. All costs for handling and transportation charges to the designated point of delivery shall be borne by the Contractor. Transportation, handling and all related charges are included in the unit prices or discounts submitted by the Contractor with its bid.

## **11. WARRANTY**

- (i) Contractor warrants to the County during the term of the Agreement that the services provided to the County by Contractor will consist of delivery of an Interim Text-to-9-1-1 emergency call answering solution and shall conform in all material respects to the performance and functionality requirements set forth in the mutually agreed upon Exhibit A. It is understood that the Contractor shall not be liable to the County for performance or functionality issues that arise solely from service interruption or degradation that may arise in the County's IP network.
- (ii) If any services provided to the County by Contractor fail to conform to the warranty set forth in subsection (i) above, and the County notifies Contractor of such nonconformance in writing within ninety (90) days following written acceptance by the County for the initial live delivery of the Contractor hosted service solution to the County under Exhibit A, or after such initial 90 day period the County notifies Contractor of such nonconformance in writing within thirty (30) days following the date of the nonconformance (including the date through which the nonconformance continues), the County's remedy and Contractor's liability shall be for Contractor (A) to repair, revise or replace the non-conforming Contractor services to bring the Interim Text-to-9-1-1

emergency call answering solution into compliance with the warranty in subsection (i) above within thirty (30) days of notification of the nonconformance by the County (or such longer period of time as mutually may be agreed to by the parties in writing); or (B) in the event (A) is not able to be met, to refund to the County the amount actually paid by the County to Contractor for the relevant defective or non-conforming Contractor services. If Contractor fails to repair, revise or replace a warranty non-conformance as described above within thirty (30) days of notification of the non-conformance by the County (or such longer period of time as mutually may be agreed to by the parties in writing), the County may, so long as such warranty non-conformity remains uncorrected, terminate the Contract immediately upon delivery of written notice to Contractor.

- (iii) Except as expressly provided in the Agreement, Contractor does not warrant that (A) the Contractor services will meet any other County requirements not expressly set forth in the Agreement, (B) the Contractor services will operate in combination with other hardware, software, systems or data not described in Exhibit A, or (C) the operation of the Contractor services will be uninterrupted or error-free. Without limiting any of the foregoing, Contractor shall not be responsible for the quality or accuracy of any data not originally developed by it, its subcontractors or partners, nor shall Contractor be responsible for any errors or other issues in the operation of the services resulting from, in whole or in part, any data not originally developed by it, its subcontractors or partners.

EXCEPT AS OTHERWISE EXPRESSLY SET FORTH ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE CONTRACTOR SERVICES (INCLUDING ALL CONTENT, SOFTWARE, FUNCTIONS, MATERIALS, INFORMATION AND EQUIPMENT INCLUDED OR PROVIDED BY CONTRACTOR OR ANY OTHER THIRD PARTY IN CONNECTION THEREWITH) ARE PROVIDED WITHOUT ANY OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ANY WARRANTIES IMPLIED OR REQUIRED BY LAW THAT CANNOT BE DISCLAIMED ARE LIMITED IN DURATION TO THE WARRANTY PERIOD SET FORTH IN SUBSECTION (ii) ABOVE.

## **12. INSPECTION, ACCEPTANCE, TITLE, AND RISK OF LOSS**

Inspection and acceptance of goods or materials by the County will be at the delivery location in Arlington County, Virginia, and within ten (10) calendar days of delivery, unless otherwise provided for in the Contract. The County will not inspect, accept, or pay for any goods or materials stored or delivered off-site by the Contractor.

Title and risk of loss or damage to all goods shall be the responsibility of the Contractor until acceptance by the County. The County's right of inspection shall not be deemed to relieve the Contractor of its obligation to ensure that all articles, materials and supplies are consistent with specifications and instructions and are fit for their intended use. The County reserves the right to conduct any tests or inspections it reasonably may deem appropriate before acceptance.

No goods or materials shall be purchased by the Contractor or any subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that it has good title to, and that it will require all subcontractors to warrant that they have good title to, all goods or materials for which the Contractor invoices for payment.

## **13. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED**

During the performance of this Contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by federal or Virginia law related to discrimination in employment except where there is a bona fide

occupational qualification reasonably necessary or related to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that the Contractor is an Equal Opportunity Employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- d. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment, and mandates their full participation in both publicly and privately-provided services and activities.
- e. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000.00 relating to this Contract, so that these provisions will apply to each subcontractor or vendor.

**14. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED**

In accordance with § 2.2-4311.1 of the Code of Virginia, 1950, as amended, the Contractor acknowledges that it does not, and shall not during the performance of this Contract, knowingly employ an unauthorized alien as that term is defined in the federal Immigration Reform and Control Act of 1986.

**15. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR**

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of marijuana or any other controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000.00 relating to this Contract, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor by Arlington County, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

**16. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE**

Either party may terminate this Contract for cause in the event that the other party fails to perform any of the material covenants, conditions or agreements contained in this Contract, unless such default is cured within thirty (30) days (or such longer period of time as mutually may be agreed to by the parties in writing) of delivery of written notice of such default to the defaulting party. If the County is in material default of this Contract and such default continues for a period of thirty (30) days after Contractor's written notice to the County, then Contractor shall also have an independent and alternative right to suspend delivery of products or services. Each party may also terminate this Contract upon notice to the other party if the other party has become insolvent, has filed for bankruptcy, or has been declared insolvent or bankrupt.

Termination of the Contract (whether for cause or otherwise) shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve either party of liability to the other for responsibilities accrued prior to termination (including by way of example, and not limitation, liability for damages sustained by either party by virtue of any breach of the Contract or

the County's obligation to pay all fees for which funds have been appropriated by the County Board of Arlington County, Virginia for satisfactorily completed services).

#### **17. TERMINATION FOR THE CONVENIENCE OF THE COUNTY**

The performance of Work under this Contract may be terminated for convenience by the County Purchasing Agent, in whole or in part, whenever the Purchasing Agent shall determine that such termination is in the County's best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination at least fifteen (15) days before the date of termination, specifying the extent to which performance of the work under this Contract is terminated and the date upon which such termination becomes effective. The Contractor will be entitled to receive compensation for all Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by the County prior to such termination and any other reasonable termination costs as negotiated by the parties, but no amount shall be allowed for Contractor's anticipatory profits.

After receipt of a notice of termination and except as otherwise directed, the Contractor shall stop all designated work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to the County; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

#### **18. INDEMNIFICATION**

- (i) **Acknowledgement.** No provisions of this Contract shall be construed as affecting or negating the standards, immunities or limitations for liability set forth in any applicable law limiting the liability of any party providing or assisting in providing any 911-related products or services, including without limitation Va. Code Ann. § 8.01-225(C).
- (ii) **Indemnity from Contractor.** Contractor agrees to indemnify, defend and hold harmless the County, its officers, employees and agents (each a "County Indemnitee") from and against any and all liability and costs (including reasonable attorneys' fees) incurred by any County Indemnitee in connection with any damages, liabilities or third party claim to the extent directly arising out of or resulting from the negligent act or omission of Contractor (including its employees, subcontractors, and licensors that are used by Contractor in providing the services to the County under this Contract) in performing Contractor's work covered by this Contract.
- (iii) **IP Indemnity.** Contractor shall defend, indemnify and hold harmless the County from and against any loss, damage, or liability assessed against the County in a final judgment by a court of competent jurisdiction or any settlement that Contractor has agreed upon with such third party, including reasonable costs and attorney fees, for any loss, damage or liability that arises out of a claim, suit, or allegation by a third party that the Contractor services (including the products of Contractor's subcontractors or licensors that are used by Contractor in providing the services to the County under this Contract) delivered to the County ("Contractor Products") infringes a patent, trademark or copyright or other intellectual property right of such third party (an "IP Claim"). Contractor shall not be liable or have any obligation of indemnification under this section for: (A) any costs or expenses incurred by the County without Contractor's prior written authorization (which consent shall not be unreasonably withheld or delayed); (B) designs, instructions, specifications, data, materials, content or any other intellectual property provided solely by the County; (C) infringement caused from unauthorized modifications to the Contractor Products by the County, its employees, agents, contractors or any other person not authorized by Contractor in writing in advance; (D) (D) the County's combination of Contractor Products with other products or

services without the prior written authorization from Contractor if the infringement would have been avoided but for such combination, or (E) Contractor's implementation of a County-originated design or modification to the extent infringement is due to such County-specified design or modification.

- (iv) **Indemnity Procedure.** The County shall provide Contractor with (A) prompt written notice of any claim under this section for which it or any County Indemnitee seeks indemnification hereunder; and (B) full information and assistance in settling and/or defending the claim. The County agrees not to incur expenses nor settle or compromise such a claim for which indemnification is sought under this Contract without the prior written consent of the Contractor (which consent shall not be unreasonably withheld or delayed). Neither party shall agree to settle or compromise a claim for which indemnification is sought under this Contract without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed).
- (v) **IP Claim Infringement Remedy.** In addition to and without limiting any of the foregoing, if the use, manufacture, or sale of Contractor Products furnished hereunder becomes subject to an IP Claim, Contractor shall, at Contractor' option and at no expense to the County, (A) by license or other release from claim of infringement obtain for the County the right to use the Contractor Products, as appropriate; (B) substitute an equivalent non-infringing product or service reasonably acceptable to the County, which meets in all material respects the specifications for the Contractor Products as provided herein; (C) modify such Contractor Products to make it non-infringing but continue to meet the specifications therefor as provided herein; or (D) if Contractor cannot reasonably obtain the remedies in (A), (B) or (C), refund the pro-rated portion of the allocable fees and charges previously paid by the County to Contractor for the infringing portion of the Contractor Products and the County may terminate the Contract upon written notice to the Contractor.
- (vi) **Exclusive Remedy for Indemnification.** The remedies set forth in this section shall be the exclusive remedies of the County with reference to any claims for indemnification and any IP Claim.

#### **19. CONFIDENTIAL INFORMATION**

The Contractor acknowledges the sensitive and confidential nature of information that it may obtain with regard to (i) data provided by the County pursuant to this Contract and (ii) text messages or other data transmitted or received through the Interim Text-to-9-1-1 Emergency Call Answering Solution (herein collectively referred to as "County Data"). Contractor agrees that County Data will be kept in strict confidence by the Contractor using the same degree of care as it employs with respect to its own information of like importance but in any event not less than reasonable care. The Contractor shall treat all County Data as confidential information and the Contractor shall only use County Data for the performance of services under the Contract and agrees not to otherwise use or disclose any County Data in violation of any applicable law covering the County Data (including, without limitation, to the extent applicable, the Health Insurance Portability and Accountability Act). Contractor acknowledges that the County is subject to the Virginia Freedom of Information Act "VFOIA") and that certain records of the County are open to inspection, unless an applicable exemption exists. Contractor acknowledges that the Contract and any information that Contractor submits to the County shall be subject to VFOIA, therefore any information that Contractor submits may be excluded from the mandatory disclosure provision of VFOIA if Contractor identifies and properly invokes a VFOIA exclusion in writing. The County may disclose this Contract and information related to it in compliance with the VFOIA, and shall promptly notify Contractor of any requests pursuant to the VFOIA for this Contract, information or copies of any documents related to this Contract. Except to the extent that disclosure is required pursuant to the VFOIA, each party shall maintain the confidentiality of and not disclose to third parties (other than its employees or contractors on a need-to-know basis and who are subject to confidentiality obligations at



least as protective as those set forth herein) all information or data of any nature provided to it by the other party hereto provided such information contains a conspicuous marking properly identifying it as confidential or proprietary under applicable provisions of the VFOIA, or in the case of confidential information disclosed orally, is identified as confidential at the time of disclosure and a written summary provided to the receiving party within fifteen (15) days of disclosure ("Confidential Information").

Confidential Information shall not include information that (i) is or becomes a part of the public domain through no act or omission of the receiving party; (ii) was in the receiving party's lawful possession prior to the disclosure and had not been obtained by the receiving party either directly or indirectly from the other party; (iii) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or (iv) is independently developed by the receiving party without use of or reference to the Confidential Information of the other party. In addition, this section will not be construed to prohibit disclosure of Confidential Information by either party to the extent that such disclosure is required by law or valid order of a court or other governmental authority.

Except to the extent that disclosure is required pursuant to the VFOIA, the County shall not disclose the results or other details of any performance tests or other evaluations of any products or services made available by TCS hereunder to any third party without TCS's prior written approval.

Each party acknowledges and agrees that the other party may be damaged irreparably in the event any of these confidentiality obligations are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each party agrees that, in addition to any other remedy to which the non-breaching party may be entitled, at law or in equity, the non-breaching party shall be entitled to seek an injunction or injunctions to prevent breaches or threatened breaches of the provisions of this section and to enforce specifically such provisions in a court of competent jurisdiction as provided in the Contract.

## **20. ETHICS IN PUBLIC CONTRACTING**

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as any Virginia or federal law related to ethics, conflicts of interest, or bribery, including, by way of illustration and not limitation, the Virginia State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its offer was made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

## **21. COUNTY EMPLOYEES**

No employee of the County shall be admitted to any share in any part of this Contract or to any benefit that may arise therefrom which is not available to the general public.

## **22. FORCE MAJEURE**

The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, an act of God or other cause beyond the control of the Contractor and outside the scope of the Contractor's then-current, by industry standards, disaster plan that make performance impossible or illegal, unless otherwise specified in the Contract.

The County shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, an act of God or other cause beyond the control of the County that make performance impossible or illegal, unless otherwise specified in the Contract.

**23. AUTHORITY TO TRANSACT BUSINESS**

The Contractor shall, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the Initial Term and any Subsequent Contract Term(s) of this Contract. A contract entered into by a Contractor in violation of this requirement is voidable, without cost or expense, at the sole option of the County.

**24. RELATION TO THE COUNTY**

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will, under any circumstances, be considered employees, servants or agents of the County. The County will not be legally responsible for any negligence or other wrongdoing by the Contractor, its employees, servants or agents. The County will not withhold from payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor or its employees, servants or agents. Furthermore, the County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by the County for its employees.

**25. ANTITRUST**

By entering into this Contract, the Contractor conveys, sells, assigns and transfers to the County all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States or the Commonwealth of Virginia, relating to the goods purchased or acquired by the County under this Contract.

**26. AUDIT**

The Contractor agrees to retain all books, records and other documents related to this Contract for at least three (3) years after final payment. Subject to the Contractor's reasonable security requirements, the County or its authorized agents shall have reasonable access to and the right to examine any of the above documents during this period and during the Initial Contract Term and any Subsequent Contract Term. If the Contractor wishes to destroy or dispose of records related to this Contract (including confidential records to which the County does not have ready access) within three (3) years after final payment, the Contractor shall notify the County at least thirty (30) days prior to such disposal, and if the County reasonably objects, shall not dispose of the records. The Contractor may redact from the records provided to the County (and shall not be required to preserve for the County) any information that reveals the identity or non-public information of other Contractor customers or other Contractor confidential or protected information that is not relevant to the reasonable purposes of a County permitted records review.

Any third-party audit is expected to be conducted by a reputable and nationally recognized audit company at the expense of the County. Furthermore, any audit shall be subject to the representative to whom access of such materials is provided being subject to appropriate confidentiality obligations to preclude the disclosure or use of any information except for the reasonable purposes of the audit.

Any audit must be conducted during regular business hours and in a manner so as not to unreasonably interfere with the normal business operations of the Contractor. Audits may not be undertaken more frequently than once per year. In addition, in no event shall any audit be made upon less than ten (10) business days prior written notice.

**27. ASSIGNMENT**

All provisions of the Contract shall be binding upon, inure to the benefit of and be enforceable by and against each party and their respective successors and permitted assigns. Notwithstanding the foregoing, neither the Contract nor any rights granted under it may be sold, leased, assigned, or otherwise transferred, in whole or in part, by either party without the prior written consent of the other party and any such attempted assignment shall be void and of no effect; provided, however that prior written consent from the County shall not be required in connection with (a) Contractor granting a security

interest in, or otherwise assigning, transferring or conveying, any right to any payment under this Contract to a bank or other financial institution, or (b) Contractor assigning, transferring or conveying the Contract to any Affiliate (as defined below) or successor-in-interest pursuant to a merger or a sale of all or substantially all of its stock or assets. Notwithstanding the foregoing in no event shall any assignment, including without limitation the grant of a security interest or otherwise assigning the Contract, relieve the Contractor from its obligations or change the terms of the Contract, without written amendment of the Contract signed by the County Purchasing Agent. "Affiliate" shall mean any person or entity controlling, controlled by, or under common control with Contractor. For purposes of this definition, "control" means the ownership, directly or indirectly, of equity securities or interests that represent at least a majority of the voting power of the equity ownership of such entity.

**28. AMENDMENTS**

Unless otherwise specified herein, this Contract shall not be amended except by written amendment executed by persons duly authorized to bind the Contractor and the County.

**29. ARLINGTON COUNTY PURCHASING RESOLUTION**

Notwithstanding any provision to the contrary herein, no provision of the Arlington County Purchasing Resolution is waived in whole or in part.

**30. DISPUTE RESOLUTION**

All disputes arising under this Agreement, or its interpretation, whether involving law or fact, extra work or extra compensation or time, and all claims for alleged breach of Contract shall be submitted in writing to the Project Officer for decision at the time of the occurrence or beginning of the work upon which the claim is based, whichever occurs first. Any such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than sixty (60) days after final payment. The time limit for final written decision by the County Manager in the event of a contractual dispute, as that term is defined in the Arlington County Purchasing Resolution, is fifteen (15) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Purchasing Resolution, which is incorporated herein by reference. A copy of the Arlington County Purchasing Resolution is available upon request from the Office of the Purchasing Agent. The Contractor shall not cause a delay in the Work pending a decision of the Project Officer, County Manager, County Board, or a court.

**31. APPLICABLE LAW, FORUM, VENUE, AND JURISDICTION**

This Contract and the work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia, and the jurisdiction, forum, and venue for any litigation with respect hereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In performing its work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

**32. ARBITRATION**

It is expressly agreed that nothing under the Contract shall be subject to arbitration, and that any references to arbitration are expressly deleted from the Contract.

**33. NONEXCLUSIVITY OF REMEDIES**

All remedies available to either party under this Contract are cumulative, and no such remedy shall be exclusive of any other remedy available to a party at law or in equity.

**34. NO WAIVER**

The failure of either party to exercise in any respect a right provided for in this Contract shall not be deemed to be a subsequent waiver of the same right or any other right.

**35. SEVERABILITY**

The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

**36. [Intentionally omitted.]**

**37. SURVIVAL OF TERMS**

In addition to the numbered section in this Agreement which specifically state that the term or paragraph survives the expiration of termination of this Contract, the following sections if included in this Contract also survive: INDEMNIFICATION; RELATION TO COUNTY; AUDIT; WARRANTY; AND CONFIDENTIAL INFORMATION.

**38. HEADINGS**

The section headings in this Contract are inserted only for convenience and are not to be construed as part of this Contract or a limitation on the scope of the particular section to which the heading precedes.

**39. AMBIGUITIES**

Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

**40. NOTICES**

Unless otherwise provided herein, all notices and other communications required by this Contract shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

**TO THE CONTRACTOR:**

TeleCommunication Systems, Inc.  
275 West Street  
Annapolis, MD 21401  
Attn.: Contracts  
Tel.: 410-263-7616  
Fax: 410-280-4903

**TO THE COUNTY:**

Jeffrey Horwitz  
Office of Emergency Management  
Emergency Communications Center  
1425 N. Courthouse Road, 7<sup>th</sup> Floor  
Arlington, VA 22201

**AND**

Michael E. Bevis, Purchasing Agent  
Arlington County, Virginia  
2100 Clarendon Boulevard, Suite 500  
Arlington, Virginia 22201

Either party may change the names or address to which notices must be sent by sending a written notice to the other party.

#### **41. NON-DISCRIMINATION NOTICE**

Arlington County does not discriminate against faith-based organizations.

#### **42. INSURANCE REQUIREMENTS**

The Contractor shall provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force the coverage below prior to the start of any Work under this Contract and upon any contract extension. The Contractor agrees to maintain such insurance until the completion of this Contract or as otherwise stated in the Contract Documents. All required insurance coverages must be acquired from insurers authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides, and acceptable to the County. The minimum insurance coverage shall be:

- a. Workers Compensation - Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employers liability with limits of \$100,000/100,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- b. Commercial General Liability - \$1,000,000 combined single limit coverage with \$2,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability, Independent Contractors, and Products Liability. The general aggregate limit shall apply to this Contract. Evidence of Contractual Liability coverage shall be typed on the certificate.
- c. Business Automobile Liability - \$1,000,000 Combined Single Limit (Owned, non-owned and hired).
- d. The Contractor shall carry Errors and Omissions or Professional Liability insurance which will pay for injuries arising out of errors or omissions in the rendering, or failure to render services or perform Work under the contract, in the amount of \$1,000,000.
- e. Additional Insured - Arlington County, and its officers, elected and appointed officials, employees, and agents shall be named as an additional insureds on all policies except Workers Compensation and Auto and Professional Liability; and evidence of the Additional Insured endorsement shall be typed on the certificate.
- f. Cancellation - If there is a material change or reduction in coverage the Contractor shall notify the Purchasing Agent immediately upon Contractor's notification from the insurer. It is the Contractor's responsibility to notify the County upon receipt of a notice indicating that the policy will not be renewed or will be materially changed. Any policy on which the Contractor has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be replaced with another policy consistent with the terms of this Contract, and the County notified of the replacement, in such a manner that there is no lapse in coverage. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- g. Any insurance coverage that is placed as a "claims made" policy must remain valid and in force, or the Contractor must obtain an extended reporting endorsement consistent with the terms of this Contract, until the applicable statute of limitations has expired, such date as determined to begin running from the date of the Contractor's receipt of final payment.
- h. Contract Identification - The insurance certificate shall state this Contract's number and title.

The Contractor must disclose the amount of any deductible or self insurance component applicable to the General Liability, Automobile Liability, Professional Liability, Intellectual Property or any other policies

required herein, if any. The County reserves the right to request additional information to reasonably determine if the Contractor has the financial capacity to meet its obligations under a deductible. Thereafter, at its reasonable option, the County may require a lower deductible, funds equal to the deductible be placed in escrow, a certificate of self-insurance, collateral, or other mechanism in the amount of the deductible to ensure protection for the County.

The Contractor shall require all subcontractors to maintain during the term of this Contract, Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation insurance in the same form and manner as specified for the Contractor. The Contractor shall furnish subcontractors' certificates of insurance to the County promptly upon request by the County.

No acceptance or approval of any insurance by the County shall be construed as relieving or excusing the Contractor from any liability or obligation imposed upon the Contractor by the provisions of the Contract Documents.

The Contractor shall be responsible for the work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the work. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.

The Contractor shall be as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.

Notwithstanding any of the above, the Contractor may satisfy its obligations under this section by means of self insurance for all or any part of the insurance required, provided that the Contractor can demonstrate financial capacity and the alternative coverages are submitted to and acceptable to the County. In such event, the Contractor must also provide its most recent actuarial report and provide a copy of its self insurance resolution to determine the adequacy of the insurance funding.

#### **43. OTHER SPECIAL TERMS AND CONDITIONS.**

The following additional terms and conditions are hereby incorporated into the Contract:

- (a) **Ownership.** No ownership interest in any products, services or materials developed, made available or otherwise provided by TCS under this Contract shall pass to County. For greater certainty and without limiting the foregoing, title and all intellectual property rights in and to any communications equipment, other hardware, software, documentation, data and other materials in any form installed or provided by TCS and used by County or TCS hereunder will remain at all times with TCS and its licensors. Except to the extent the following restrictions are prohibited by law, the County shall not, directly or indirectly: (i) modify, adapt, translate, copy, duplicate, print, reproduce, decompile, prepare derivative works of or reverse engineer all or any portion of the Interim Text-to-9-1-1 emergency call answering solution provided to it by Contractor hereunder or attempt to do so; or (ii) knowingly authorize, or acquiesce in, any other person engaging in these activities, or attempting to do so.

Notwithstanding the foregoing, with respect to any County database provided by the County to TCS for purposes of the performance of services hereunder, as between the parties the County retains all right, title and interest in and to all data in such Customer database and TCS is granted only a right to use any such data in connection with the delivery and/or the performance of services hereunder.

**(b) Limitations of Liability.**

- (i) With the exception of (1) liability for personal injury, death or property damage directly caused by the negligent acts or willful misconduct of TCS (including its employees, subcontractors, and licensors that are used by Contractor in providing the services to the County under this Contract); (2) TCS' indemnification obligations for any IP Claims as expressly set forth in this Contract; and (3) TCS' breach of the confidentiality obligations set forth in this Contract, TCS'S AGGREGATE LIABILITY TO THE COUNTY UNDER THIS CONTRACT SHALL NOT EXCEED THE TOTAL PAYMENTS ACTUALLY RECEIVED BY TCS FROM THE COUNTY PURSUANT TO OR IN CONNECTION WITH THE CONTRACT IN THE PRECEDING TWELVE-MONTH PERIOD.
- (ii) With the exception of TCS' indemnification obligations for any IP Claims as expressly set forth in this Contract, IN NO EVENT SHALL TCS BE LIABLE TO THE COUNTY FOR ANY INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS OR REVENUE, INCURRED BY THE COUNTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF TCS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (iii) TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ANY OF TCS'S LICENSORS BE DIRECTLY LIABLE TO THE COUNTY FOR ANY DAMAGES OR LOSS OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR USE, INCURRED BY COUNTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF SUCH TCS LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (iv) The provisions of this Contract allocate the risks between TCS and the County. The County acknowledges and agrees that but for such allocation of risk and limitation of liability as provided herein the pricing it would receive under this Contract would be different.

**(c) Government Restricted Rights.** To the extent the user of the services hereunder is any unit or agency of the United States Government (the "Federal Government"), or if the user of the services hereunder is using funds provided by the Federal Government for this Contract, the following applies:

It is understood and acknowledged that all products and/or services provided or made available hereunder are classified, as applicable, as "Commercial Computer Software" and/or "Software Documentation" and/or "Technical Data" related to "Commercial Items", as such terms or their equivalents are defined in the applicable provisions of the Federal Acquisition Regulations ("FARs") and supplements thereto, including the Department of Defense FAR Supplement ("DFARS"), and are provided with RESTRICTED RIGHTS. For greater certainty, it is understood and acknowledged that all such products and/or services were developed entirely at private expense and no part of such products and/or services were first produced in the performance of a Federal Government contract. As such, to the extent applicable, consistent with FAR 12.211 and 12.212 (and any other applicable equivalent FAR or DFARS provision) any such products and/or services provided to or used by or for the Federal Government may be done so only under and subject to the commercial license terms

and /or rights to use included in this Contract and the Federal Government's rights therein are to be RESTRICTED and/or LIMITED pursuant to such terms.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON  
COUNTY, VIRGINIA

NAME: MICHAEL E. BEVIS

TITLE: PURCHASING AGENT

SIGNATURE: 

DATE: 09/01/15

TELECOMMUNICATION SYSTEMS, INC.

NAME: James D. Nohl

TITLE: Associate Counsel

SIGNATURE: 

DATE: August 27, 2015



# EXHIBIT A

**TEXT TO 9-1-1 SOLUTION  
STATEMENT OF WORK  
AGREEMENT NUMBER 808-15  
BETWEEN  
BOARD OF ARLINGTON COUNTY, VIRGINIA  
AND  
TELECOMMUNICATION SYSTEMS, INC (TCS).**

This Statement of Work (SOW) is hereby incorporated into and made an integral part of Agreement Number 808-15 (hereinafter referred to as "Contract") between the Arlington County Board of Arlington, Virginia (hereinafter referred to as "Customer") and NextGen Communications, Inc., a wholly-owned subsidiary of TeleCommunication Systems, Inc. (hereinafter referred to as "TCS").

**STATEMENT OF WORK**

## **TCS Proprietary Level 2 Guidelines**

TCS Proprietary Level 2 is applied to information assets that are classified as Business Critical or Highly Confidential. Below is a summary of the instructions for handling.

- **Accessibility:** Media must be kept from view of unauthorized individuals. Documents or other media should not be left in view on computer screens, desks, or tabletops. When not in use, they should be stored out of plain sight. When removable media (e.g., thumb drives or CDs) or email is used to store or transmit this level of information, encryption is recommended. Care should be taken that distribution is only to the intended recipients.
- **External Distribution:** Media containing proprietary information of this level should be delivered directly and may require signature of receipt using approved carriers.
- **Electronic Distribution:** Media containing proprietary information of this level should be encrypted; however, it is not required.
- **Disposal:** When electronic media or printed media containing TCS proprietary information are no longer needed and any applicable retention period has lapsed, the data should be electronically deleted or physically destroyed. All Proprietary Level 2 printed media must be shredded or securely disposed of.

The following information is TCS confidential and proprietary and may be protected under one or more United States and foreign patent(s) and/or patent applications.

## **Notices**

AtlasBook<sup>®</sup>, BGADrive<sup>®</sup>, Connections that Matter<sup>®</sup>, Enabling Convergent Technologies<sup>®</sup>, Galatea<sup>®</sup>, Geopoke<sup>®</sup>, Gokivo<sup>®</sup>, MO Chat<sup>®</sup>, NAVBuilder<sup>®</sup>, Proteus<sup>®</sup>, Secure the Edge<sup>®</sup>, SwiftLink<sup>®</sup>, TCS VoIP Verify<sup>®</sup>, The Art of Where<sup>®</sup>, TrafficBuilder<sup>®</sup>, VoIP Verify<sup>®</sup>, and Xypoint<sup>®</sup> are registered trademarks and Art of Exploitation<sup>™</sup>, Convergence 911<sup>™</sup>, DopplerNav<sup>™</sup>, EMInet<sup>™</sup>, Family Minder<sup>™</sup>, GEM<sup>™</sup>, GEM 9-1-1<sup>™</sup>, GeoNexus<sup>™</sup>, IMPACT<sup>™</sup>, Livewire911<sup>™</sup>, Location Connect<sup>™</sup>, M2MC<sup>™</sup>, Mercury GeoLink<sup>™</sup>, PerformanScore<sup>™</sup>, RAVE911<sup>™</sup>, TotalCom<sup>™</sup>, Total Mobility Management<sup>™</sup>, Triton<sup>™</sup>, Trusted Circle<sup>™</sup>, TCS<sup>™</sup>, and VirtuMedix<sup>™</sup> are trademarks of TCS in the U.S. and certain other countries.

All other brand names and product names used in this document are trademarks, registered trademarks, or service marks of their respective holders.

As of September 30, 2014, TCS holds 373 issued patents and has more than 290 patent applications pending worldwide. Its patents cover a broad spectrum of technologies, including wireless data, text and voice

telecommunications, location-based services, GIS/mapping, intercarrier messaging, secure communications, public safety/E9-1-1, and mobile navigation.

NASDAQ GS: TSYS

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# 1. Introduction

This Statement of Work ("SOW") is issued by the Office of Emergency Management (OEM) on behalf of the County and is governed by and will be performed under the terms and conditions of the Master Sales Agreement between the Customer and TCS being entered into concurrently (the "Agreement") to which this SOW is hereby made a part. It describes TCS' Text-to-9-1-1 services for Public Safety Authorities, to be provided by TCS to the Customer under the Agreement. It explains how the Text-to-9-1-1 services will work from a technical, deployment, and operational perspective. The document sets forth the parties' respective roles and responsibilities with regard thereto. Certain acronyms and abbreviations used herein are set for in Appendix A attached hereto.

## 2. EMedia Solution for 9-1-1 Authorities and PSAPs

The EMedia solution is an advanced set of services to provide feature-rich capabilities combined with ease of management of SMS Text-to-9-1-1 sessions for 9-1-1 Authorities and PSAPs. Those capabilities include:

- Aggregation of the SMS Text-to-9-1-1 traffic from multiple wireless carriers ("carriers") and TCC (Text Control Center) vendors
- EMedia browser window for access from the PSAP's CPE
- A single interface to existing or developing ESInets
- SMS Text-to-9-1-1 session handling
- Session transfer capability between public safety answering points (PSAPs) with session history
- Session transfer control by designated PSAP administrator using EMedia administrative portal
- Hand-off of sessions within a PSAP
- Language translation service (Spanish only) – future feature
- Enhanced Reporting
- Capability to start with a transitional browser-based system and migrate to an i3/MSRP-compliant system. Conversion from the web portal interface to the i3/MSRP interface will incur additional charges.
- Transfers between web browser PSAPs and i3/MSRP PSAPs will be available by the end of 2015.

### 2.1. EMedia Integrated Architecture

The solution functions as a single aggregator and support a regional deployment where multiple PSAPs in a given jurisdiction shall have text messages aggregated through one interface to multiple TCC vendors and multiple carriers providing SMS to 9-1-1 services. The TCS-provided single interface node is compatible with a web-based text display. The TCS TCC manages the text messages as they originate from TCS-connected carriers. This system consists of Short Message Peer-to-Peer Protocol (SMPP) interfaces that connect to carrier Short Message Service Centers (SMSCs), and Mobile Location Protocol (MLP) interfaces that connect to carrier location servers. The TCC also utilizes a National Emergency Number Association (NENA) i3-compliant Emergency Services Routing Proxy (ESRP) to query the Emergency Call Routing Function (ECRF). The ECRF relies on Geographic Information System (GIS) data gathered by TCS. The TCC also uses an ATIS-compliant MSRP interface, called MxP, to interface with other TCCs.

The TCS TCC service includes the following functions:

- Accepts incoming SMS text sessions.
- Verifies that there is a text-capable PSAP available in that area (based on GIS and rules).
- If there is no available PSAP, the TCC sends a bounce back message to the texter.
- If the message originates within the boundary of an Emergency Services IP Network (ESInet) supporting MSRP, the TCC sends the message to that ESInet passing control to the ESInet.

- If the message originates within the boundary of a PSAP connected to a different TCC, it will forward the session to that TCC for delivery.
- If the PSAP is subscribed, it sends the session to EMedia.

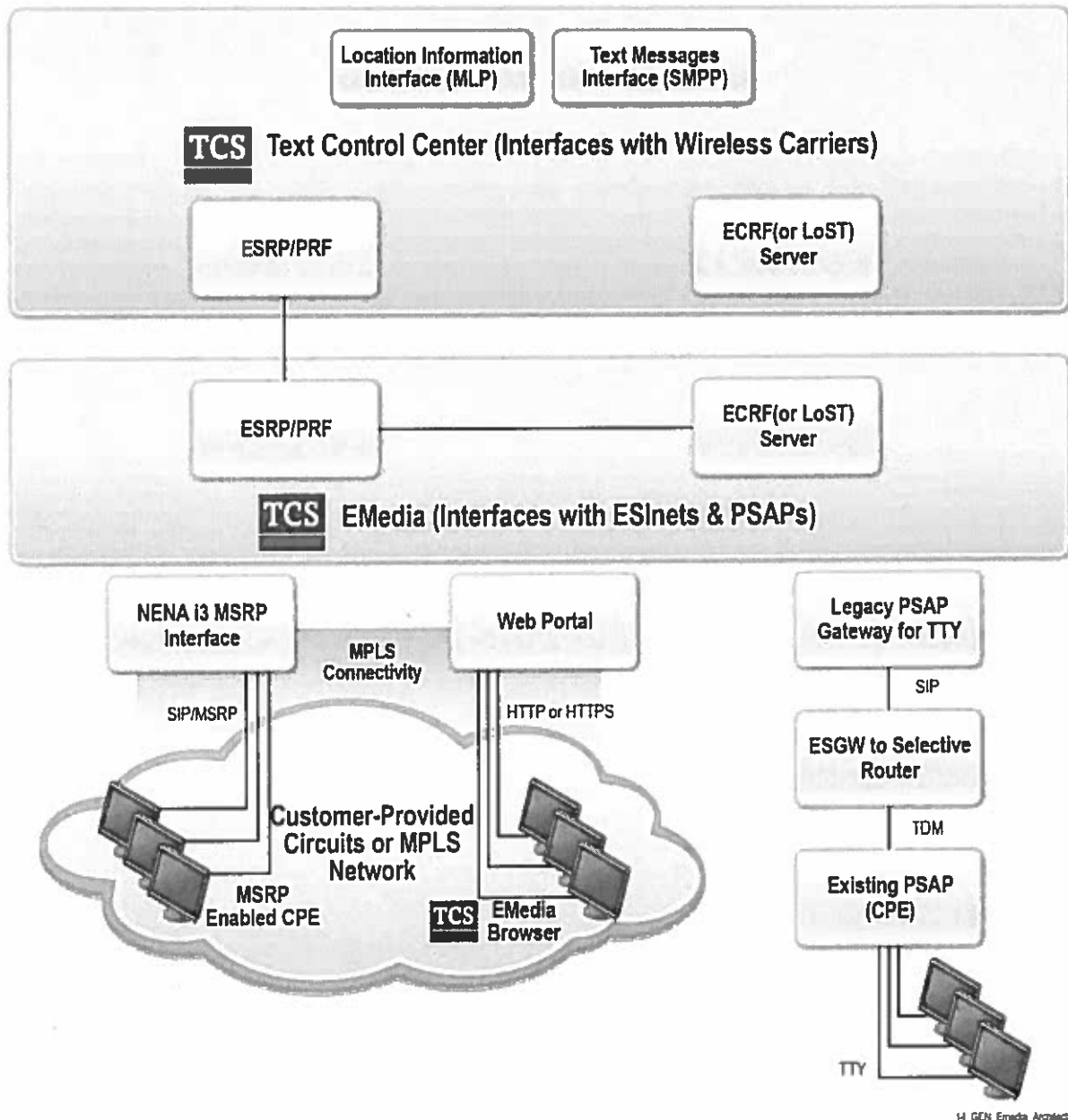


Exhibit 1. EMedia Architecture

## 2.2. 9-1-1 Authority Provides Connectivity to EMedia Solution

The EMedia solution is hosted from TCS data centers located in Dallas, Texas, and Raleigh, North Carolina. The Customer shall provide connectivity to the EMedia solution. TCS recommends that the Customer deploys Multiprotocol Label Switching (MPLS) circuits to the Customer's chosen points of

presence for high availability and reliability. Alternatively, the Customer may choose public internet over MPLS circuits as another form of connectivity.

### 2.3. EMedia Web Browser Administrative Portal

The EMedia web browser interface includes an administrative portal for the creation of predefined messages for operators to choose as responses to texters. These predefined responses are accessed via a drop-down box. The interface supports both the creation and list priority for these messages. The administrative portal also provides PSAP administrators the ability to set up operator accounts and reset passwords. The administrator(s) also can select from a number of policy routing rules, including time-of-day maximum number of concurrent sessions allowed and failover routing to alternate PSAPs. Hypertext Transfer Protocol Secure (HTTPS) is the protocol for web delivery. Exhibit 1 illustrates the EMedia web browser interface.

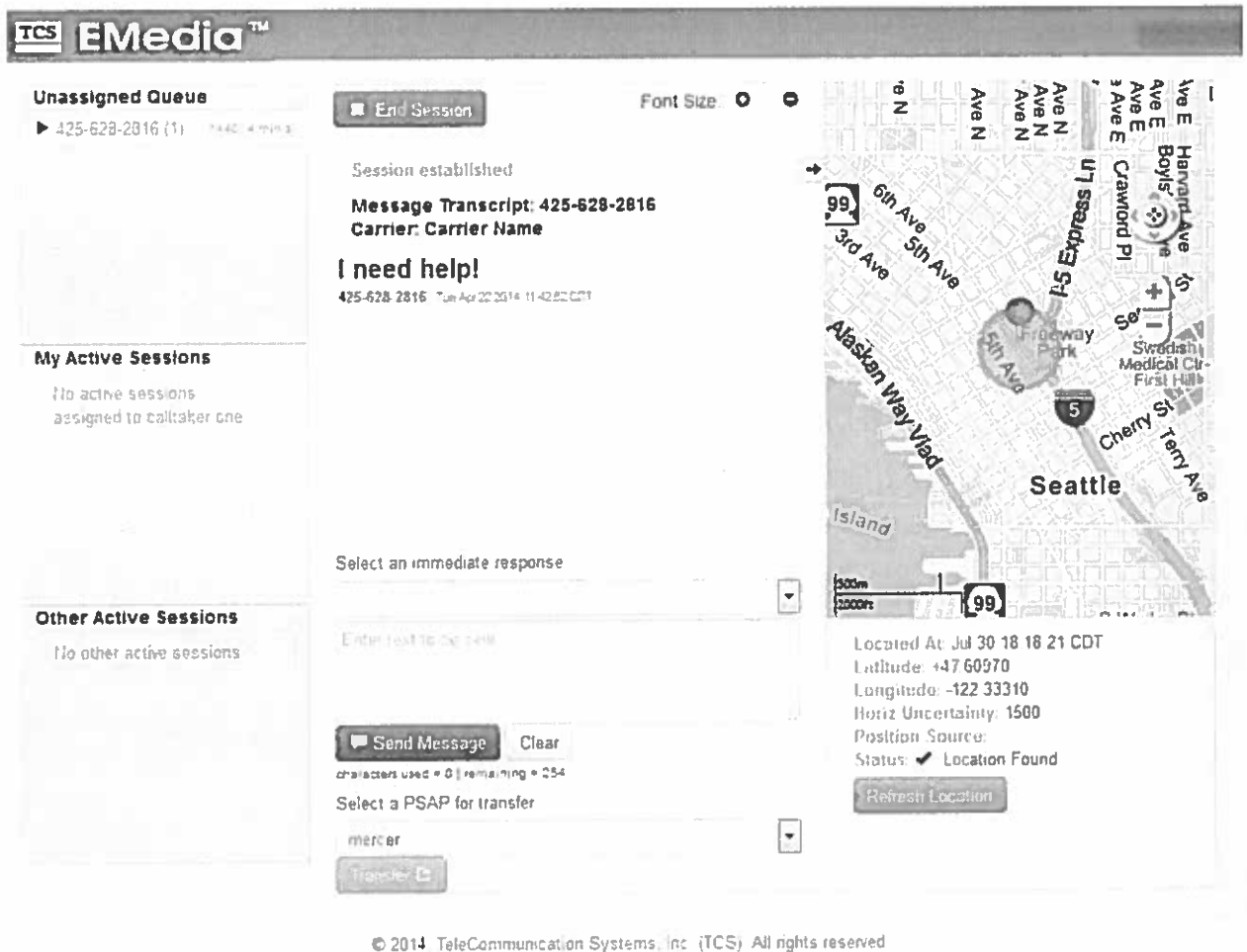


Exhibit 1. EMedia Web Browser Interface

### 2.4. EMedia Reporting Portal

The EMedia service and EMedia web portal includes a reporting portal with a comprehensive set of text reports that are downloadable for ease of management. The reports available include:

- Messages per Hour
- Messages per Hour by Carrier



- Messages by Telecommunicator
- Telecommunicator Average Speed of Answer
- Messages per Session Profile
- Telecommunicator Average Speed of Response
- Telecommunicator Single Session Average Response
- Average Session Duration
- Top 20 Busiest Hours
- Sessions from Same MDN
- Top 10 Session from same Mobile Directory Number (MDN))

Exhibit 2 illustrates the reporting portal view.

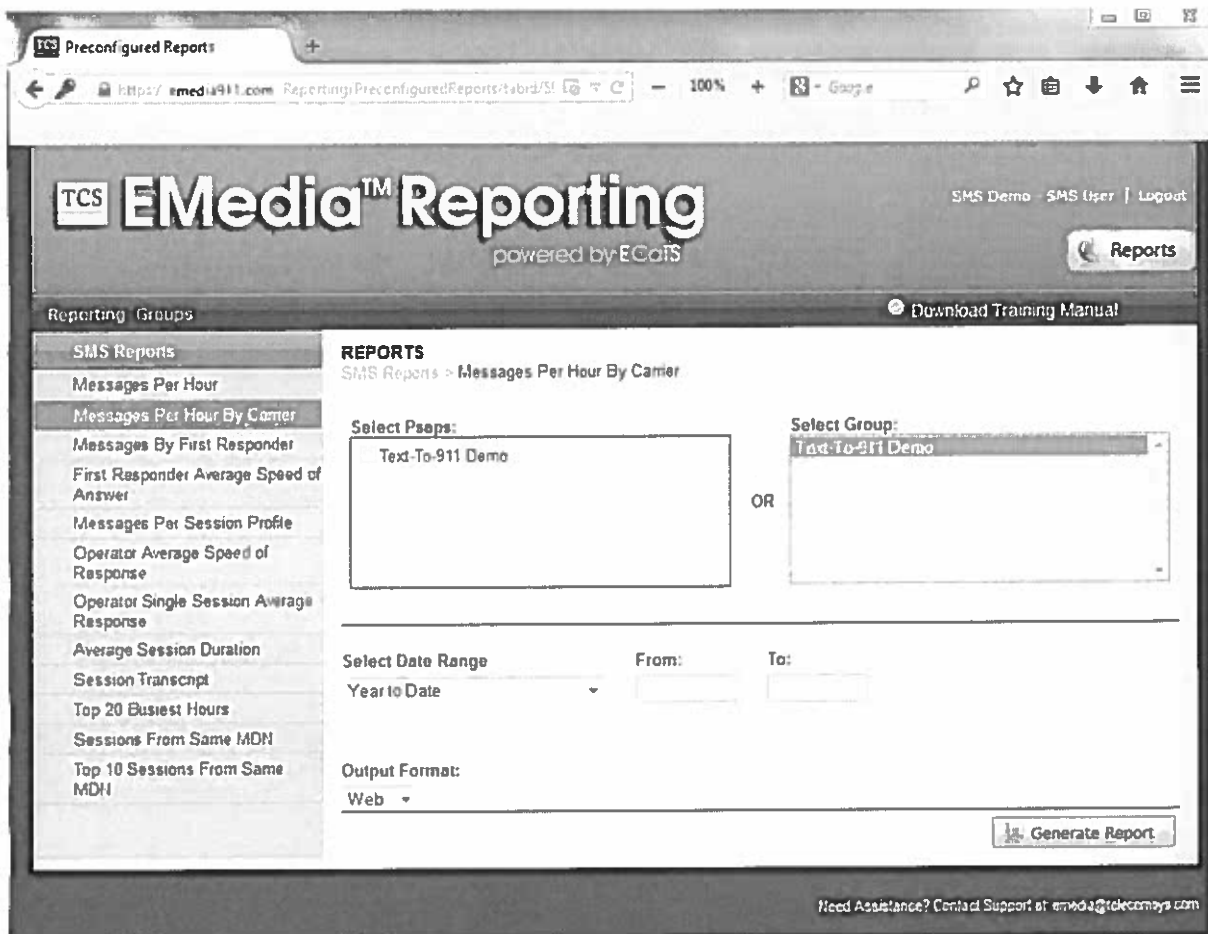


Exhibit 2. EMedia Reporting Portal

## 2.5. Use Cases

### 2.5.1. Text Message Call from An Interconnected Text Application or SMS

The solution shall support this use case and shall function as follows:

- Person with wireless device using SMS or an Interconnected text application, without speaking to the PSAP, and located within the jurisdictional boundaries of the Customer, texts in a request for help and enter the digits '911' as the sender phone number and requests emergency medical assistance. The solution shall complete:
  - The text call from user to EMedia browser accessible by call taker
  - The location retrieval in the form of lat/lon instance that is provided by the carrier, either coarse or enhanced.
  - At a minimum, the display of information about the text caller, including:
    - Callback phone number
    - Coarse location (coordinates of cell-sector centroid) as received from the carrier
    - Carrier network delivering text message when available
    - Horizontal uncertainty information such as latitude, longitude, range in meters of where caller is located
    - Street map with location of caller indicated by a pinpoint marker

### 2.5.2. Text Message Call from An Over the Top (Non-interconnected) Texting Application

The solution shall support this use case provided that the application has converted the messages to SMS and that the SMS messages are delivered to TCS via SMPP. The solution shall function as follows:

- Person with wireless device using SMS or an Over the Top (Non-Interconnected) text application, without speaking to the PSAP, and located within the jurisdictional boundaries of the Customer, texts in a request for help and enters the digits '911' as the sender phone number and requests emergency medical assistance. The solution shall complete:
  - The text call from user to EMedia browser accessible by call taker
  - The location retrieval in the form of lat/lon instance that is provided by the carrier, either coarse or enhanced.
  - At a minimum, the display of information about the text caller, including:
    - Callback phone number
    - Coarse location (coordinates of cell-sector centroid) as received from the carrier

### 2.5.3. Unknown Text Message Call

The solution shall support this use case and function as follows:

- Person with wireless device using SMS or an Interconnected text application, without speaking to the PSAP, and located within the jurisdictional boundaries of the Customer, texts in the word 'Help' and enters the digits '9-1-1' as the sender phone number and the texter does not provide any other response to the PSAP call taker. The solution shall complete:
  - The text call from user to EMedia browser accessible by call taker
  - The location retrieval in the form of lat/lon instance that is provided by the carrier, either coarse or enhanced.
  - At a minimum, the display of information about the text caller, including:
    - Callback phone number
    - Coarse location (coordinates of cell-sector centroid) as received from the carrier
    - Carrier network delivering text message when available
    - Horizontal uncertainty information such as latitude, longitude, range in meters of where caller is located
    - Street map with location of caller indicated by a pinpoint marker

### 2.5.4. Turn off Text Message Receipt at PSAP.

The solution shall support this use case and function as follows:

- SMS Text-to-911 capability shall be invoked by the call taker logging into the browser. The browser shall allow the PSAP administrator to set the maximum number of active text sessions.
- The browser shall provide the ability to temporarily suspend the receipt of SMS Text-to-911. The browser shall invoke a bounce-back message to the texters when the PSAP has logged out of all EMedia sessions or the PSAP administrator has set the number of EMedia sessions to zero.
- The browser shall display a warning message when the last user attempts to log out.

#### 2.5.5. Call Taker Shift Change Over Within Same Operations Center.

The solution shall support this use case and function as follows:

- At shift change, the browser shall permit the outgoing operator to log out of the EMedia. The browser shall support the incoming operator to log into EMedia and receive immediate access to "New and Other" session queues from which the operator can select and manage an ongoing session.
  - In handing over control of the texting conversation from one call taker to another call taker, the browser shall permit the new operator to log into the EMedia and continue the text conversations with the caller.

#### 2.5.6. TTY Transfer to PSAPs Served by the Same Selective Router

The TCS TCC solution, not the EMedia solution, shall provide TTY transfer of SMS texts between TTY PSAPs on the same selective router that TCS is connected to. The capability is limited to the selective router connectivity provided by the Level 3 Emergency Services Gateways (ESGWs). TTY transfer is a function of the selective router itself.

#### 2.5.7. Transfer Text Message Call between Text-Enabled PSAPs that use EMedia browser

The solution shall support this use case and function as follows:

- Person with mobile device, located on the border of the jurisdictional boundary of the Customer, without speaking to the PSAP, texts 9-1-1 and requests emergency medical assistance. The solution shall complete:
  - The text call from user to EMedia browser accessible by call taker
  - The location retrieval in the form of lat/lon instance that is provided by the carrier, either coarse or enhanced.
  - The transfer of text message call to neighboring PSAP jurisdiction that also use EMedia browser with complete history of initial text call passed to the transferred jurisdiction.
  - The transfer of the text "call" from the initial PSAP to the 'transferred to' PSAP without need of any voice communications between PSAPs. The act of transferring a text call to another PSAP shall occur via a drop down box to select a PSAP from a list to which the text can be transferred.
    - The web browser shall auto-populate the text being transferred with a text supplement message stating something similar to 'the Customer transferring a text message call to PSAP \_\_\_\_\_' (where the blank line would auto populate with the 'transferred to' PSAP name).
    - This feature is in production as of the date of this SOW.
- The web browser shall have the capability for the user to color code or mark the transferred in conversation text history from the original PSAP to indicate the communication was conducted by a third party and to differentiate which communications were conducted by their PSAP and which were conducted by another PSAP.
- The web browser shall provide to the transferring PSAP a positive confirmation (not via a voice phone call) that the transfer has been received at the 'transferred to' PSAP and that the 'transferred to' PSAP has begun to interact directly with the texter. This confirmation shall indicate that the control of the call was officially transferred and time stamped when such transfer was made.

- The browser session that requests location updates shall receive location updates during a text conversation within the original PSAP. The original PSAP's browser session(s) shall have the capability to monitor text conversations.
- The browser shall allow the 'transferred to' PSAPs to receive control of text conversations and release the control from the original PSAP. The control shall be within a PSAP across multiple workstations and shall include the ability to anchor transferred texts, manage the text conversations, request for location updates, and monitor text conversations.
- The browser shall provide options and capabilities with each option to handle transferring situations when the 'transferred to' PSAP is busy and cannot confirm they have received the text. The options shall include:
  - The ability of the original transferring PSAP to reclaim control of the conversation in the event that either the 'transferred to' PSAP is unavailable or the number of sessions exceeds the session limit established by the 'transferred to' PSAP. This feature is targeted for deployment in April 2015.
  - The ability to time-stamp the initiation of the transfer and the subsequent rejection of the transfer in the event that either the 'transferred to' PSAP is unavailable or the number of sessions exceeds the session limit established by the 'transferred to' PSAP. This feature is targeted for deployment in April 2015.
    - The browser shall archive text history conversations locally for up to one year and be made accessible via administrative rights.
- The browser shall establish a single unique session ID for each text history conversation. The unique session ID shall be passed to the 'transfer to' PSAP.

#### 2.5.8. Transfer Text Message Call between GEM-Enabled Primary and Secondary PSAPs

The solution shall allow messages to be transferred between adjoining PSAPs (primary and secondary) that use the solution's EMedia browser interface.

#### 2.5.9. Language Interpretation Interfaces or Conferencing.

- The solution shall support Spanish language interpretation of incoming text messages for the quoted fee per minute. This feature will be available in the future.

### 3. Services Scope

The services provided in this SOW will consist of program and project management of hosted EMedia solution implementation, deployment of web browser based and TTY PSAPs, maintenance, and operational support.

1. The Customer and/or PSAPs shall be responsible for their internet access in order to connect to TCS' EMedia servers over HTTPS.
2. TCS and the Customer shall execute the Acceptance Test Plan (ATP) for agreed upon First Office Application (FOA) PSAPs.
3. TCS shall launch hosted EMedia service for the Customer at:
  - Primary Emergency Communications Center (ECC) – 1425 N. Courthouse Rd, Arlington VA 22201.
  - Alternate ECC – 1400 N. Uhle Street, Arlington, VA 22201.
4. TCS shall provide post-deployment system monitoring the of the EMedia solution.

#### 3.1. Service Deliverables

TCS provides a standards-compliant, fully integrated EMedia solution used to distribute text-to-911 messages to the Customer's PSAPs using the EMedia web browser interface .

1. Within two weeks following the Effective Date of this SOW, TCS shall present a detailed project plan outlining tasks, milestones, deliverables, and required resources with a timeline depicting the approach for this solution effort.
2. One (1) Acceptance Test Plan (ATP).
3. Verify service (execute ATP).
4. Deliver EMedia feature training course to the Customer technical resource for one WebEx session lasting one hour during the EMedia deployment window.
5. Documentation and as-built documents
  - Following installation, TCS shall deliver two complete sets of as-built drawings, depicting the solution as implemented for the PSAP allowing the PSAP to understand connectivity, at a high level, between the system components and network components that connect the TCS solution to equipment and networks resident at the PSAP. As-built drawings shall be submitted in Microsoft Word format, or other agreed upon graphic format, on two individual sets of CD's.
  - TCS shall provide documentation for implementation, use and administration for the system and each component of the solution that resides in the PSAP environment.

### 3.2. Maintenance and Operational Support

Maintenance and operational support addresses: networking, network growth, TCS initiated enhancements, maintenance, and operation of the EMedia service. Tasks defined within this SOW.

### 3.3. Acceptance Process

Following mutual agreement of the final ATP document, the Customer and TCS shall use up to thirty (30) days to perform acceptance testing and determine if the service provided meets the specifications that are detailed in the final approved ATP. The 30-day acceptance testing period begins when the customer is provided access to the user interface.

Following the successful completion of acceptance testing, the Customer shall provide TCS written acceptance sign-off. TCS may submit applicable invoices to the Customer following acceptance sign-off.

In the event the Customer does not participate in acceptance testing during the acceptance period, or delays the acceptance testing, and such delay is not due to errors or defects discovered in the service, TCS may submit applicable invoices for payment. However, payment of such invoices shall not deem or imply acceptance of the service.

In the event that defects are discovered during the acceptance period, the Customer shall provide written notice and description of such defects to TCS. TCS will troubleshoot the defect and provide a resolution plan within fourteen (14) days, or as otherwise agreed to by the project teams.

### 3.4. Network Integration

The project plan documents the time and resources required during the integration of the EMedia service with the Customer's stakeholders. The following items represent areas of Integration Support/Service provided by the TCS deployment team:

- **Connectivity:** The TCS deployment team will work with the Customer deployment team to identify and work toward resolution of network connectivity issues.
- **Configuration:** The TCS deployment team will work with the Customer deployment team to ensure accurate and complete provisioning of the EMedia service.
- **Messaging:** The TCS deployment team will work with the Customer deployment team to ensure that valid messaging format and transport protocols are employed for a successful EMedia interface integration.
- **Demarcation:**
  - TCS' connections to the Internet for all HTTPs traffic

Details of the deployment activities, project timeline, and operation services are detailed in the subsequent sections of this document.

## 4. Project Schedule, Milestones And Deliverables

### 4.1. Project Schedule and Milestones

The project schedule and milestones shall be organized as described below for a single county level 9-1-1 authority.

**Exhibit 3. Project Schedule and Milestones for One (1) County**

Task Name	Duration
<b>EMedia Solution Deployment</b>	<b>128 days</b>
Contract Complete	1 day
<b>Deployment</b>	<b>122 days</b>
<b>Design</b>	<b>67 days</b>
Kick-off Meeting	1 day
Deployment Planning	20 days
<b>Buld</b>	<b>101 days</b>
Network Connectivity (Circuit Design, Order, Delivery, Test & Turn-Up)	101 days
Standard Reporting	55 days
Set Up/Provision PSAP	46 days
Acceptance Testing (Test Plan Review, Execute Test Plan)	61 days
Installation	34 days
Training	24 days
Production Deployment	10 days

### 4.2. Scope, Schedule Changes

Any change to the mutually agreed project scope and/or schedule shall be mutually agreed by both parties, and documented via completed, signed Change Order form to be provided by TCS.

## 5. Roles and Responsibilities

The establishment of the TCS EMedia solution for the Customer requires a coordinated team effort from a combination of program management and technical resources. These resources are summarized in Table 1.

**Exhibit 4. Table 1 – TCS/Customer Roles and Responsibilities for EMedia Implementation**

Role	Description of Responsibilities	Owner
Project Manager(s)	<p>The Project Manager(s) shall:</p> <ul style="list-style-type: none"> <li>- Be the primary point of contact between the two companies.</li> <li>- Facilitate effective communication among TCS, Customer and other associated vendors.</li> <li>- Manage resources from their respective teams</li> <li>- Ensure all Deliverables set forth in this SOW are completed.</li> <li>- Resolve critical implementation issues promptly.</li> </ul>	<p>TCS and Customer each to provide for planning and coordination.</p> <p>Customer provides customer point of contact for overall project</p>

Role	Description of Responsibilities	Owner
Implementation Engineer(s)	<p>The Implementation Engineer will:</p> <ul style="list-style-type: none"> <li>- Install and configure the TCS features</li> <li>- Lead and perform system integration in conjunction with Customer engineers.</li> <li>- Execute Acceptance Tests in conjunction with Customer engineering.</li> </ul>	TCS Engineer
Trainer	<p>The Trainer will:</p> <ul style="list-style-type: none"> <li>- Deliver EMedia feature training course to Customer technical resource for one WebEx session during the EMedia deployment window.</li> </ul>	TCS

## 5.1. TCS Deliverables

1. TCS shall deliver the Deployment Checklist, Provisioning Questionnaire, Acceptance Test Plan (ATP) and Project Schedule to the Customer.
2. TCS shall integrate the EMedia service with the Customer's web-client customers.
3. TCS shall provide remote technical support for execution of the ATP.

### 5.1.1. Project Management Services

TCS project management coordinates internal and external resources required for successful deployment. TCS:

- Plans the project
- Conducts Kick-Off Meeting
- Reports status
- Assigns responsibilities
- Identifies, escalates, and facilitates resolution of issues or barriers
- Coordinates testing

Upon execution of the SOW, TCS guides the Customer through the introduction and assimilation process, which enables an easy transition and a "quick start" into EMedia deployment. The Customer receives:

- An overview of the required deployment tasks and procedures
- Established points of contact within all appropriate TCS groups

### 5.1.2. Collateral Training Materials

*EMedia Users Guide.* This guide describes how to use the features of the EMedia web portal.

*TTY Users Guide.* This guide describes the use of TTY for receiving Text-to-911. TTY is a part of TCS' TCC solution, not EMedia.

## 5.2. Customer Deliverables for EMedia Solution Implementation

1. Customer shall deliver all items as defined in the deployment checklist, project schedule, and other relevant documents to be Customer's.
2. Customer is responsible for the items indicated in Tables 2 and 3 where Customer is the 'Owner'.
3. Customer shall provide timely responses to TCS networking questionnaire.
4. Customer shall assign a Project Manager (PM) to coordinate project and installation activities.
5. In addition to the Project Manager, the Customer shall provide a SME during installation.
6. Customer must furnish a fully operational and tested lab environment for system integration testing in accordance with the installation schedule.

The Customer and TCS shall be responsible for performing the activities outlined in **Table 2**. The party listed under "Owner" in the Responsibility Matrix shall be responsible for performing the respective task.

**Exhibit 5. Table 2 – Responsibility Matrix for EMedia Implementation**

Phase	Task	Description	Owner
Kick Off	Conduct Customer Kick-off	Facilitate a kick-off meeting with all stakeholders to outline the following: <ul style="list-style-type: none"> <li>• Project Overview</li> <li>• Timeline</li> <li>• Change Control</li> <li>• Status Updates</li> </ul>	TCS, Customer
	Develop Project Plan	Create and validate the overall project plan down to the task level with inter-dependencies and key milestones	TCS
	Identify Role and Responsibilities	Identify and describe key project roles, responsibilities, and skill sets required during the deployment	TCS, Customer
Planning	Create Tracking Documents	Develop issues and decisions logs for the deployment	TCS
	Deliver Acceptance test plan	Forward test plan to Customer	TCS
	Approval of Acceptance Test Plan (ATP)	Sign off on the TCS test plan	Customer
	Integrate Individual Interfaces	Verify Web Interfaces	TCS, Customer
	Test Interface	Test the EMedia System functionality	TCS, Customer
Testing	Execute the ATP Test Case	Execute the mutually agreed upon ATP test cases.	TCS, Customer
	Acceptance Sign-Off	Provide written acceptance sign-off for the ATP	Customer
Operations	Service Activation	Initiate Service Availability to Public.	Customer
	Acceptance Sign-Off	Provide written acceptance sign-off for the project.	Customer
	Troubleshooting, Ticket Maintenance	Ticket creation and change, incident and problem escalation	TCS

## 6. System and Connectivity Monitoring

TCS solution is a service, it can describe the components which it hosts and utilizes in the delivery of the service. All the systems running the application software are Sun systems running Solaris.

### 6.1. Monitoring Responsibility—Customer

Customer shall monitor the following, if provided, on a 24x7 basis. Customer is responsible for monitoring:

- Connectivity between the Customer's network and the PSAPs
- Internet access



## 6.2. Monitoring Responsibility—TCS

TCS shall monitor the TCS System on a 24x7 basis, including:

- All systems used in the TCS EMedia service
- Networking up to the identified demarcations

## 6.3. TCS NOC Services

### 6.3.1. Impairment Report Procedure

TCS provides high availability for the call routing function within the system. Upon identification of a service-affecting issue, Customer shall contact the TCS Network Operations Center (NOC) to open a trouble ticket. The TCS NOC can be reached by calling 1-800-959-3749 or by sending an email to [noc@telecomsys.com](mailto:noc@telecomsys.com). Upon receiving customer notification of an issue, the NOC will open an incident ticket, work the issue, escalating appropriately to ensure timely resolution. The NOC will review all tickets on the day they are received. The NOC sends out impairment notifications, impairment updates, and notifications of resolution to identifiable, impacted parties.

### Help Desk Services Provided by the NOC

TCS shall provide the following customer support services for all services provided under the contract and any renewals thereof:

- TCS NOC shall operate a help desk function for the purpose of receiving, logging, tracking, dispatching, and reporting on trouble calls. The TCS NOC shall be fully operational and staffed on a 24 x 7 basis. There shall be supervisory staff on-site at the help desk on a 24 x 7 basis.
- The TCS NOC, operating as a help desk, shall answer calls by a live staff who are trained and qualified on the systems and services furnished under this RFP. In very rare instances, occasions when the calls are greeted by voice mail systems shall be returned if a message left in the voice mail box.
- The TCS NOC shall serve as a single point of contact for PSAPs for all matters, including without limitation, the system and all components of the system. The help desk shall have the ability to communicate directly and immediately with maintenance and support services for the system and all components of the system, including without limitation, network troubles.
- The TCS NOC shall have the authority to dispatch maintenance staff from all contractors, manufacturers, subcontractors and other entities responsible for any components or services contracted for through the RFP. TCS shall dispatch staff in a timely manner to meet the response time requirements stated below in Exhibit 8.

### 6.3.2. Service Impact Level (SIL)

TCS defines three Service Impact Levels (SILs), as shown in Table 3. The SIL determines the responsibilities of the TCS NOC when responding to an impairment of service within the systems. The categorization of an event as SIL 1, SIL 2 or SIL 3 shall be reasonably made by TCS, based upon the SIL definitions.

For all SIL 1 events, TCS notifies Customer NOC. Communication to the Customer by TCS includes the TCS trouble ticket number.

For SIL 2 and SIL 3, the notification, escalation and resolution guidelines/expectation procedures shall be followed as described below in Exhibit 6. Table 3.

**Exhibit 6. Table 3 – SIL Definitions**

SIL 1	SIL 2	SIL 3
<p>High level of impact on service delivery.</p> <p>Service degradation may be apparent to all or most external stakeholders.</p> <p>May involve a trend of SIL 2 events for a given system or process.</p>	<p>Service is suffering an unacceptable level of degradation but is not completely unavailable.</p> <p>Service degradation is apparent to external stakeholders.</p> <p>May involve a trend of SIL 3 events for a given system or process.</p>	<p>Low level of impact on service delivery.</p> <p>Service degradation may be apparent to some external stakeholders (e.g., one PSAP).</p>

SIL 1 or SIL 2 events shall be communicated as described in Table 4 based on the best information available at the time.

**Exhibit 7. Table 4 – Incident Notification Time Frames**

SIL 1	SIL 2	SIL-3
Notification occurs as soon as possible but no longer than 1 hour after incident identification.	Initial notification occurs as soon as possible but no longer than 2 hours after incident identification.	No notification.

For each SIL, TCS has a target resolution time, shown in Table 5. Typically, incidents are resolved within the target time.

**Exhibit 8. Table 5 – Target Incident Resolution Times**

SIL 1	SIL 2	SIL 3
2 hours	4 hours	No more than 7 business days

**6.3.3. Escalation Procedure**

The escalation table below lists resources available by group if unique situations arise that warrants an escalation.

**Exhibit 9. Table 6 – TCS Escalation Contact List**

Group	Name/Title	Phone/Email
Network Center	Network Operations Center Systems and Network Monitoring	1.800.959.3749 toll free <a href="mailto:NOC@telecomsys.com">NOC@telecomsys.com</a>
Network Center 1 <sup>st</sup>	Pat Margherio Supervisor, NOC Monitoring (Tier 1)	206.792.2464 office 215.995.1013 mobile <a href="mailto:pmargherio@telecomsys.com">pmargherio@telecomsys.com</a>

Group	Name/Title	Phone/Email
Network Center 2 <sup>nd</sup>	Chris Ruddell Manager, ATAC (Tier 2)	206.792.2013 office 206. 437.1236 <a href="mailto:cruddell@telecomsys.com">cruddell@telecomsys.com</a>
Network Center 3 <sup>rd</sup>	Ruobo Lu Director, NOC Services	206.792.2366 office 206.849.4945 <a href="mailto:rlu@telecomsys.com">rlu@telecomsys.com</a>
Network Center 4 <sup>th</sup>	Mark Longstaff VP, Service Delivery and NOC Services	206.792.2208 office 206.619.0000 <a href="mailto:m-longstaff@telecomsys.com">m-longstaff@telecomsys.com</a>

## 7. Training

TCS shall provide training to Customer teams relative to our EMedia service. TCS views this as a shared opportunity to optimize the productivity and efficiency of the partnership. TCS will provide session via WebEx.

### User Operations Training

TCS shall deliver a two-hour, train-the-trainer course oriented to non-technical floor operations personnel who will then train the rest of the County operations staff. The 'Train the Trainers' curriculum shall include:

- Logging in
- The features of the GEM9-1-1 interface for users
- Taking control of a new session
- The background information about elements (e.g., where the lat/lon comes from)
- How to use the predefined, canned messages
- How to free-form type messages
- How to use a canned message and edit it before sending
- Use of the map for zooming and tracking
- PSAP-to-PSAP transfer
- Taking over for another operator in the same PSAP
- How to get support
- Other mutually agreeable topics

### Administrator Training

TCS shall deliver a two-hour course. The curriculum shall include:

- Administrative functions
- Setting up users
- Viewing call history
- Setting up and managing predefined messages
- Viewing PSAP operator status (online/offline)

The materials for the training shall include a manual or pamphlet that contains the essential desk side guide the trainers can use as a tool to train the rest of the staff. The number of students per training class shall not exceed eight (8) persons.

### Technical Operations Training

TCS will not provide formal Technical training, as the components of the solution are under TCS's ownership and control. Familiarization with the technical aspects of the service, including the technical requirements at the PSAP, will be provided by the Project Manager during the implementation period, before the user training takes place.

## 8. Assumptions and Constraints

This SOW is predicated on the following assumptions. Should any of these assumptions prove to be incorrect, TCS' ability to deliver the services described in this SOW may be materially impacted or hindered.

- Legal and/or regulatory issues will not impede TCS' ability to complete the SOW;
- Documentation provided to TCS by the Customer will be accurate;
- Customer will cooperate with and assist TCS in performing under this SOW; and
- Customer will satisfy its obligations and responsibilities under this SOW.
- Out of Scope Requests - Customer requests which are outside the scope of the deliverables outlined in this SOW may be subject to additional charges, terms, and/or conditions.

## 9. Standards Compliance

TCS and the Customer will use commercially reasonable efforts to adhere to and comply with all current industry standards and norms related to the EMedia service.

## 10. Continuous Improvement

Customer and TCS agree to review this SOW on a mutually agreed to timeframe in a continual improvement effort. Process improvements identified and agreed upon by Customer and TCS will be treated as out of scope requests subject to the change of service request process described herein.

## 11. Project Reporting

### 11.1. TCS Project Contacts

TCS shall assign a Project Manager to support the TCS EMedia deployment process. The Project Manager (PM) shall coordinate the detailed project plan and scope of all deployment activities. As such, the PM shall be responsible for ensuring that requirements have been agreed to by Customer and assisting in the coordination of resources and deliverables. The project management contacts listed below may be changed by the Customer or TCS at their discretion as long as such change is communicated to the other party as soon as practical.

- Project Manager
  - Tom Hagel
  - 206-792-2118
  - [thagel@telecomsys.com](mailto:thagel@telecomsys.com)
- SME
  - Rod Robinson
  - 206-792-2620
  - [rrobinson@telecomsys.com](mailto:rrobinson@telecomsys.com)

### 11.2. Customer Project Contacts

- Project Manager
  - Jeffrey Horwitz

- o 703-228-4001
- o jhorwitz@arlingtonva.us

## 12. Pricing

The following pricing notes are applicable to the service.

1. Prices are in US Dollars.
2. Prices do not include tax. Customer will be invoiced for any applicable taxes.
3. Unless otherwise expressly agreed in writing, no rights with respect to intellectual property are granted.
4. Prices are based on the standard terms and conditions of the Agreement.
5. Neither party shall incur any obligation to the other hereby simply by the issuance of this SOW. Obligations shall only arise upon execution and delivery of this SOW by both parties.

### 12.1. Non-Recurring Fee per PSAP

**Exhibit 10. One-Time Fee Description**

One-Time Fee	Description	Non- Recurring Fee
EMedia	Fee is due at the time of SOW execution for setup, and implementation.	\$1,500 Per PSAP
	<b>Total Non-Recurring Fee</b>	<b>\$1,500.00</b>

### 12.2. Annual Recurring Fee per PSAP

**Exhibit 11. Annual Fees Description**

Annual Fees	Description	Recurring Fee
EMedia	1 to 5 seats (lump sum recurring fee covers up to 5 seats)	\$175.00/month
	<b>Example Total Annual Recurring Fee (based on 1 to 5 seats)</b>	<b>\$2,100.00</b>
EMedia	6 to 10 seats (lump sum recurring fee covers up to 10 seats)	\$340/month
	<b>Example Total Annual Recurring Fee (based on 6 to 10 seats)</b>	<b>\$4,080.00</b>
EMedia	11 seats and above (lump sum recurring fee per actual number of seats)	\$340/month + \$32.50/month/additional seat over 10
	<b>Example Total Annual Recurring Fee (based on 11 seats)</b>	<b>\$4,470.00</b>

TCS will invoice the Customer for non-recurring fee per PSAP, upon SOW execution.

TCS will invoice the Customer the total annual recurring fees per PSAP, in advance, upon commencement of the EMedia service at each PSAP for which TCS is providing the EMedia service. For

the initial total annual recurring fee invoice, TCS will invoice the Customer upon acceptance in accordance with Section 3.3.

Payments should be made to:

**Regular Mail:**

TeleCommunication Systems, Inc.  
Attn: Accounts Receivable  
Dept CH 17168  
Palatine, IL 60055-7168

**Overnight Mail:**

TeleCommunication Systems, Inc.  
TCS Lockbox  
5505 N. Cumberland  
#17168, Suite 307  
Chicago, IL 60656

### 12.3. Optional Spanish Translation Service Pricing

The Customer has the option to purchase Spanish translation service. Spanish translation is not currently available. When available, the price below in Exhibit 12 will apply. Exhibit 12. Translation Service Fee

Translation Service	Fee per Minute
Spanish Translation	\$ 6.00

TCS may invoice the Customer for translation services on the first day of each calendar month for the total minutes of translation services used during the previous month. Optional Professional Services Pricing

The Customer has the option to acquire professional services from TCS. Any request for TCS to provide professional services would need to be covered by an appropriate and mutually agreed upon amendment/change order describing the requested additional services.

**Exhibit 13. Professional Services**

Professional Services	Fees
Custom Tool Development;; Services Beyond the Statement of Work;	\$ 150 per hour
On-site Training (All inclusive of labor and travel expenses. Two-day minimum.)	\$1,600 per day

TCS may invoice the Customer for any additional professional services in accordance with the terms of the appropriate and mutually agreed upon amendment/change order describing the requested additional services .

## 13. Term

This SOW shall be deemed effective on the date the last party hereto signs below (the "Effective Date") and, unless terminated sooner in accordance with the termination provisions of the Agreement, shall continue for a period of five (5) years following the date the EMedia service is made available to the first PSAP hereunder. Unless terminated in accordance with the termination provisions of the Agreement, the SOW thereafter shall automatically renew for successive one (1) year terms unless either party provides

written notice to the other party of its intention not to renew the SOW at least thirty (30) days prior to the end of then-current term.

## 14. Project Authorization to Proceed

Based on the scope of work, responsibilities and pricing presented herein, the Customer authorizes TCS to proceed with the work described in this SOW as of the Effective Date. This SOW will be performed under the terms and conditions of the Agreement.

Agreed by:

**Arlington County Office of Emergency Management**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*[Handwritten Signature]*  
*09/01/15*  
*Asst. Purchasing Agent*  
*Robert W. Jenkins*

**NextGen Communications, Inc.**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*James D. Nohl*  
*James D. Nohl*  
*Associate Counsel*  
*August 27, 2015*

## Appendix A. Acronyms and Abbreviations

Some of the following definitions are adapted from the *NENA Master Glossary of 9-1-1 Terminology*.

Abbreviation or Acronym	Term	Definition
CPE	Customer-premises equipment	PCs, terminals, or other equipment located at a customer's site. In the 9-1-1 world, "CPE" refers to the call and/or message receiving and translating equipment and display stations.
	Conference bridge	A network element that facilitates adding one or more parties to a two-way call. A SIP-based conference bridge can accommodate multimedia content (voice, text, and video).
ESInet	Emergency Services IP Network	In an NG9-1-1 system, the IP-based network that interconnects all parties involved in routing and responding to a 9-1-1 call, including the originating network and the PSAP.
HTTPS	Hypertext Transfer Protocol Secure	A communications protocol for secure communication over a computer network such as the Internet.
i3	i3	A transitional standard defined by NENA for an IP-based VoIP E9-1-1 network. The i3 standard was the last step in the evolution of E9-1-1 before NG9-1-1. The i3 standard addressed IP-based connectivity between the ESInet and IP-enabled PSAPs.
i3 Public Safety Answering Point	i3 PSAP	A PSAP that can receive IP-based emergency-call signaling, can originate IP-based calls, and conforms to NENA specifications for such PSAPs.
IP	Internet Protocol	The primary communications-level protocol for delivery of data packets across the Internet.
	legacy	Using technology or connectivity that predates IP-based NG9-1-1.
MDN	Mobile Directory Number	The 10-digit telephone number associated with a wireless handset.
MSRP	<i>Message Session Relay Protocol</i>	A protocol for transmitting a series of related instant messages in the context of a session.
NG9-1-1	Next Generation 9-1-1	Variously applied to the architecture, the technology, and the government initiative, a term referring to the routing and delivery of 911 calls in an IP-based inter-network. The NG9-1-1 inter-network is designed to provide access to emergency services from all connected communications sources and to provide PSAPs and other emergency service organizations with multimedia data capabilities.



Abbreviation or Acronym	Term	Definition
PRF	Policy Routing Function	In NG9-1-1 systems, a functional component that determines whether to route a call to the primary PSAP for the caller's location or to an alternative PSAP, based on the policies of the primary PSAP. Policies are based such factors as the time of day, the call traffic limit of the PSAP, and whether a disaster plan is in effect. The PRF can include a provisioning UI so that the PSAP can update its status in real time.
PSAP	Public Safety Answering Point	An organizational unit authorized by a regional emergency services authority for the purpose of answering 9-1-1 calls within a defined geographic area and dispatching emergency responders to the caller's location.
SBC	Session Border Controller	The hardware/software platform on which the BCF runs.  See also <i>BCF</i> .
SIP	Session Initiation Protocol	An IETF signaling protocol that accommodates multimedia content and is the call-signaling protocol used in i2, i3, and VoIP inter-networks.
	SIP-enabled PSAP	A PSAP that can handle multimedia sessions in Voice over Internet Protocol (VoIP) emergency calls.
TCC	Text Control Center	The standards based (ATIS J-STD-110) element responsible for routing and delivering text-to-911 messages.
TTY	Text telephone; teletype	A device that allows deaf subscribers to send and receive text messages over telephone lines.
URN	Uniform Resource Name	An identifier of a Web object that follows a standard syntax. Cannot be used to navigate to a Web object.

# EXHIBIT B



# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

MAR 4 2015

TeleCommunication Systems, Inc.  
275 West Street, Suite 400  
Annapolis, MD 21401-3466

Attention: Richard Young, Executive Vice President & COO

Reference: RFP2000001214; Interim Text to 9-1-1 Emergency Solution

Dear Mr. Young:

## Acceptance Agreement

**Contract Number: 4400005651**

This acceptance agreement signifies a contract award for Interim Text to 9-1-1 Emergency Solution. The period of the contract shall be from Date of Award through February 28, 2017, with five (5) one-year renewal options available as described in the contract.

The contract award shall be in accordance with:

- 1) This Acceptance Agreement;
- 2) The Terms and Conditions of RFP2000001214 and all Addenda;
- 3) Your Technical and Cost Proposals dated July 15, 2014 (Revised September 11, 2014 and February 4, 2015);
- 4) Your Revised Statement of Work dated October 23, 2014;
- 5) The Attached Exhibit B, titled "Contract Clarifications".

Please note that this is not an order to proceed. A Purchase Order constituting your notice to proceed will be issued to your firm. Please provide your Insurance Certificate pursuant to RFP2000001214 Special Provisions Paragraph 17, within 10 days after receipt of this letter. All questions in regards to this contract shall be directed to the Contract Specialist, Teena L. Stewart, at 703-324-3227 or via e-mail at [teena.stewart@fairfaxcounty.gov](mailto:teena.stewart@fairfaxcounty.gov).

Sincerely,

Cathy A. Muse, CPPO  
Director/County Purchasing Agent

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Department of Purchasing & Supply Management  
12000 Government Center Parkway, Suite 427  
Fairfax, VA 22035-0013

Website: [www.fairfaxcounty.gov/dpsm](http://www.fairfaxcounty.gov/dpsm)  
Phone 703-324-3201, TTY: 1-800-828-1140, Fax: 703-324-3228

**EXHIBIT B  
CONTRACT CLARIFICATIONS**

These Contract Clarifications are agreed to by the County of Fairfax (the "County") and TeleCommunication Systems, Inc. ("Contractor" or "TCS"). The parties hereby amend, restate, supplement and/or otherwise modify Contract Number 4400005651 (the "Contract") as follows:

1. **Certain Definitions.** Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the Contract.
2. **Updates to the "Special Provisions" in RFP2000001214.** The following updates are made to the "Special Provisions" in RFP2000001214 (the "RFP") attached to the Contract:

- (a) Section 23 (Access to and Inspection of Work) is supplemented with the addition of the following:

Inspection of work in progress must be conducted during regular business hours and in a manner so as not to unreasonably interfere with the normal business operations of TCS. Inspections should not be undertaken more frequently than as reasonably necessary to ensure compliance with the terms of the Contract. Furthermore, inspection occurring at any TCS facilities may only be made upon not less than ten (10) business days prior written notice.

- (b) Section 24 (Project Audits) is supplemented with the addition of the following:

Any third-party audit is expected to be conducted by a reputable and nationally recognized audit company at the expense of the County. Furthermore, any audit shall be subject to the representative to whom access of such materials is provided being subject to appropriate confidentiality obligations to preclude the disclosure or use of any information except for the purposes of the inspection and use upon the conditions provided in Section 24 (PROJECT AUDITS) of the Special Provisions to the RFP. Such audit also must be conducted during regular business hours and in a manner so as not to unreasonably interfere with the normal business operations of TCS. In addition, in no event should such audit be made upon less than ten (10) business days prior written notice. TCS may redact from the records provided to the County any information that reveals the identity or non-public information of other TCS customers or other TCS confidential or protected information that is not relevant to the purposes of the review.

- (c) Section 32 (HIPAA Compliance) is supplemented with the addition of the following:

The parties do not believe that Health Insurance Portability and Accountability Act (HIPAA) compliance is required by the nature of the services to be provided under the project contemplated by the Contract. To the extent that TCS is required to enter into any form of a Business Associate Agreement, TCS reserves the right to review and negotiate such form of agreement before entering into it. The parties agree to negotiate the terms of any Business Associate Agreement that may be required for HIPAA compliance in good faith and is confident that, if necessary, the parties will be able to agree upon a definitive Business Associate Agreement containing terms and conditions that are mutually acceptable to all.

3. Updates to the "General Conditions and Instructions to Bidders" in RFP2000001214. The following updates are made to the "General Conditions and Instructions to Bidders" in the RFP:

- (a) Section 33 (Termination of Contract for Cause) is replaced in its entirety with the following:

Either party may terminate this Contract for cause in the event that the other party fails to perform any of the material covenants, conditions or agreements contained in this Contract, unless such default is cured within thirty (30) days (or such longer period of time as mutually may be agreed to by the parties in writing) of delivery of written notice of such default to the defaulting party. If the County is in material default of this Contract and such default continues for a period of thirty (30) days after Contractor's written notice to the County, then Contractor shall also have an independent and alternative right to suspend delivery of products or services. Each party may also terminate this Contract upon notice to the other party if the other party has become insolvent, has filed for bankruptcy, or has been declared insolvent or bankrupt.

Termination of the Contract (whether for cause or otherwise) shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve either party of liability to the other for responsibilities accrued prior to termination (including by way of example, and not limitation, liability for damages sustained by either party by virtue of any breach of the Contract or the County's obligation to pay all fees for which funds have been appropriated by the Board of Supervisors for satisfactorily completed services).

- (b) Section 37 (Delivery/Service Failures) is deleted in its entirety.
- (c) Section 49 (Compliance) is deleted in its entirety.
- (d) Section 61 (General Guaranty) is replaced in its entirety with the following:

**GENERAL REPRESENTATIONS** – Contractor agrees that (a) Contractor shall abide by (and shall cause its employees, agents and other parties for whose conduct Contractor is responsible to abide by) all applicable laws, ordinances, rules and regulations of federal, state and local governments; (b) Contractor shall take all reasonable precautions to prevent injury to any persons (including, without limitation, employees of Contractor and employees of the County) or damage to property (including, without limitation, the County's property) during the term of the Contract; and (c) should the County permit Contractor to use any of the County's equipment, tools or facilities during the term of this Contract, such permission shall be gratuitous and Contractor shall be responsible for any injury to any person (including, without limitation, death) or damage to property directly caused by Contractor (including its employees and any of its subcontractors) use of such County equipment, tools or facilities.

- (e) Section 62 (Service Contract Guaranty) is replaced in its entirety with the following:

- (i) **Warranty.** Contractor warrants to the County during the term of the Contract that the services provided to the County by Contractor will consist of delivery of an Interim Text-to-9-1-1 emergency call answering solution and shall conform in all material respects to the performance and functionality requirements set forth in the mutually agreed upon Statement of Work dated October 23 2014. It is understood that the Contractor shall not be liable to the County for performance or functionality issues that arise solely from service interruption or degradation that may arise in the County's IP network.

- (ii) **Remedy for Breach.** If any services provided to the County by Contractor fail to conform to the warranty set forth in subsection (i) above, and the County notifies Contractor of such nonconformance in writing within ninety (90) days following written acceptance by the County for the initial live delivery of the Contractor hosted service solution to the County under the Statement of Work, or after such initial 90 day period the County notifies Contractor of such nonconformance in writing within thirty (30) days following the date of the nonconformance (including the date through which the nonconformance continues), the County's remedy and Contractor's liability shall be for Contractor (A) to repair, revise or replace the non-conforming Contractor services to bring the Interim Text-to-9-1-1 emergency call answering solution into compliance with the warranty in subsection (i) above within thirty (30) days of notification of the nonconformance by the County (or such longer period of time as mutually may be agreed to by the parties in writing); or (B) in the event (A) is not able to be met, to refund to the County the amount actually paid by the County to Contractor for the relevant defective or non-conforming Contractor services. If Contractor fails to repair, revise or replace a warranty non-conformance as described above within thirty (30) days of notification of the non-conformance by the County (or such longer period of time as mutually may be agreed to by the parties in writing), the County may, so long as such warranty non-conformity remains uncorrected, terminate the Agreement immediately upon delivery of written notice to Contractor.
- (iii) **Disclaimers.** Except as expressly provided in the Contract, Contractor does not warrant that (A) the Contractor services will meet any other County requirements not expressly set forth in the Contract, (B) the Contractor services will operate in combination with other hardware, software, systems or data not described in the SOW dated October 23, 2014, or (C) the operation of the Contractor services will be uninterrupted or error-free. Without limiting any of the foregoing, Contractor shall not be responsible for the quality or accuracy of any data not originally developed by it, its subcontractors or partners, nor shall Contractor be responsible for any errors or other issues in the operation of the services resulting from, in whole or in part, any data not originally developed by it, its subcontractors or partners.

EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS CONTRACT TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE CONTRACTOR SERVICES (INCLUDING ALL CONTENT, SOFTWARE, FUNCTIONS, MATERIALS, INFORMATION AND EQUIPMENT INCLUDED OR PROVIDED BY CONTRACTOR OR ANY OTHER THIRD PARTY IN CONNECTION THEREWITH) ARE PROVIDED WITHOUT ANY OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ANY WARRANTIES IMPLIED OR REQUIRED BY LAW THAT CANNOT BE DISCLAIMED ARE LIMITED IN DURATION TO THE WARRANTY PERIOD SET FORTH IN SUBSECTION (ii) ABOVE.

- (f) Section 63 (Indemnification) is replaced in its entirety with the following:
- (i) **Acknowledgement.** No provisions of this Contract shall be construed as affecting or negating the standards, immunities or limitations for liability set forth in any applicable law limiting the liability of any party providing or assisting in providing any 911-related products or services, including without limitation Va. Code Ann. § 8.01-225(C).

- (ii) **Indemnity from Contractor.** Contractor agrees to indemnify, defend and hold harmless the County, its officers, employees and agents (each a "County Indemnitee") from and against any and all liability and costs (including reasonable attorneys' fees) incurred by any County Indemnitee in connection with any damages, liabilities or third party claim to the extent directly arising out of or resulting from the negligent act or omission of Contractor (including its employees, subcontractors, and licensors that are used by Contractor in providing the services to the County under this Contract) in performing Contractor's work covered by this Contract.
- (iii) **IP Indemnity.** Contractor shall defend, indemnify and hold harmless the County from and against any loss, damage, or liability assessed against the County in a final judgment by a court of competent jurisdiction or any settlement that Contractor has agreed upon with such third party, including reasonable costs and attorney fees, for any loss, damage or liability that arises out of a claim, suit, or allegation by a third party that the Contractor services (including the products of Contractor's subcontractors or licensors that are used by Contractor in providing the services to the County under this Contract) delivered to the County ("Contractor Products") infringes a patent, trademark or copyright or other intellectual property right of such third party (an "IP Claim"). Contractor shall not be liable or have any obligation of indemnification under this section for: (A) any costs or expenses incurred by the County without Contractor's prior written authorization (which consent shall not be unreasonably withheld or delayed); (B) designs, instructions, specifications, data, materials, content or any other intellectual property provided solely by the County; (C) infringement caused from unauthorized modifications to the Contractor Products by the County, its employees, agents, contractors or any other person not authorized by Contractor in writing in advance; (D) the County's combination of Contractor Products with other products or services without the prior written authorization from Contractor if the infringement would have been avoided but for such combination, or (E) Contractor's implementation of a County-originated design or modification to the extent infringement is due to such County-specified design or modification.
- (iv) **Indemnity Procedure.** The County shall provide Contractor with (A) prompt written notice of any claim under this section for which it or any County Indemnitee seeks indemnification hereunder; and (B) full information and assistance in settling and/or defending the claim. The County agrees not to incur expenses nor settle or compromise such a claim for which indemnification is sought under this Contract without the prior written consent of the Contractor (which consent shall not be unreasonably withheld or delayed). Neither party shall agree to settle or compromise a claim for which indemnification is sought under this Contract without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed).
- (v) **IP Claim Infringement Remedy.** In addition to and without limiting any of the foregoing, if the use, manufacture, or sale of Contractor Products furnished hereunder becomes subject to an IP Claim, Contractor shall, at Contractor's option and at no expense to the County, (A) by license or other release from claim of infringement obtain for the County the right to use the Contractor Products, as appropriate; (B) substitute an equivalent non-infringing product or service reasonably acceptable to the County, which meets in all material respects the specifications for the Contractor Products as provided herein; (C) modify such Contractor Products to make it non-infringing but continue to meet the specifications therefor as provided herein; or (D) if Contractor cannot reasonably obtain the remedies in (A), (B) or (C), refund the pro-rated portion of the allocable fees and charges previously paid by the County to Contractor for the infringing portion of the Contractor Products and the County may terminate the Contract upon written notice to the Contractor.

- (vi) **Exclusive Remedy for Indemnification.** The remedies set forth in this section shall be the exclusive remedies of the County with reference to any claims for indemnification and any IP Claim.
- (g) Section 73 (Contractual Disputes) is replaced in its entirety with the following (specific updates identified by double-underlining for language additions and strike-through for language deletions):
  - a. Any dispute concerning a question of fact as a result of ~~a contract with the County~~ the Contract which is not disposed of by agreement shall be decided by the County Purchasing Agent, who shall reduce his decision to writing and mail or otherwise forward a copy to the Contractor within ninety (90) days. The decision of the County Purchasing Agent shall be final and conclusive unless the Contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. Contractor may not institute legal action, prior to receipt of the County Purchasing Agent's decision on the claim, unless the County Purchasing Agent fails to render such decision within the time specified.
  - b. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a ~~contract~~ the Contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

**4. Other Special Terms and Conditions.** The following additional terms and conditions are added to the Contract:

- (a) **Purchase Orders.** Any County purchase order to be issued for the work contemplated by this Contract shall be deemed a contract document; provided, however, any such purchase order or other acknowledgment, acceptance, counteroffer or confirmation used by the County may not contain any additional, different or inconsistent terms or conditions from those provided herein and, in the event of any such additional, different or inconsistent terms or conditions, such additional, different or inconsistent terms or conditions provided by the County shall be of no force or effect, and shall not be binding on Contractor unless specifically agreed to in writing by an officer of Contractor. Failure by Contractor to specifically object to any provisions contained in any purchase order or any other acknowledgment, acceptance, counteroffer or confirmation used by the County shall not in any way be deemed an alteration to or waiver of the terms and conditions stated above.
- (b) **Ownership.** No ownership interest in any products, services or materials developed, made available or otherwise provided by TCS under this Contract shall pass to County. For greater certainty and without limiting the foregoing, title and all intellectual property rights in and to any communications equipment, other hardware, software, documentation, data and other materials in any form installed or provided by TCS and used by County or TCS hereunder will remain at all times with TCS and its licensors. Except to the extent the following restrictions are prohibited by law, the County shall not, directly or indirectly: (i) modify, adapt, translate, copy, duplicate, print, reproduce, decompile, prepare derivative works of or reverse engineer all or any portion of the Interim Text-to-9-1-1 emergency call answering solution provided to it by Contractor hereunder or attempt to do so; or (ii) knowingly authorize, or acquiesce in, any other person engaging in these activities, or attempting to do so.

Notwithstanding the foregoing, with respect to any County database provided by the County to TCS for purposes of the performance of services hereunder, as between the parties the County retains all right, title and interest in and to all data in such Customer database and TCS is granted only a right to use any such data in connection with the delivery and/or the performance of services hereunder.



**(c) Limitations of Liability.**

- (i) With the exception of (1) liability for personal injury, death or property damage directly caused by the negligent acts or willful misconduct of TCS (including its employees, subcontractors, and licensors that are used by Contractor in providing the services to the County under this Contract); (2) TCS' indemnification obligations for any IP Claims as expressly set forth in this Contract; and (3) TCS' breach of the confidentiality obligations set forth in this Contract, TCS'S AGGREGATE LIABILITY TO THE COUNTY UNDER THIS CONTRACT SHALL NOT EXCEED THE TOTAL PAYMENTS ACTUALLY RECEIVED BY TCS FROM THE COUNTY PURSUANT TO OR IN CONNECTION WITH THE CONTRACT IN THE PRECEDING TWELVE-MONTH PERIOD.
- (ii) With the exception of TCS' indemnification obligations for any IP Claims as expressly set forth in this Contract, IN NO EVENT SHALL TCS BE LIABLE TO THE COUNTY FOR ANY INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS OR REVENUE, , INCURRED BY THE COUNTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF TCS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (iii) TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ANY OF TCS'S LICENSORS BE DIRECTLY LIABLE TO THE COUNTY FOR ANY DAMAGES OR LOSS OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR USE, INCURRED BY COUNTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF SUCH TCS LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (iv) The provisions of this Contract allocate the risks between TCS and the County. The Customer acknowledges and agrees that but for such allocation of risk and limitation of liability as provided herein the pricing it would receive under this Contract would be different.
- (d) **Confidentiality.** Contractor acknowledges the sensitive and confidential nature of information that it may obtain with regard to (i) data provided by the County pursuant to this Contract and (ii) text messages or other data transmitted or received through the Interim Text-to-9-1-1 Emergency Call Answering Solution (herein collectively referred to as "County Data"). Contractor agrees that County Data will be kept in strict confidence by the Contractor using the same degree of care as it employs with respect to its own information of like importance but in any event not less than reasonable care. The Contractor shall treat all County Data as confidential information and the Contractor shall only use County Data for the performance of services under the Contract and agrees not to otherwise use or disclose any County Data in violation of any applicable law covering the County Data (including, without limitation, to the extent applicable, the Health Insurance Portability and Accountability Act). Contractor acknowledges that the County is subject to the Virginia Freedom of Information Act "VFOIA") and that certain records of the County are open to inspection, unless an applicable exemption exists. Contractor acknowledges that the Contract and any information that Contractor submits to the County shall be subject to VFOIA, therefore any information that Contractor submits may be excluded from the mandatory disclosure provision of VFOIA if Contractor identifies and properly invokes a VFOIA exclusion in writing. The County may disclose this Contract and information related to it in compliance with the VFOIA, and shall promptly notify Contractor of any requests pursuant to the VFOIA for this Contract, information or copies of any documents related to this Contract. Except to the extent that disclosure is required pursuant to the VFOIA, each party shall maintain the confidentiality of and not disclose to third parties (other than its employees or contractors on a need-to-know basis and who are subject to confidentiality obligations at least as protective as those set forth herein) all information or data of any nature provided to it by the other party hereto provided such information contains a conspicuous marking properly identifying it as confidential or proprietary under applicable provisions of the VFOIA, or in the case of confidential information

disclosed orally, is identified as confidential at the time of disclosure and a written summary provided to the receiving party within fifteen (15) days of disclosure ("Confidential Information").

Confidential Information shall not include information that (i) is or becomes a part of the public domain through no act or omission of the receiving party; (ii) was in the receiving party's lawful possession prior to the disclosure and had not been obtained by the receiving party either directly or indirectly from the other party; (iii) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or (iv) is independently developed by the receiving party without use of or reference to the Confidential Information of the other party. In addition, this section will not be construed to prohibit disclosure of Confidential Information by either party to the extent that such disclosure is required by law or valid order of a court or other governmental authority;

Except to the extent that disclosure is required pursuant to the VFOIA, the County shall not disclose the results or other details of any performance tests or other evaluations of any products or services made available by TCS hereunder to any third party without TCS's prior written approval.

Each party acknowledges and agrees that the other party may be damaged irreparably in the event any of these confidentiality obligations are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each party agrees that, in addition to any other remedy to which the non-breaching party may be entitled, at law or in equity, the non-breaching party shall be entitled to seek an injunction or injunctions to prevent breaches or threatened breaches of the provisions of this section and to enforce specifically such provisions in a court of competent jurisdiction as provided in the Contract.

- (e) **Government Restricted Rights.** To the extent the user of the services hereunder is any unit or agency of the United States Government (the "Federal Government"), or if the user of the services hereunder is using funds provided by the Federal Government for this Contract, the following applies:

It is understood and acknowledged that all products and/or services provided or made available hereunder are classified, as applicable, as "Commercial Computer Software" and/or "Software Documentation" and/or "Technical Data" related to "Commercial Items", as such terms or their equivalents are defined in the applicable provisions of the Federal Acquisition Regulations ("FARs") and supplements thereto, including the Department of Defense FAR Supplement ("DFARS"), and are provided with RESTRICTED RIGHTS. For greater certainty, it is understood and acknowledged that all such products and/or services were developed entirely at private expense and no part of such products and/or services were first produced in the performance of a Federal Government contract. As such, to the extent applicable, consistent with FAR 12.211 and 12.212 (and any other applicable equivalent FAR or DFARS provision) any such products and/or services provided to or used by or for the Federal Government may be done so only under and subject to the commercial license terms and /or rights to use included in this Contract and the Federal Government's rights therein are to be RESTRICTED and/or LIMITED pursuant to such terms.

- (f) **Notices.** All notices required to be sent hereunder shall be in writing and shall be deemed to have been given (A) on the date sent by confirmed facsimile, or (B) on the date delivered by reputable overnight.
- i. Notices to the County shall be sent to the County at the following addresses (or to such other address as the County may specify from time to time by written notice to TCS).

For Contractual Matters:

Fairfax County Government  
Department of Purchasing and Supply Management  
Attn: Ms. Cathy A. Muse, CPPO, Director  
12000 Government Center pkwy, Suite 427  
Fairfax, Virginia 22035  
Email: Cathy.Muse@fairfaxcounty.gov  
Tel.: 703.324.3206  
Fax: 703.324.3228

For Solution Related Matters:

Fairfax County Government  
Department of Public Safety Communications  
Attn: Steve McMurrer, ENP, 9-1-1 Systems Administrator  
4890 Alliance Drive  
Fairfax County, Virginia 22030  
Email: Steve.McMurrer@fairfaxcounty.gov  
Tel: 571-350-1779

- ii. Notices to TCS shall be sent to TCS at the following address (or to such other address as TCS may specify from time to time by written notice to the County):

TeleCommunication Systems, Inc.  
275 West Street  
Annapolis, MD 21401  
Attn.: Contracts  
Tel.: 410-263-7616  
Fax: 410-280-4903

- (g) **Successors and Assigns.** All provisions of the Contract shall be binding upon, inure to the benefit of and be enforceable by and against each party and their respective successors and permitted assigns. Notwithstanding the foregoing, neither the Contract nor any rights granted under it may be sold, leased, assigned, or otherwise transferred, in whole or in part, by either party without the prior written consent of the other party and any such attempted assignment shall be void and of no effect; provided, however that prior written consent from the County shall not be required in connection with (a) Contractor granting a security interest in, or otherwise assigning, transferring or conveying, any right to any payment under this Contract to a bank or other financial institution, or (b) Contractor assigning, transferring or conveying the Contract to any Affiliate (as defined below) or successor-in-interest pursuant to a merger or a sale of all or substantially all of its stock or assets. Notwithstanding the foregoing in no event shall any assignment, including without limitation the grant of a security interest or otherwise assigning the Contract, relieve the Contractor from its obligations or change the terms of the Contract, without written amendment of the Contract signed by the County Purchasing Agent. "Affiliate" shall mean any person or entity controlling, controlled by, or under common control with Contractor. For purposes of this definition, "control" means the ownership, directly or indirectly, of equity securities or interests that represent at least a majority of the voting power of the equity ownership of such entity.

- (h) **Entire Agreement.** The Contract constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of the Contract. The Contract may not be modified or amended except in writing signed by a duly authorized representative of each party (which for the County is limited to the County's Purchasing Agent). No other act, document, usage or custom shall be deemed to amend or modify the Contract.
- (i) **Relationship Between the Parties.** Each party is an independent contractor of the other and nothing in the Contract shall be construed to create a partnership, joint venture or agency relationship between the parties.

**5. Interpretation of these Contract Clarifications.** Except as expressly modified in these Contract Clarifications, the terms and conditions of the Contract otherwise remain in full force and effect.

*[End of Items of Clarification]*