

**RESOLUTION 2014-042      Passed: June 9, 2014**

**AUTHORIZING THE MAYOR OF THE CITY OF DEKALB, ILLINOIS, TO SIGN AN AGREEMENT WITH MOTOROLA, INC. FOR A SOFTWARE MAINTENANCE AGREEMENT OF THE STARCOM 21 COMMUNICATIONS NETWORK.**

**WHEREAS**, the City of DeKalb Police Department upgraded its radio system to the STARCOM21 network and in order to keep current with technology, maintenance and upgrades in the system are a necessary requirement; now,

**THEREFORE BE IT RESOLVED BY THE CITY COUNCIL** of the City of DeKalb, Illinois, as follows:

**Section 1.** That the Mayor of the City of DeKalb be authorized and directed to execute an Agreement with Motorola, Inc., to provide a software maintenance agreement with STARCOM21 communications network, a copy of which is attached hereto and made a part hereof as Exhibit "A."

**PASSED BY THE CITY COUNCIL** of the City of DeKalb, Illinois at a regular meeting held on the 9th day of June, 2014, and approved by me as Mayor on the same day. Passed by Omnibus roll call vote of 5-0-3 on Consent Agenda. Aye: Finucane, Snow, Naylor, O'Leary, Rey. Absent: Jacobson, Lash, Baker.

**ATTEST:**

  
ELIZABETH E. PEERBOOM, City Clerk

  
  
JOHN A. REY, Mayor

STARTS 11/01/2014



SERVICES AGREEMENT

Attn: National Service Support/4th fl  
 1301 East Algonquin Road  
 (800) 247-2346

Contract Number: S00001022586  
 Contract Modifier: RN01

Date: 09/19/2013

Company Name: De Kalb, City Of  
 Attn: Police Department  
 Billing Address: 200 South Fourth Street  
 City, State, Zip: De Kalb, IL 60115  
 Customer Contact: Lt. Jason Leverton  
 Phone: (815) 748-8400



Required P.O.: No  
 Customer #: 1036164789  
 Bill to Tag #: 0002  
 Contract Start Date: 11/01/2014  
 Contract End Date: 10/31/2018  
 Anniversary Day: Oct 31st  
 Payment Cycle: ANNUAL  
 PO #:

QTY	MODEL/OPTION	SERVICES DESCRIPTION	MONTHLY EXT	EXTENDED AMT
4	SVC02SVC0201A	***** Recurring Services ***** SUA II IMPLEMENTATION SERVICES SITE	\$3,083.31	\$36,999.72
4	SVC04SVC0204A	SYSTEM UPGRADE AGREEMENT II SITE	\$10,825.00	\$129,900.00

SPECIAL INSTRUCTIONS - ATTACH STATEMENT OF WORK FOR PERFORMANCE DESCRIPTIONS	Subtotal - Recurring Services	\$13,908.31	\$166,899.72
	Subtotal - One-Time Event Services	\$ .00	\$ .00
	Total	\$13,908.31	\$166,899.72
	Taxes	-	-
Software Subscription Upgrade II (SUA II) - Years 2 through 5	Grand Total	\$13,908.31	\$166,899.72
2014 - \$44,899.92    2015 - \$40,399.92	THIS SERVICE AMOUNT IS SUBJECT TO STATE AND LOCAL TAXING JURISDICTIONS WHERE APPLICABLE, TO BE VERIFIED BY MOTOROLA.		
2016 - \$40,699.92    2017 - \$40,899.96			

Subcontractor(s)	City	State
MOTOROLA NIO SSA TEAM	SCHAUMBU RG	IL
MOTOROLA SOLUTIONS - T5 SYSTEMS UPGRADE (CB705)	BROADVIE W HEIGHTS	OH

I received Statements of Work that describe the services provided on this Agreement. Motorola's Service Terms and Conditions, a copy of which is attached to this Service Agreement, is incorporated herein by this reference.

  
 AUTHORIZED CUSTOMER SIGNATURE      MAYOR      June 10, 2014  
 TITLE      DATE  
  
 CUSTOMER (PRINT NAME)

MOTOROLA REPRESENTATIVE(SIGNATURE)      TITLE      DATE

PATTY BLOCKER

847-683-9560

MOTOROLA REPRESENTATIVE(PRINT NAME)

PHONE

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Company Name: De Kalb, City Of

Contract Number: S00001022586

Contract Modifier: RN01

Contract Start Date: 11/01/2014

Contract End Date: 10/31/2018

## STATEMENT OF WORK

### ASTRO 25 SYSTEM UPGRADE AGREEMENT II (SUA II)

#### 1.0 Description of Service and Obligations

- 1.1 As major system releases become available, Motorola agrees to provide the system owner with the software, hardware and implementation services required to execute up to one system infrastructure upgrade in a two-year period for their ASTRO 25 system.
- 1.2 The parties agree that the system owner will have, at their option, the choice of upgrading in either Year 1 or Year 2 of the coverage period. To be eligible for the ASTRO 25 System Upgrade Agreement II, the ASTRO 25 system must be at system release 7.7 or later.
- 1.3 Motorola agrees to provide minor software upgrades, known as “patch releases”, which may include commercial Operating Software (“OS”) and application software patches and service pack updates when and if available. Currently, the parties acknowledge that Motorola’s service includes Microsoft Windows and Server OS, Red Hat Linux, Sun Solaris and any Motorola software service packs that may be available. Motorola agrees to provide only patch releases that have been analyzed, pre-tested, and certified in a dedicated ASTRO 25 test lab to ensure that they are compatible and do not interfere with the ASTRO 25 network functionality. Corresponding 3rd Party software and operating system patches will be released quarterly upon successful completion of the regular test cycle or at Motorola’s discretion. Once a patch release has been validated as safe for deployment on the radio network, Motorola agrees to post it on a Motorola secure extranet site for the Customer to download and deploy.
  - 1.3.1 The parties agree that minor software upgrades, and patch release coverage, which include commercial OS and application software patches and service pack updates, will terminate should the customers system release version become more than 5 system release versions from the current shipping release version.
- 1.4 The parties agree that ASTRO 25 system release upgrades are considered “major” upgrades if they include commercial OS and application software updates as well as Motorola system release software. System releases shall be pre-tested and certified in Motorola’s Systems Integration Test lab. ASTRO 25 system releases shall improve the system functionality and operation from previous releases and may include some minor feature enhancements. At Motorola’s option, system releases may also include significant new feature enhancements as optional features. The SUA II does not include coverage for new optional feature software or hardware. Optional features may be offered for purchase.
- 1.5 The parties agree to the Eligible System Release Upgrade Paths available to the system owner as per the system release upgrade chart referenced and incorporated in Appendix A.
- 1.6 Motorola agrees that this Agreement entitles a Customer to past software versions for the purpose of downgrading product software to a compatible release version.
- 1.7 Motorola agrees that the following ASTRO 25 system release software for the following products are covered under this Agreement: base stations, site controllers, comparators, routers, LAN



switches, servers, dispatch consoles, NICE IP logging recorder, NICE replay stations (Scenario Replay and Inform Lite), network management terminals, Network Fault Management (NFM) products, network security devices such as firewalls and intrusion detection sensors, and associated peripheral infrastructure software.

- 1.8 Product programming software such as Radio Service Software ("RSS"), Configuration Service Software ("CSS"), and Customer Programming Software ("CPS") are also covered under this Agreement.
- 1.9 The parties agree that the SUA II makes available the subscriber radio software releases that are shipping from the factory during the SUA II coverage period. The parties further agree that new subscriber radio options and features not previously purchased are excluded from SUA II coverage. Additionally, subscriber software installation and reprogramming are excluded from the ASTRO 25 SUA II coverage.
- 1.10 Motorola agrees to provide hardware version updates and/or replacements necessary to upgrade the system to an eligible system release with an equivalent level of functionality up to once in a two-year period. Hardware will be upgraded and/or replaced if required to maintain the existing feature & functionality of the eligible system release. The parties agree that any updates to hardware versions and/or replacement hardware required to support new features or those not specifically required to maintain existing functionality are not included.
- 1.11 Motorola agrees that the following hardware components are eligible for full product replacement when necessary per the eligible system release upgrade and if originally provided by Motorola:
  - 1.11.1 Servers
  - 1.11.2 PC Workstations
  - 1.11.3 Routers
  - 1.11.4 LAN Switches
- 1.12 Motorola agrees that the following hardware components are eligible for board-level replacement when necessary per the eligible system release upgrade. The parties agree that "board-level replacement" is defined as any Field Replaceable Unit ("FRU") for the products listed:
  - 1.12.1 GTR 8000 Base Stations
  - 1.12.2 GCP 8000 Site Controllers
  - 1.12.3 GCM 8000 Comparators
  - 1.12.4 MCC 7500 Console Operator Positions
  - 1.12.5 STR 3000 Base Stations
  - 1.12.6 Quantar Base Stations
  - 1.12.7 Centracom Gold Elite Console Operator Interface Electronics
  - 1.12.8 Centracom Gold Elite Central Electronics Banks
  - 1.12.9 Ambassador Electronics Banks
  - 1.12.10 Motorola Gold Elite Gateways
  - 1.12.11 ASTROTAC Comparators

- 1.12.12 PSC 9600 Site Controllers
- 1.12.13 PBX Switches for Telephone Interconnect
- 1.12.14 NFM/NFM XC/MOSCAD RTU
- 1.13 The ASTRO 25 SUA II does not cover all products. Refer to section 2.0 for exclusions and limitations.
- 1.14 Motorola agrees to provide implementation services necessary to upgrade the system to an eligible system release with an equivalent level of functionality up to once in a two-year period. The parties agree that any implementation services that are not directly required to support the system upgrade are not included. The parties further agree that implementation services necessary for system expansions and/or new features or functionality that are implemented concurrent with the system upgrade are not included.
- 1.15 As major system releases become available, Motorola Agrees to provide the following software design and technical resources necessary to complete system release upgrades up to a maximum of one system release upgrade per two-year contract period.:
  - 1.15.1 Review infrastructure system audit data as needed.
  - 1.15.2 Identify additional system equipment needed to implement a system release, if applicable.
  - 1.15.3 Complete a proposal defining the system release, equipment requirements, installation plan, and impact to system users.
  - 1.15.4 Advise Customer of probable impact to system users during the actual field upgrade implementation.
  - 1.15.5 Program management support required to perform the system upgrade.
  - 1.15.6 Field installation labor required to perform the system upgrade.
  - 1.15.7 Upgrade operations engineering labor required to perform the system upgrade.
- 1.16 The parties agree that the ASTRO 25 SUA II pricing is based on the system configuration outlined in Appendix B. The parties further agree that this configuration is to be reviewed annually on the contract renewal date. Any change in system configuration may require an ASTRO 25 SUA II price adjustment.
- 1.17 The parties agree and acknowledge that the ASTRO 25 SUA II applies only to system release upgrades within the ASTRO 25 7.x platform.
- 1.18 Motorola agrees to issue the Software Maintenance Agreement (“SMA”) bulletin on an annual basis and post it in soft copy on a designated extranet site for Customer access. Standard and optional features for a given ASTRO 25 system release are listed in the SMA bulletin.
- 1.19 The parties agree that all services described in this SOW are available during the Standard Business Day unless otherwise agreed to by Motorola.
- 1.20 Coverage Continuity.
  - 1.20.1 The parties acknowledge and agree that the ASTRO 25 SUA II requires continuous coverage beginning within (90) days after the expiration of system warranty. Should

the Customer delay purchase of an ASTRO 25 SUA II beyond (90) days from system warranty expiration or elect to discontinue the ASTRO 25 SUA II and later decide to reinstate coverage, additional payment(s) will be necessary to cover the period for which coverage was discontinued or delayed. The total of payments for lapses in coverage will not exceed 3 years in equivalent ASTRO 25 SUA II coverage.

1.21 The Customer agrees that they shall:

- 1.21.1 Contact Motorola upon receiving the SMA bulletin to engage the appropriate Motorola resources for a system release upgrade.
- 1.21.2 Purchase any additional software and hardware necessary to implement optional system release features or system expansions.
- 1.21.3 Provide or purchase labor to implement optional system release features or system expansions.
- 1.21.4 Provide high-speed internet connectivity at the zone core site(s) for use by Motorola to perform remote upgrades and diagnostics during the upgrade period.
- 1.21.5 Properly store and make available hardware and software required to perform software upgrade services needed for installation of the system release.
- 1.21.6 If the Servicer is required to travel beyond two (2) hours or one hundred twenty (120) miles by vehicle from the prime site to a remote site to deliver this service, the Customer is responsible for incremental travel and expenses incurred.
- 1.21.7 Inform system users of software upgrade plans and scheduled system downtime. Perform appropriate system backups and make them readily available during the installation of the system release.
- 1.21.8 Assist Motorola in the preparation of a Customer Support Plan before system acceptance and provide all information necessary to complete the Customer Support Plan.
- 1.21.9 Cooperate with Motorola and perform all acts that are reasonable or necessary to enable Motorola to provide software upgrade services.

## 2.0 Exclusions and Limitations

- 2.1 The parties agree that Systems that have non-standard configurations that have not been certified by Motorola Systems Integration Testing are specifically excluded from the ASTRO 25 SUA II unless otherwise agreed in writing by Motorola and included in this SOW.
- 2.2 The parties agree that the ASTRO 25 SUA II does not include hardware replacement for all products. Version updates may be available in some cases, but complete product replacement is not covered for all products.
- 2.3 The parties acknowledge and agree that the ASTRO 25 SUA II does not cover the following products:
  - NICE Full Inform
  - MCC5500 Dispatch Consoles

- MIP5000 Dispatch Consoles
  - Plant/E911 Systems
  - MOTOBRIDGE Solutions
  - ARC 4000 Systems
  - Motorola Public Sector Applications Software (“PSA”)
  - Custom SW, CAD, Records Management Software
  - Data Radio Devices
  - Mobile computing devices such as Laptops
  - Non-Motorola two-way radio subscriber products
  - Genesis Products
  - Point-to-point products such as Microwave terminals and association multiplex equipment
- 2.4 The parties further agree that the ASTRO 25 SUA II does not cover any hardware or software supplied to the system owner by any Motorola business sector other than Motorola Solutions and/or purchased directly from a third party, unless specifically included in this SOW.
- 2.5 The parties agree that the ASTRO 25 system release upgrades include limited security updates issued by Microsoft, Solaris and Red Hat certified with each individual system release.
- 2.6 The parties agree that the ASTRO 25 SUA II does not cover software support for virus attacks or other applications that are not part of the ASTRO 25 system, or unauthorized modifications or other misuse of the covered software. Motorola is not responsible for management of anti-virus or other security applications (such as Norton). Anti-virus and/or security application support may be covered under a separate agreement.
- 2.7 The parties agree that upgrades for equipment add-ons or expansions during the term of the contract are not included in the coverage of this SOW unless otherwise agreed to by Motorola.

### 3.0 Special provisions

- 3.1 Customer acknowledges that if its System has a Special Product Feature, additional engineering may be required to prevent an installed system release from overwriting the Special Product Feature. Upon request, Motorola will determine whether a Special Product Feature can be incorporated into a system release and whether additional engineering effort is required. If additional engineering is required Motorola will issue a change order for the change in scope and associated increase in the price for the ASTRO 25 SUA II.
- 3.2 Customer acknowledges that they may use the software (including any System Releases) only in accordance with the applicable Software License Agreement. The SUA II Statement of Work is not intended to modify or terminate an existing Software License Agreement. The SUA II or services rendered by Motorola does not alter Motorola’s software intellectual property rights.
- 3.3 Customer acknowledges that SUA II services do not include repair or replacement of hardware or software necessary due to defects that are not corrected by the system release, nor does it include repair or replacement of defects resulting from any nonstandard or improper use or conditions or from unauthorized installation of software.





- 3.4 The parties agree that ASTRO 25 SUA II coverage and the parties' responsibilities described in this Statement of Work will automatically terminate if Motorola no longer supports the ASTRO 25 7.x software version in the Customer's system or discontinues the SUA II program; in either case, Motorola will refund to Customer any prepaid fees for System Upgrade Agreement services applicable to the terminated period.
- 3.5 Motorola may suspend or terminate the ASTRO 25 SUA II if the following conditions apply:
- Customer fails to pay Motorola any fees for the ASTRO 25 SUA II when due
  - Customer breaches the Software License Agreement or other applicable agreement
  - Customer's rights to use the software under the Software License Agreement expire or are terminated
  - Customer replaces its Motorola System with a system from another manufacturer



#### **4.0 WARRANTIES AND DISCLAIMER:**

Motorola warrants that its services will be free of defects in materials and workmanship for a period of ninety (90) days following completion of the service ("Warranty Period"). Your sole remedies are to require Motorola to re-perform the affected service or at Motorola's option to refund, on a pro-rata basis, the service fees paid for the affected service. Product and software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which this information is provided) are collectively referred to as "Documentation." During the applicable Warranty Period, Motorola warrants that the tested anti-virus definitions, intrusion detection sensor signatures, and operating system security updates/patches do not degrade or compromise System functionality, and that after incorporation of the recommended remediation action the System Software, when used properly and in accordance with the Documentation, will be free from a reproducible defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the software. Whether a defect occurs will be determined solely with reference to the Documentation. Motorola does not warrant that Customer's use of the software or products will be uninterrupted or error-free or that the software or the products will meet Customer's particular requirements.

MOTOROLA DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO PRETESTED ANTI-VIRUS DEFINITIONS, DATABASE SECURITY UPDATES, OPERATING SYSTEM SOFTWARE PATCHES, AND INTRUSION DETECTION SENSOR SIGNATURE FILES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. FURTHER, MOTOROLA DISCLAIMS ANY WARRANTY CONCERNING THE NON-MOTOROLA SOFTWARE AND DOES NOT GUARANTEE THAT CUSTOMER'S SYSTEM WILL BE ERROR-FREE OR IMMUNE TO VIRUSES OR WORMS AS A RESULT OF THESE SERVICES.

**Appendix A – ASTRO 25 Eligible System Release Upgrade Paths**

<b>Release Date</b>	<b>Platform Release</b>	<b>Available Upgrade Paths</b>	
Oct-05	R7.0	N/A	
Jun-06	R7.1	N/A	
Dec-06	R7.2	7.7	
Mar-07	R7.1.1	N/A	
Dec-07	R7.4	7.7	
Jun-08	R7.5	7.7	
Dec-08	R7.6	7.7	
Jun-09	R7.7	7.9	7.11
Jan-10	R7.8	7.9	
Dec-10	R7.9	7.11	7.13
Aug-11	R7.11	7.13	7.14 (planned)
Mar-12	R7.12	N/A	
Nov-12	R7.13	7.14 (planned)	7.15 (planned)
Nov-13	R7.14 (planned)	7.15 (planned)	7.16 (planned)

The information contained herein is provided for information purposes only and is intended only to outline Motorola's presently anticipated general technology direction. The information in the roadmap is not a commitment or an obligation to deliver any product, product feature or software functionality and Motorola reserves the right to make changes to the content and timing of any product, product feature or software release. Prices for any future product or software included herein will be separately negotiated when and if such product or software becomes available.

The most current eligible system release upgrade paths can be found in the most recent SMA bulletin.



## Appendix B - System Pricing Configuration

This configuration is to be reviewed annually on the contract renewal date. Any change in system configuration may require an ASTRO 25 SUA II price adjustment.

DeKalb, IL Police Department	2013	2014	2015	2016	2017	2018
<b>Core</b>						
Master Site Configuration	0	0	0	0	0	0
Zones in Operation (Including DSR and Dark Master Sites)	0	0	0	0	0	0
Zone Features: IV&D, OTAR, TDMA, Telephone Interconnect, CNI, HPD, ISSI CSMS, IA, POP25, Text Messaging, Outdoor Location, ...	0	0	0	0	0	0
<b>RF System</b>						
Voice RF Sites & RF Simulcast Sites	0	0	0	0	0	0
Repeaters/Stations (FDMA)	0	0	0	0	0	0
Repeaters/Stations (TDMA)	0	0	0	0	0	0
HPD RF Sites	0	0	0	0	0	0
HPD Stations	0	0	0	0	0	0
<b>Dispatch Console System</b>						
Dispatch Sites	1	1	1	1	1	1
Gold Elite Operator Positions	0	0	0	0	0	0
MCC 7500 Operator Positions (GPIOM)	4	4	0	0	0	0
MCC 7500 Operator Positions (VPM)	1	1	5	5	5	5
Conventional Channel Gateways (CCGW)	3	3	3	3	3	3
Conventional Site Controllers (GCP 8000 Controller)	1	1	1	1	1	1
<b>Logging System</b>						
Number of AIS Servers	1	1	1	1	1	1
Number of Voice Logging Recorder	1	1	1	1	1	1
Number of Logging Replay Clients	1	1	1	1	1	1
<b>Network Management and MOSCAD NFM</b>						
Network Management Clients	0	0	0	0	0	0
MOSCAD NFM Systems	0	0	0	0	0	0
MOSCAD NFM RTUs	0	0	0	0	0	0
MOSCAD NFM Clients	0	0	0	0	0	0
<b>Fire Station Alerting (FSA)</b>						
FSA Systems	0	0	0	0	0	0
FSA RTUs	0	0	0	0	0	0
FSA Clients	0	0	0	0	0	0
<b>Subscribers</b>						
Voice Subscribers non-APX	64	64	64	64	64	64
Voice Subscribers APX	0	0	0	0	0	0
HPD Subscribers	0	0	0	0	0	0
<b>Computing and Networking Hardware (for SUA / SUA II, actual replacement qty may be less than shown)</b>						
Workstations - High Performance	0	0	0	0	0	0
Workstations - Mid Performance	7	7	7	7	7	7
Servers - High Performance	1	1	1	1	1	1
Servers - Mid Performance	0	0	0	0	0	0
LAN Switch - High Performance	0	0	0	0	0	0
LAN Switch - Mid Performance	2	2	2	2	2	2
Routers	4	4	4	4	4	4
<b>Training</b>						
# of onsite, instructor-led, 3-day training sessions	0	0	0	0	0	0

## Service Terms and Conditions

Motorola Solutions Inc. ("Motorola") and the customer named in this Agreement ("Customer") hereby agree as follows:

### Section 1. APPLICABILITY

These Service Terms and Conditions apply to service contracts whereby Motorola will provide to Customer either (1) maintenance, support, or other services under a Motorola Service Agreement, or (2) installation services under a Motorola Installation Agreement.

### Section 2. DEFINITIONS AND INTERPRETATION

2.1. "Agreement" means these Service Terms and Conditions; the cover page for the Service Agreement or the Installation Agreement, as applicable; and any other attachments, all of which are incorporated herein by this reference. In interpreting this Agreement and resolving any ambiguities, these Service Terms and Conditions take precedence over any cover page, and the cover page takes precedence over any attachments, unless the cover page or attachment states otherwise.

2.2. "Equipment" means the equipment that is specified in the attachments or is subsequently added to this Agreement.

2.3. "Services" means those installation, maintenance, support, training, and other services described in this Agreement.

### Section 3. ACCEPTANCE

Customer accepts these Service Terms and Conditions and agrees to pay the prices set forth in the Agreement. This Agreement becomes binding only when accepted in writing by Motorola. The term of this Agreement begins on the "Start Date" indicated in this Agreement.

### Section 4. SCOPE OF SERVICES

4.1. Motorola will provide the Services described in this Agreement or in a more detailed statement of work or other document attached to this Agreement. At Customer's request, Motorola may also provide additional services at Motorola's then-applicable rates for the services.

4.2. If Motorola is providing Services for Equipment, Motorola parts or parts of equal quality will be used; the Equipment will be serviced at levels set forth in the manufacturer's product manuals; and routine service procedures that are prescribed by Motorola will be followed.

4.3. If Customer purchases from Motorola additional equipment that becomes part of the same system as the initial Equipment, the additional equipment may be added to this Agreement and will be billed at the applicable rates after the warranty for that additional equipment expires.

4.4. All Equipment must be in good working order on the Start Date or when additional equipment is added to the Agreement. Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment. Customer must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. Customer's obligation to pay Service fees for this Equipment will terminate at the end of the month in which Motorola receives the written notice.

4.5. Customer must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

4.6. If Equipment cannot, in Motorola's reasonable opinion, be properly or economically serviced for any reason, Motorola may modify the scope of Services related to that Equipment; remove that Equipment from the Agreement; or increase the price to Service that Equipment.

4.7. Customer must promptly notify Motorola of any Equipment failure. Motorola will respond to Customer's notification in a manner consistent with the level of Service purchased as indicated in this Agreement.

### Section 5. EXCLUDED SERVICES

5.1. Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.

5.2. Unless specifically included in this Agreement, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no

obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.

#### **Section 6. TIME AND PLACE OF SERVICE**

Service will be provided at the location specified in this Agreement. When Motorola performs service at Customer's location, Customer will provide Motorola, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola or its subcontractors will not be imposed as a site access requirement. Customer will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Motorola may perform its Services. Unless otherwise stated in this Agreement, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in this Agreement, the price for the Services exclude any charges or expenses associated with helicopter or other unusual access requirements; if these charges or expenses are reasonably incurred by Motorola in rendering the Services, Customer agrees to reimburse Motorola for those charges and expenses.

#### **Section 7. CUSTOMER CONTACT**

Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable Customer's personnel to maintain contact, as needed, with Motorola.

#### **Section 8. PAYMENT**

Unless alternative payment terms are stated in this Agreement, Motorola will invoice Customer in advance for each payment period. All other charges will be billed monthly, and Customer must pay each invoice in U.S. dollars within twenty (20) days of the invoice date. Customer will reimburse Motorola for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments that are levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Motorola) by any governmental entity.

#### **Section 9. WARRANTY**

Motorola warrants that its Services under this Agreement will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. In the event of a breach of this warranty, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

#### **Section 10. DEFAULT/TERMINATION**

10.1. If either party defaults in the performance of this Agreement, the other party will give to the non-performing party a written and detailed notice of the default. The non-performing party will have thirty (30) days thereafter to provide a written plan to cure the default that is acceptable to the other party and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement the cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement effective upon giving a written notice of termination to the defaulting party.

10.2. Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. All sums owed by Customer to Motorola will become due and payable immediately upon termination of this Agreement. Upon the effective date of termination, Motorola will have no further obligation to provide Services.

#### **Section 11. LIMITATION OF LIABILITY**

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Service provided under this Agreement. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account. This limitation of liability will survive the expiration or termination of this Agreement and applies notwithstanding any contrary provision.

#### **Section 12. EXCLUSIVE TERMS AND CONDITIONS**

12.1. This Agreement supersedes all prior and concurrent agreements and understandings between the parties, whether written or oral, related to the Services, and there are no agreements or representations concerning the subject matter of this Agreement except for those expressed herein. The Agreement may not be amended or modified except by a written agreement signed by authorized representatives of both parties.

12.2. Customer agrees to reference this Agreement on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement will not affect its applicability. In no event will either party be bound by any terms contained in a Customer purchase order, acknowledgement, or other writings unless: the purchase order, acknowledgement, or other writing specifically refers to this Agreement; clearly indicate the intention of both parties to override and modify this Agreement; and the purchase order, acknowledgement, or other writing is signed by authorized representatives of both parties.

### **Section 13. PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS**

13.1. Any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to Customer under this Agreement will remain Motorola's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Motorola's request. Customer may not disclose, without Motorola's written permission or as required by law, any confidential information or data to any person, or use confidential information or data for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section survive the expiration or termination of this Agreement.

13.2. Unless otherwise agreed in writing, no commercial or technical information disclosed in any manner or at any time by Customer to Motorola will be deemed secret or confidential. Motorola will have no obligation to provide Customer with access to its confidential and proprietary information, including cost and pricing data.

13.3. This Agreement does not grant directly or by implication, estoppel, or otherwise, any ownership right or license under any Motorola patent, copyright, trade secret, or other intellectual property including any intellectual property created as a result of or related to the Equipment sold or Services performed under this Agreement.

### **Section 14. FCC LICENSES AND OTHER AUTHORIZATIONS**

Customer is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission or any other federal, state, or local government agency and for complying with all rules and regulations required by governmental agencies. Neither Motorola nor any of its employees is an agent or representative of Customer in any governmental matters

### **Section 15. COVENANT NOT TO EMPLOY**

During the term of this Agreement and continuing for a period of two (2) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Motorola or its subcontractors without the prior written authorization of Motorola. This provision applies only to those employees of Motorola or its subcontractors who are responsible for rendering services under this Agreement. If this provision is found to be overly broad under applicable law, it will be modified as necessary to conform to applicable law

### **Section 16. MATERIALS, TOOLS AND EQUIPMENT**

All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of this Agreement will be and remain the sole property of Motorola. Customer will safeguard all such property while it is in Customer's custody or control, be liable for any loss or damage to this property, and return it to Motorola upon request. This property will be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction.

### **Section 17. GENERAL TERMS**

17.1. If any court renders any portion of this Agreement unenforceable, the remaining terms will continue in full force and effect.

17.2. This Agreement and the rights and duties of the parties will be interpreted in accordance with the laws of the State in which the Services are performed

~~17.3. Failure to exercise any right will not operate as a waiver of that right, power, or privilege.~~

17.4. Neither party is liable for delays or lack of performance resulting from any causes that are beyond that party's reasonable control, such as strikes, material shortages, or acts of God.

17.5. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

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

17.7. THIS AGREEMENT WILL RENEW, FOR AN ADDITIONAL ONE (1) YEAR TERM, ON EVERY ANNIVERSARY OF THE START DATE UNLESS EITHER THE COVER PAGE SPECIFICALLY STATES A TERMINATION DATE OR ONE PARTY NOTIFIES THE OTHER IN WRITING OF ITS INTENTION TO DISCONTINUE THE AGREEMENT NOT LESS THAN THIRTY (30) DAYS OF THAT ANNIVERSARY DATE. At the anniversary date, Motorola may adjust the price of the Services to reflect its current rates.

17.8. If Motorola provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and Customer agrees to pay for those services on a time and materials basis at Motorola's then effective hourly rates.  
Revised Jan 1, 2010