

**ADDENDUM TO SERVICE AGREEMENT No. USC000005031**

**between**

**Laramie County, WY and Motorola Solutions, Inc.**

THIS ADDENDUM is made and entered into by and between Laramie County, 310 West 19th Street, P.O. Box 608, Cheyenne Wyoming, 82003-0608 (hereinafter referred to as "COUNTY" or "Customer") and Motorola Solutions, Inc., 1299 East Algonquin Rd., Schaumburg, IL 60196 (hereinafter referred to as "CONTRACTOR" or "Motorola"). The parties agree as follows:

**I. PURPOSE**

The purpose of this Addendum is to modify the following documents detailing the services to be provided by CONTRACTOR to COUNTY:

- A. The Service Agreement (2 pages);
- B. The Service Terms and Conditions (4 pages); and
- C. The Customer Support Plan (15 pages).

**II. MODIFICATIONS**

A. Section 3 of the "Service Terms and Conditions" entitled "Acceptance," is excluded, is of no force and effect, and is replaced with the following:

"The Agreement shall commence on the date this Addendum is last executed by the duly authorized representatives of the parties, and shall remain in full force until its completion, unless terminated at an earlier date pursuant to the provisions of this contract, or pursuant to federal or state statute, rule or regulation."

B. Subsections 8.1 and 8.2 of the "Service Terms and Conditions" entitled "Invoicing and Payment" are excluded, are of no force and effect, and are replaced with the following:

CONTRACTOR shall bill COUNTY by detailed invoice submitted to the Laramie County Clerk, Finance Office. Payments shall be in accordance with WYO. STAT. § 16-6-602, as amended. No payment shall be made before the last signature is affixed to this Agreement.

C. Subsection 10.3 of the "Service Terms and Conditions" entitled "Default/Termination" is excluded and is of no force or effect.

D. The following Indemnification language shall be inserted at the end of Section 11, "Limitation of Liability":

To the fullest extent permitted by law, CONTRACTOR agrees to indemnify and hold harmless COUNTY, its elected and appointed officials and employees from any and all liability for personal injury, direct damages to tangible property, claims,

penalties, actions, demands or expenses to the extent it is caused by the negligence of CONTRACTOR and arising from or in connection with work performed by or on behalf of CONTRACTOR for COUNTY except to the extent liability is caused by the sole negligence or willful misconduct of COUNTY or its employees and provided that the County gives CONTRACTOR prompt, written notice of any such claim or suit. County shall cooperate with Motorola in its defense and settlement of such claim or suit. This section sets forth the full extent of CONTRACTOR's general indemnification of COUNTY from liabilities that are in any way related to CONTRACTOR'S performance under this Agreement.

E. Section 12.1 of the "Service Terms and Conditions" entitled "Exclusive Terms and Conditions" is excluded and of no force and effect, and is replaced with the following:

"In no event will either party be bound by any terms contained in a COUNTY purchase order, acknowledgement, or other writing 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."

F. Section 15 of the "Service Terms and Conditions" entitled "Covenant Not to Employ" is excluded and of no force and effect.

G. Section 17.2 of the "Service Terms and Conditions," a subparagraph of the section entitled "General Terms," is excluded, is of no force and effect, and is replaced with the following:

The parties mutually understand and agree that this Agreement shall be governed by and interpreted pursuant to the laws of the State of Wyoming. If any dispute arises between the parties from or concerning this Agreement or the subject matter hereof, any suit or proceeding at law or in equity shall be brought in a court of competent jurisdiction in the State of Wyoming. The foregoing provisions of this paragraph are agreed by the parties to be a material inducement to CONTRACTOR and to COUNTY in executing this Agreement. This provision is not intended nor shall it be construed to waive COUNTY's governmental immunity as provided in this Agreement.

H. Section 17.4 of the "Service Terms and Conditions," a subparagraph of the section entitled "General Terms," is excluded, is of no force and effect, and is replaced with the following:

Neither party shall be liable to perform under this Agreement if such failure arises out of causes beyond control, and without the fault or the negligence of said party. Such causes may include, but are not restricted to, Act of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. In every case, however, a failure to perform must be beyond the control and without the fault or the negligence of said party.

### **III. RESPONSIBILITIES OF CONTRACTOR**

A. CONTRACTOR shall provide the COUNTY with services as more fully described in the Service Agreement, the Service Terms and Conditions, and the Customer Support Plan.

B. CONTRACTOR agrees to retain all required and directly pertinent records for three (3) years after the County makes final payment and all other matters relating to the Addendum are concluded. Upon thirty (30) days prior written notice from COUNTY to CONTRACTOR, CONTRACTOR agrees to permit access by the COUNTY or any of its duly authorized representatives to any books, documents, papers and records of the CONTRACTOR which are directly pertinent to this specific Addendum for purposes including but not limited to audit, examination, excerpts, and transcriptions. CONTRACTOR books and records provided to COUNTY pursuant to this provision shall not be used, duplicated or disclosed to any other third party without the express written permission of CONTRACTOR or as required by law, including the Wyoming Public Records Act. The COUNTY agrees to notify the CONTRACTOR in advance before disclosing proprietary or confidential CONTRACTOR data or information in response to a public records request. In no circumstances will CONTRACTOR be required to create or maintain documents not kept in the ordinary course of CONTRACTOR's business operations, nor will CONTRACTOR be required to disclose any information, including but not limited to product cost data, which it considers confidential or proprietary to CONTRACTOR.

### **IV. GENERAL PROVISIONS**

A. Acceptance Not Waiver: COUNTY approval of the reports, and work or materials furnished hereunder shall not in any way relieve CONTRACTOR of responsibility for the technical accuracy of the work. COUNTY approval or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any rights under this Addendum or of any cause of action arising out of the performance of this Addendum.

B. Entire Agreement: This Addendum (7 pages), Exhibit 1 (2 pages), the Service Agreement (2 pages), the Service Terms and Conditions (4 pages), and the Customer Support Plan (20 pages) represent the entire and integrated agreement and understanding between the parties and supersede all prior negotiations, statements, representations and agreements, whether written or oral.

C. Modification: This Addendum shall be modified only by a written agreement, duly executed by all parties hereto.

D. Contingencies: CONTRACTOR certifies no gratuities, kick-backs or contingency fees were paid in connection with this Addendum, nor were any fees, commissions, gifts or other considerations made contingent upon the award of this Addendum.

E. Discrimination: All parties agree they will not discriminate against any person who performs work under the terms and conditions of this Addendum because of race, color, gender, creed, handicapping condition, or national origin.

F. **ADA Compliance:** All parties agree they will not discriminate against a qualified individual with disability, pursuant to a law as set forth in the Americans With Disabilities Act, P.L. 101-336, 42 U.S.C. § 12101, et seq., and/or any properly promulgated rules and regulations relating thereto.

G. **Governmental/Sovereign Immunity:** COUNTY does not waive its Governmental/Sovereign Immunity, as provided by any applicable law including WYO. STAT. §§ 1-39-101 through 121, as amended, by entering into this Addendum. Further, COUNTY fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law, based on this Addendum.

H. **Conflict of Interest:** COUNTY and CONTRACTOR affirm, to their knowledge, no CONTRACTOR employee has any personal beneficial interest whatsoever in the Addendum described herein. No staff member of CONTRACTOR, compensated either partially or wholly with funds from this Addendum, shall engage in any conduct or activity which would constitute a conflict of interest relative to this Addendum.

I. **Limitation on Payment:** COUNTY's payment obligation is conditioned upon the availability of funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services and equipment provided by CONTRACTOR the Addendum may be terminated by COUNTY at the end of the period for which funds are available. COUNTY shall notify CONTRACTOR, in writing, at the earliest possible time of the services which will or may be affected by a shortage of funds. At the earliest possible time means at least thirty (30) days before the shortage will affect payment of claims, if COUNTY knows of the shortage at least thirty (30) days in advance. No penalty shall accrue to COUNTY in the event this provision is exercised, and COUNTY shall not be obligated or liable for any future payments due or for any damages as a result of termination under this provision. This provision shall not be interpreted or construed to permit COUNTY to terminate this Addendum in order to acquire similar services from another party. If this Agreement is terminated, the COUNTY will be liable to pay CONTRACTOR for all services performed on or before the effective date of the termination.

J. **Insurance:** The CONTRACTOR shall obtain insurance, and provide certificates, to the Owner's satisfaction and subject to requirements substantially similar to those set out in Exhibit 1--Insurance Requirements for Most Contracts, which is attached and incorporated her by reference.

K. **Addendum Controls:** Where a conflict exists or arises between any provision and condition of this Addendum and the Service Agreement, the Service Terms and Conditions, or the Customer Support Plan, the provisions and conditions set forth in this Addendum shall control.

L. **Notices:** All notices required and permitted under this Addendum shall be deemed to have been given, if and when deposited: (i) with a recognized courier service (such as Federal Express, UPS or DHL) or (ii) in the U.S. Mail, properly stamped and addressed to the party for whom intended at such parties' address listed herein, or when personally delivered to such party. A party may change its address for notice hereunder by giving written notice to the other party.

ADDENDUM TO SERVICE AGREEMENT No. USC000005031

between  
Laramie County, WY and Motorola Solutions, Inc.

Signature Page


LARAMIE COUNTY, WYOMING

By: \_\_\_\_\_ Date \_\_\_\_\_  
Gunnar Malm, Chairman, Laramie County Commissioners

ATTEST:


By: \_\_\_\_\_ Date \_\_\_\_\_  
Debra Lee, Laramie County Clerk

CONTRACTOR: MOTOROLA SOLUTIONS, INC.

By:  \_\_\_\_\_ Date 6/2/2020  
Name (printed): David Kiepert  
Title: CSM

This Addendum is effective the date of the last signature affixed to this page.

REVIEWED AND APPROVED AS TO FORM ONLY

By:  \_\_\_\_\_ Date 6/2/2020  
Gladys Ayokosok  
Deputy Laramie County Attorney

## **Exhibit 1 Insurance Requirements**

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees. Contractor will require that any subcontractors procure and maintain insurance equivalent to this Exhibit.

### **MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

1. Commercial General Liability (COL): Insurance Services Office Form CG 00 01 covering COL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: ISO Form Number CA 00 OI covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation: as required by the State of Wyoming with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and-Omissions): Omitted.

### **Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

#### Additional Insured Status

The Entity, its officers, officials, employees and volunteers are to be covered as additional insured's on the COL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance ( at least as broad as ISO Form CG 20 1 O 11 85 or if not available, through the addition of both CG 20 10 and CG 20 3 7 if a later edition is used).

#### Primary Coverage

For any claims related to this contract, the Contractor's commercial general liability insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance of self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

#### Notice of Cancellation

Contractor shall provide notice to the Entity in the event the coverage is cancelled

Waiver of Subrogation

Contractor hereby grants to Entity a waiver of any right to subrogation under the Workers' Compensation insurance Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Contractor shall be solely responsible for any deductibles under Contractor's insurance policies.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

Claims Made Policies (note -should be applicable only to professional liability, see below)

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided/or at least five (5) years after completion of the contract work
3. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

Verification of Coverage

Contractor shall furnish the Entity with certificates and endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them.

Special Risks or Circumstances

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.



## SERVICE AGREEMENT

500 W Monroe St  
Chicago, IL 60661  
(800) 247-2346

Contract Number: USC000005031  
Contract Modifier: R26-FEB-20 22:12:19

Date: 02-APR-2020

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|--|
| <b>Company Name:</b> Laramie County Combined Communications Center<br><b>Attn.:</b> Glenn Crumpton<br><b>Billing Address:</b> 309 W 20th St<br><b>City, State, Zip Code:</b> Cheyenne, WY 82001<br><b>Customer Contact:</b> Glenn Crumpton<br><b>Phone:</b> 307-633-4330 |
|--|

**P.O.#:** N/A  
**Customer #:** 1036730978  
**Bill to Tag#:** 0001  
**Contract Start Date:** 01-JUL-2020  
**Contract End Date:** 30-JUN-2021  
**Payment Cycle:** MONTHLY  
**Currency:** USD

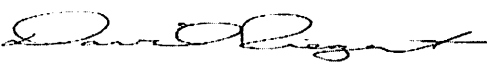
| QTY  | MODEL/OPTION                   | SERVICES DESCRIPTION   | MONTHLY EXT   | EXTENDED AMT              |
|--|--------------------------------|--|---|---------------------------|
|  | SVC01SVC0331A<br>SVC01SVC1424C | ***** Recurring Services *****<br>MOTOTRBO INF REP W/ADV REPL<br>ONSITE RESPONSE-LOCAL DISPATCH-<br>STANDARD | \$475.14<br>\$2,959.08  | \$5,701.68<br>\$35,508.96 |
| Sub Total  |                                |  | \$3,434.22  | \$41,210.64               |
| Taxes  |                                |  | \$0.00  | \$0.00                    |
| Grand Total  |                                |  | \$3,434.22  | \$41,210.64               |
| SPECIAL INSTRUCTIONS - ATTACH STATEMENT OF WORK FOR PERFORMANCE DESCRIPTIONS |                                |  | THIS SERVICE AMOUNT IS SUBJECT TO STATE AND LOCAL TAXING JURISDICTIONS WHERE APPLICABLE, TO BE VERIFIED BY MOTOROLA SOLUTIONS |                           |

| Subcontractor(s)                    | City  | State |
|-------------------------------------|-------|-------|
| Phoenix Region FSO                  | Tempe | AZ    |
| Infrastructure Depot Operations IDO | Elgin | IL    |

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 \_\_\_\_\_ TITLE \_\_\_\_\_ DATE \_\_\_\_\_

CUSTOMER (PRINT NAME) \_\_\_\_\_

  
 MOTOROLA REPRESENTATIVE (SIGNATURE) \_\_\_\_\_ TITLE CSM DATE 4/2/2020

DAVID RIEGERT \_\_\_\_\_



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MOTOROLA REPRESENTATIVE (PRINT NAME)

PHONE

Company Name : Laramie County Combined  
Communications Center  
Contract Number : USC000005031  
Contract Modifier : R26-FEB-20 22:12:19  
Contract Start Date : 01-JUL-2020  
Contract End Date : 30-JUN-2021

## **Service Terms and Conditions**

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

### **Section 1. APPLICABILITY**

These Maintenance 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 Maintenance 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 Maintenance 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 Maintenance 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. INVOICING AND PAYMENT**

8.1 Customer affirms that a purchase order or notice to proceed is not required for the duration of this service contract and will appropriate funds each year through the contract end date. 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.

8.2 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. The Customer will pay all invoices as received from Motorola. At the time of execution of this Agreement, the Customer will provide all necessary reference information to include on invoices for payment in accordance with this Agreement.

8.3 For multi-year service agreements, at the end of the first year of the Agreement and each year thereafter, a CPI percentage change calculation shall be performed using the U.S. Department of Labor, Consumer Price Index, all Items, Unadjusted Urban Areas (CPI-U). Should the annual inflation rate increase greater than 3% during the previous year, Motorola shall have the right to increase all future maintenance prices by the CPI increase amount exceeding 3%. All items, not seasonally adjusted shall be used as the measure of CPI for this price adjustment. Measurement will take place once the annual average for the New Year has been posted by the Bureau of Labor Statistics. For purposes of illustration, if in year 5 the CPI reported an increase of 8%, Motorola may increase the Year 6 price by 5% (8%-3% base)

#### **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.

10.3 If the Customer terminates this Agreement before the end of the Term, for any reason other than Motorola default, then the Customer will pay to Motorola an early termination fee equal to the discount applied to the last three (3) years of Service payments for the original Term.

#### **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.

17.9 This Agreement may be executed in one or more counterparts, all of which shall be considered part of the Agreement. The parties may execute this Agreement in writing, or by electronic signature, and any such electronic signature shall have the same legal effect as a handwritten signature for the purposes of validity, enforceability and admissibility. In addition, an electronic signature, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document.