



Department of Administration  
Purchasing Division  
2019 Washington Street East  
Post Office Box 50130  
Charleston, WV 25305-0130

# State of West Virginia Master Agreement

Order Date: 06-29-2022

CORRECT ORDER NUMBER MUST  
APPEAR ON ALL PACKAGES, INVOICES,  
AND SHIPPING PAPERS. QUESTIONS  
CONCERNING THIS ORDER SHOULD BE  
DIRECTED TO THE DEPARTMENT  
CONTACT.

Order Number:	CMA 0926 1979 PSC2200000002 1	Procurement Folder:	1040771
Document Name:	Radios and Accessories	Reason for Modification:	
Document Description:	Radios & Accessories		
Procurement Type:	Central Master Agreement		
Buyer Name:			
Telephone:			
Email:			
Shipping Method:	Best Way	Effective Start Date:	2022-07-05
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2023-07-04

VENDOR	DEPARTMENT CONTACT																				
Vendor Customer Code: 000000178509 MOTOROLA SOLUTIONS INC 7031 COLUMBIA GATEWAY DR  COLUMBIA MD 21046 US Vendor Contact Phone: 999-999-9999 Extension:  Discount Details: <table><thead><tr><th></th><th>Discount Allowed</th><th>Discount Percentage</th><th>Discount Days</th></tr></thead><tbody><tr><td>#1</td><td>No</td><td>0.0000</td><td>0</td></tr><tr><td>#2</td><td>No</td><td></td><td></td></tr><tr><td>#3</td><td>No</td><td></td><td></td></tr><tr><td>#4</td><td>No</td><td></td><td></td></tr></tbody></table>		Discount Allowed	Discount Percentage	Discount Days	#1	No	0.0000	0	#2	No			#3	No			#4	No			Requestor Name: Malena L Harding Requestor Phone: (304) 340-0333 Requestor Email: mharding@psc.state.wv.us  <b>23</b> FILE LOCATION _____
	Discount Allowed	Discount Percentage	Discount Days																		
#1	No	0.0000	0																		
#2	No																				
#3	No																				
#4	No																				

INVOICE TO	SHIP TO
ADMINISTRATION PUBLIC SERVICE COMMISSION 201 BROOKS ST  CHARLESTON WV 25301 US	RECEIVING/TRANSPORTATION BUILDING PUBLIC SERVICE COMMISSION 1116 QUARRIER ST  CHARLESTON WV 25301 US

Purchasing Division's File Copy

Total Order Amount: Open End

PURCHASING DIVISION AUTHORIZATION  
DATE: *Munx Aug - 7/08/2022*  
ELECTRONIC SIGNATURE ON FILE

ATTORNEY GENERAL APPROVAL AS TO FORM  
DATE: *7/20/2022*  
ELECTRONIC SIGNATURE ON FILE

ENCUMBRANCE CERTIFICATION  
DATE: *7/21/2022*  
ELECTRONIC SIGNATURE ON FILE

**Extended Description:**

The Vendor, Motorola Solutions, Inc., agrees to enter with the Public Service Commission (PSC), into an open- end contract to provide radios and accessories, per the specifications, terms and conditions, bid requirements, and the Vendor's submitted and accepted bid dated 05/24/2022, incorporated herein by reference and made apart hereof.

Additional renewal years will be added via change order with a dual-party agreement.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	52161511			EA	0.000000
	Service From	Service To			

**Commodity Line Description:** Radios and accessories

**Extended Description:**

Radios & Accesories

## ORDER OF PRECEDENT AND MODIFICATION ADDENDUM

THIS ORDER OF PRECEDENT AND MODIFICATION ADDENDUM, (hereinafter "Addendum") by and between Motorola Solutions, Inc. (hereinafter "Motorola") and the State of West Virginia Public Service Commission (hereinafter "State of West Virginia"), (both referred to as "Parties"), is intended to modify certain terms and conditions submitted by the Parties and to provide an order of precedent for all documents that comprise the contract resulting from the request for quotation identified as CRFQ PSC2200000015, Procurement Folder # 1040771 (the "Contract").

NOW THEREFORE, the Parties hereto hereby agree as follows:

1. **Order of Precedence:** The Contract is comprised of the documents listed in this section. The terms and conditions contained in the various documents shall be interpreted according to the priority given to the Contract document in this section.

**Contract Documents:**

- a. **Order of Precedence and Modification Addendum** (this document) – First Priority
  - b. **WV-96 Agreement Addendum** (Attached as Exhibit A) – Second Priority
  - c. **General Terms and Conditions** (Attached as Exhibit B) – Third Priority
  - d. **Motorola Documents** (Attached as Exhibit C) – Fourth Priority
2. **Document Modifications:** The documents included in this Contract referred to below are modified as shown below. Any modification of the documents not included below, or modified through the established order of precedence above, are expressly rejected.

a. **WV-96**

- i. **Assignment:** The term entitled "13. ASSIGNMENT" is modified by adding the following at the end of the clause

Notwithstanding the foregoing, Vendor reserves the right to assign the contract as part of a merger, joint venture, or sale of substantially all of its assets by providing the State with 30 day advance notice and an opportunity to immediately void the contract should such an assignment be objectionable or violate state laws or rules.

- ii. **Third Party Software:** The term entitled "19. THIRD-PARTY SOFTWARE" is modified by removing it in its entirety and replacing it with the following:

19: THIRD-PARTY SOFTWARE: Vendor hereby certifies that this Contract will not require the State to agree to third-party software terms. In the event that there are third-party terms, then Vendor agrees to Indemnify and defend the State against all claims resulting from an assertion that such third party terms and conditions are applicable and supersede the terms of the WV-96 State of West Virginia Addendum to Vendor's Standard Contractual Forms.

3. **List of Legal Clarifications:** The state expressly rejects Motorola's List of Legal Clarifications.

IN WITNESS WHEREOF, the Parties have entered into this Addendum as of the date of last signature below.

STATE OF WEST VIRGINIA

By: Melina Harding

Name: Melina Harding

Its: Senior Procurement Specialist

Date: 6/14/2022

MOTOROLA SOLUTIONS, INC.

By: Michael Leonard

Name: Michael Leonard

Its: MSSSI Territory Vice President

Date: June 13, 2022

**STATE OF WEST VIRGINIA  
ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS**

State Agency, Board, or Commission (the "State"): Public Service Commission  
Vendor: Motorola Solutions, Inc.  
Contract/Lease Number ("Contract"): CMA PSC2200000002  
Commodity/Service: Radios & Accessories

The State and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendor's form(s), however, include(s) one or more contractual terms and conditions that the State cannot or will not accept. In consideration for the State's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Contract:

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**

2. **PAYMENT** – Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.

Any language imposing any interest or charges due to late payment is deleted.

3. **FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

4. **RIGHT TO TERMINATE** – The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.

Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.

5. **DISPUTES** – Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.

Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.

Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.

6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.

7. **GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.

8. **RISK SHIFTING** – Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.

9. **LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.

10. **TAXES** – Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.

11. **NO WAIVER** – Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.

12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the State's prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
15. **INSURANCE** – Any provision requiring the State to maintain any type of insurance for either its or the Vendor's benefit is deleted.
16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act ("FOIA") (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State's sole discretion.
- Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.
19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software's terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
20. **AMENDMENTS** – The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *italics* to identify language being added and ~~strike through~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General's authorized representative expressly agree to and knowingly approve those alterations.

State: Public Service Commission

By: Malena Harding

Printed Name: Malena Harding

Title: Senior Procurement Specialist

Date: 6/14/2022

Vendor: Motorola Solutions, Inc.

By: Michael Leonard

Printed Name: Michael Leonard

Title: MSSSI Territory Vice President

Date: June 13, 2022

## **GENERAL TERMS AND CONDITIONS:**

**1. CONTRACTUAL AGREEMENT:** Issuance of an Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance by the State of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid, or on the Contract if the Contract is not the result of a bid solicitation, signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

**2. DEFINITIONS:** As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.

**2.1. "Agency" or "Agencies"** means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

**2.2. "Bid" or "Proposal"** means the vendors submitted response to this solicitation.

**2.3. "Contract"** means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.

**2.4. "Director"** means the Director of the West Virginia Department of Administration, Purchasing Division.

**2.5. "Purchasing Division"** means the West Virginia Department of Administration, Purchasing Division.

**2.6. "Award Document"** means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

**2.7. "Solicitation"** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

**2.8. "State"** means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

**2.9. "Vendor" or "Vendors"** means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

**3. CONTRACT TERM; RENEWAL; EXTENSION:** The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

☒ **Term Contract**

**Initial Contract Term:** The Initial Contract Term will be for a period of ONE (1) YEAR. The Initial Contract Term becomes effective on the effective start date listed on the first page of this Contract and the Initial Contract Term ends on the effective end date also shown on the first page of this Contract.

**Renewal Term:** This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be delivered to the Agency and then submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified below, renewal of this Contract is limited to THREE (3) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

☐ **Alternate Renewal Term** – This contract may be renewed for \_\_\_\_\_ successive \_\_\_\_\_ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

**Delivery Order Limitations:** In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

☐ **Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within \_\_\_\_\_ days.

☐ **Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within \_\_\_\_\_ days. Upon completion of the work covered by the preceding sentence, the vendor agrees that:

☐ the contract will continue for \_\_\_\_\_ years;

☐ the contract may be renewed for \_\_\_\_\_ successive \_\_\_\_\_ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney

General's Office (Attorney General approval is as to form only).

☐ **One-Time Purchase:** The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

☐ **Other:** Contract Term specified in \_\_\_\_\_

**4. AUTHORITY TO PROCEED:** Vendor is authorized to begin performance of this contract on the date of encumbrance listed on the front page of the Award Document unless either the box for "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked in Section 3 above. If either "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked, Vendor must not begin work until it receives a separate notice to proceed from the State. The notice to proceed will then be incorporated into the Contract via change order to memorialize the official date that work commenced.

**5. QUANTITIES:** The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

☒ **Open End Contract:** Quantities listed in this Solicitation/Award Document are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

☐ **Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.

☐ **Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

☐ **One-Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.

**6. EMERGENCY PURCHASES:** The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute of breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One-Time Purchase contract.

**7. REQUIRED DOCUMENTS:** All of the items checked in this section must be provided to the Purchasing Division by the Vendor as specified:

☐ **BID BOND (Construction Only):** Pursuant to the requirements contained in W. Va. Code § 5-22-1(c), All Vendors submitting a bid on a construction project shall furnish a valid bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.

☐ **PERFORMANCE BOND:** The apparent successful Vendor shall provide a performance bond in the amount of 100% of the contract. The performance bond must be received by the Purchasing Division prior to Contract award.

☐ **LABOR/MATERIAL PAYMENT BOND:** The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be delivered to the Purchasing Division prior to Contract award.

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable. Notwithstanding the foregoing, West Virginia Code § 5-22-1 (d) mandates that a vendor provide a performance and labor/material payment bond for construction projects. Accordingly, substitutions for the performance and labor/material payment bonds for construction projects is not permitted.

☐ **MAINTENANCE BOND:** The apparent successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the Purchasing Division prior to Contract award.

☐ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits upon request and in a form acceptable to the State. The request may be prior to or after contract award at the State's sole discretion.

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The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications regardless of whether or not that requirement is listed above.

Revised 04/01/2022

**8. INSURANCE:** The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below and must include the State as an additional insured on each policy prior to Contract award. The insurance coverages identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies, including but not limited to, policy cancelation, policy reduction, or change in insurers. The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether that insurance requirement is listed in this section.

Vendor must maintain:

☒ **Commercial General Liability Insurance** in at least an amount of: \$1,000,000.00 per occurrence.

☐ **Automobile Liability Insurance** in at least an amount of: \_\_\_\_\_ per occurrence.

☐ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: \_\_\_\_\_ per occurrence. Notwithstanding the forgoing, Vendor's are not required to list the State as an additional insured for this type of policy.

☐ **Commercial Crime and Third Party Fidelity Insurance** in an amount of: \_\_\_\_\_ per occurrence.

☐ **Cyber Liability Insurance** in an amount of: \_\_\_\_\_ per occurrence.

☐ **Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract.

☐ **Pollution Insurance** in an amount of: \_\_\_\_\_ per occurrence.

☐ **Aircraft Liability** in an amount of: \_\_\_\_\_ per occurrence.

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Notwithstanding anything contained in this section to the contrary, the Director of the Purchasing Division reserves the right to waive the requirement that the State be named as an additional insured on one or more of the Vendor's insurance policies if the Director finds that doing so is in the State's best interest.

**9. WORKERS' COMPENSATION INSURANCE:** Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

**10. [Reserved]**

**11. LIQUIDATED DAMAGES:** This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

☐ \_\_\_\_\_ for \_\_\_\_\_.

☐ Liquidated Damages Contained in the Specifications.

☒ Liquidated Damages Are Not Included in this Contract.

**12. ACCEPTANCE:** Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.

**13. PRICING:** The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification. Notwithstanding the foregoing, Vendor must extend any publicly advertised sale price to the State and invoice at the lower of the contract price or the publicly advertised sale price.

**14. PAYMENT IN ARREARS:** Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software maintenance, licenses, or subscriptions may be paid annually in advance.

**15. PAYMENT METHODS:** Vendor must accept payment by electronic funds transfer and P-Card. (The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.)

**16. TAXES:** The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

**17. ADDITIONAL FEES:** Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia, included in the Contract, or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

**18. FUNDING:** This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

**19. CANCELLATION:** The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-5.2.b.

**20. TIME:** Time is of the essence regarding all matters of time and performance in this Contract.

**21. APPLICABLE LAW:** This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code, or West Virginia Code of State Rules is void and of no effect.

**22. COMPLIANCE WITH LAWS:** Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

**SUBCONTRACTOR COMPLIANCE:** Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

**23. ARBITRATION:** Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.

**24. MODIFICATIONS:** This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

**25. WAIVER:** The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

**26. SUBSEQUENT FORMS:** The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

**27. ASSIGNMENT:** Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments.

**28. WARRANTY:** The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

**29. STATE EMPLOYEES:** State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

**30. PRIVACY, SECURITY, AND CONFIDENTIALITY:** The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.

**31. YOUR SUBMISSION IS A PUBLIC DOCUMENT:** Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

**DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.**

Submission of any bid, proposal, or other document to the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

**32. LICENSING:** In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

**SUBCONTRACTOR COMPLIANCE:** Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up-to-date on all state and local obligations as described in this section. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

**33. ANTITRUST:** In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

**34. VENDOR CERTIFICATIONS:** By signing its bid or entering into this Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this Solicitation in its entirety; understands the requirements, terms and conditions, and other information contained herein.

Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

**35. VENDOR RELATIONSHIP:** The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

**36. INDEMNIFICATION:** The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

**37. NO DEBT CERTIFICATION:** In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State. By submitting a bid, or entering into a contract with the State, Vendor is affirming that (1) for construction contracts, the Vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, neither the Vendor nor any related party owe a debt as defined above, and neither the Vendor nor any related party are in employer default as defined in the statute cited above unless the debt or employer default is permitted under the statute.

**38. CONFLICT OF INTEREST:** Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

**39. REPORTS:** Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

☒ Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

☐ Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at [purchasing.division@wv.gov](mailto:purchasing.division@wv.gov).

**40. BACKGROUND CHECK:** In accordance with W. Va. Code § 15-2D-3, the State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

**41. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS:** Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process.

- c. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
  1. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
  2. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

**42. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL:** In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a “substantial labor surplus area”, as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products. This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

**43. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE:** W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1 million, the Vendor must submit to the Agency a disclosure of interested parties prior to beginning work under this Contract. Additionally, the Vendor must submit a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-work interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

**44. PROHIBITION AGAINST USED OR REFURBISHED:** Unless expressly permitted in the solicitation published by the State, Vendor must provide new, unused commodities, and is prohibited from supplying used or refurbished commodities, in fulfilling its responsibilities under this Contract.

**45. VOID CONTRACT CLAUSES –** This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

**46. ISRAEL BOYCOTT:** Bidder understands and agrees that, pursuant to W. Va. Code § 5A-3-63, it is prohibited from engaging in a boycott of Israel during the term of this contract.

**DESIGNATED CONTACT:** Vendor appoints the individual identified in this Section as the Contract Administrator and the initial point of contact for matters relating to this Contract.

(Name, Title) Peter Marotta, Motorola Account Manager for WV

(Printed Name and Title) Peter Marotta, Motorola Account Manager

(Address) 809 Pinnacle Dr. Linthicum, MD 21090

(Phone Number) / (Fax Number) 304-860-5051

(email address) petermarotta@motorolasolutions.com

**CERTIFICATION AND SIGNATURE:** By signing below, or submitting documentation through wvOASIS, I certify that: I have reviewed this Solicitation/Contract in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation/Contract for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that I am authorized by the vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

By signing below, I further certify that I understand this Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law; and that pursuant to W. Va. Code 5A-3-63, the entity entering into this contract is prohibited from engaging in a boycott against Israel.

MOTOROLA SOLUTIONS, INC.  
(Company)

[Signature] MSSSI VICE PRESIDENT  
(Authorized Signature) (Representative Name, Title)

MICHAEL LEONARD MSSSI VICE PRESIDENT 5/23/2022  
(Printed Name and Title of Authorized Representative) (Date)

OFFICE (410) 712-4818 MOBILE (443) 691-4945 (410) 712-6502 (FAX)  
(Phone Number) (Fax Number)

MICHAEL.LEONARD@MOTOROLASOLUTIONS.COM  
(Email Address)

## COMMUNICATIONS PRODUCTS AGREEMENT

Motorola Solutions, Inc. ("Motorola") and **Public Service Commission, WV** ("Customer") enter into this "Agreement," pursuant to which Customer will purchase and Motorola will sell the Products, as described below. Motorola and Customer may be referred to individually as a "Party" and collectively as the "Parties." For good and valuable consideration, the Parties agree as follows:

### Section 1 EXHIBITS

1.1 EXHIBITS. The exhibits listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement takes precedence over the exhibits and any inconsistency between the exhibits will be resolved in their listed order.

Exhibit A	Motorola "Software License Agreement"
Exhibit B	"Technical and Implementation Documents"
B-1	"Pricing" dated _____
B-2	"Statement of Work" dated _____
Exhibit C	"Payment Schedule" (if applicable)

### Section 2 DEFINITIONS

Capitalized terms used in this Agreement have the following meanings:

"Addendum (Addenda)" is the title of the document(s) containing a specific set of terms and conditions applicable to a particular service or other offering beyond the communication System and System implementation services. The terms in the Addendum are applicable only to the specific service or offering described therein.

"Confidential Information" means all information consistent with the fulfillment of this agreement that is (i) disclosed under this agreement in oral, written, graphic, machine recognizable, and/or sample form, being clearly designated, labeled or marked as confidential or its equivalent or (ii) obtained by examination, testing or analysis of any hardware, software or any component part thereof provided by discloser to recipient. The nature and existence of this agreement are considered Confidential Information. Confidential information that is disclosed orally must be identified as confidential at the time of disclosure and confirmed by the discloser by submitting a written document to the recipient within thirty (30) days after such disclosure. The written document must contain a summary of the Confidential Information disclosed with enough specificity for identification purpose and must be labeled or marked as confidential or its equivalent.

"Contract Price" means the price for the Products, excluding applicable sales or similar taxes and freight charges.

"Effective Date" means that date upon which the last Party executes this Agreement.

"Equipment" means the equipment listed in the List of Products that Customer purchases from Motorola under this Agreement.

"Force Majeure" means an event, circumstance, or act of a third party that is beyond a Party's reasonable control (e.g., an act of God, an act of the public enemy, an act of a government entity, supplier performance, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, riots, or any other similar cause).

"Motorola Software" means Software that Motorola or its affiliated company owns.

"Non-Motorola Software" means Software that another party owns.

"Open Source Software" (also called "freeware" or "shareware") software with either freely obtainable source code, license for modification, or permission for free distribution.

"Products" mean the Equipment and Software provided by Motorola under this Agreement.

"Proprietary Rights" means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to the Equipment and Software, including those created or produced by Motorola under this Agreement and any corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by Motorola or another party.

"Software" means the Motorola Software and Non-Motorola Software in object code format that is furnished with the Products.

"Warranty Period" means one (1) year from the date of shipment of the Products.

### **Section 3      SCOPE OF AGREEMENT AND TERM**

3.1.      **SCOPE OF WORK.** Motorola will provide and install (if applicable) the Products, and perform its other contractual responsibilities, all in accordance with this Agreement. Customer will perform its contractual responsibilities in accordance with this Agreement.

3.2.      **CHANGE ORDERS.** Either Party may request changes within the general scope of this Agreement. Neither Party is obligated to perform requested changes unless both Parties execute a written change order.

3.3.      **TERM.** Unless terminated in accordance with other provisions of this Agreement or extended by mutual agreement of the Parties, the term of this Agreement begins on the Effective Date and continues until the expiration of the Warranty Period or three (3) years from the Effective Date, whichever occurs last.

3.4.      **ADDITIONAL EQUIPMENT OR SOFTWARE.** During the Term of this Agreement, Customer may order additional Equipment or Software if it is then available. Each purchase order must refer to this Agreement and must specify the pricing and delivery terms. Notwithstanding any additional or contrary terms in the purchase order, the applicable provisions of this Agreement (except for pricing, delivery, and payment terms) will govern the purchase and sale of the additional Equipment or Software. Payment is due within thirty (30) days after the invoice date, and Motorola will send Customer an invoice as the additional Equipment is shipped or Software is licensed. Alternatively, Customer may register with and place orders through the Motorola Solutions Customer Portal eCommerce Shop, and this Agreement will be the "Underlying Agreement" for those eCommerce transactions rather than the eCommerce Shop Terms and Conditions of Sale. eCommerce Shop registration and other information may be found at [https://www.motorolasolutions.com/en\\_us/registration](https://www.motorolasolutions.com/en_us/registration) and the shop support telephone number is (800) 814-0601.

3.5.      **MAINTENANCE SERVICE.** This Agreement does not cover maintenance or support of the Products except as provided under the warranty. In addition, this Agreement does not cover professional or subscription services. If Customer wishes to purchase maintenance or support, professional or subscription services, Motorola will provide a separate proposal and terms and conditions upon request.

3.6.      **MOTOROLA SOFTWARE.** Any Motorola Software, including subsequent releases, is licensed to Customer solely in accordance with the Software License Agreement that is attached as Exhibit A.

Customer hereby accepts and agrees to abide by all of the terms and restrictions of the Software License Agreement.

3.7. **NON-MOTOROLA SOFTWARE.** Any Non-Motorola Software is licensed to Customer in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to Motorola the right to sublicense the Non-Motorola Software pursuant to the Software License Agreement, in which case it applies and the copyright owner will have all of Licensor's rights and protections under the Software License Agreement. Motorola makes no representations or warranties of any kind regarding Non-Motorola Software. Non-Motorola Software may include Open Source Software. Upon request by Customer, Motorola will use commercially reasonable efforts to determine whether any Open Source Software will be provided under this Agreement; and if so, identify the Open Source Software and provide to Customer a copy of the applicable standard license (or specify where that license may be found); and provide to Customer a copy of the Open Source Software source code if it is publicly available without charge (although a distribution fee or a charge for related services may be applicable).

3.8. **OPTIONAL EQUIPMENT OR SOFTWARE.** This paragraph applies only if a "Priced Options" exhibit is shown in Section 1, or if the parties amend this Agreement to add a Priced Options exhibit. During the term of the option as stated in the Priced Options exhibit (or if no term is stated, then for one (1) year after the Effective Date), Customer has the right and option to purchase the equipment, software, and related services that are described in the Priced Options exhibit. Customer may exercise this option by giving written notice to Motorola which must designate what equipment, software, and related services Customer is selecting (including quantities, if applicable). To the extent they apply, the terms and conditions of this Agreement will govern the transaction; however, the parties acknowledge that certain provisions must be agreed upon, and they agree to negotiate those in good faith promptly after Customer delivers the option exercise notice. Examples of provisions that may need to be negotiated are: specific lists of deliverables, statements of work, acceptance test plans, delivery and implementation schedules, payment terms, maintenance and support provisions, additions to or modifications of the Software License Agreement, hosting terms, and modifications to the acceptance and warranty provisions.

#### **Section 4      PERFORMANCE SCHEDULE**

If this Agreement includes the performance of services, the statement of work attached as Exhibit B-2 will describe the performance schedule.

#### **Section 5      CONTRACT PRICE, PAYMENT, AND INVOICING**

5.1. **CONTRACT PRICE.** The Contract Price in U.S. dollars is \$\_\_\_\_\_. The Contract Price may be further described in Exhibit B-1, Pricing.

5.2. **INVOICING AND PAYMENT.** Unless otherwise set forth in a Payment Schedule attached as Exhibit C, Motorola will submit invoices to Customer for Products when they are shipped and for services when they are performed. Invoices will be mailed or emailed to Customer pursuant to Section 5.4, Invoicing and Shipping Addresses. Customer will make payments to Motorola within thirty (30) days after the date of each invoice. Customer will make payments when due in the form of a wire transfer, check, or cashier's check from a U.S. financial institution. Overdue invoices will bear simple interest at the maximum allowable rate. For Customer's reference, the Federal Tax Identification Number for Motorola Solutions, Inc. is 36-1115800

5.3 **FREIGHT, TITLE, AND RISK OF LOSS.** Motorola will pre-pay and add all freight charges to the invoices. Title and risk of loss to the Equipment will pass to Customer upon shipment. Title to Software will not pass to Customer at any time. Motorola will pack and ship all Equipment in accordance with good commercial practices.

5.4 **INVOICING AND SHIPPING ADDRESSES.** Invoices will be sent to the Customer at the following name:\_\_\_\_\_

address: \_\_\_\_\_  
phone: \_\_\_\_\_

E-INVOICE. To receive invoices via email:

Customer Account Number: \_\_\_\_\_

Customer Accounts Payable Email: \_\_\_\_\_

Customer CC(optional) Email: \_\_\_\_\_

The Equipment will be shipped to the Customer at the final, following address (insert if this information is known): \_\_\_\_\_

Customer may change this information by giving written notice to Motorola.

## **Section 6 SITES AND SITE CONDITIONS**

6.1. ACCESS TO SITES. If Motorola is providing installation or other services, Customer will provide all necessary construction and building permits, licenses, and the like; and access to the work sites or vehicles identified in the Technical and Implementation Documents as reasonably requested by Motorola so that it may perform its contractual duties.

6.2. SITE CONDITIONS. If Motorola is providing installation or other services at Customer's sites, Customer will ensure that these work sites be safe, secure, and in compliance with all applicable industry and OSHA standards. To the extent applicable and unless the Statement of Work states to the contrary, Customer will ensure that these work sites have adequate: physical space, air conditioning and other environmental conditions; adequate and appropriate electrical power outlets, distribution, equipment and connections; and adequate telephone or other communication lines (including modem access and adequate interfacing networking capabilities), all for the installation, use and maintenance of the Products.

## **Section 7 ACCEPTANCE**

Acceptance of the Products will occur upon delivery to Customer unless the statement of work provides for acceptance verification or testing, in which case acceptance of the Products will occur upon successful completion of the acceptance verification or testing. Notwithstanding the preceding sentence, Customer's use of the Products for their operational purposes will constitute acceptance.

## **Section 8 REPRESENTATIONS AND WARRANTIES**

8.1. EQUIPMENT WARRANTY. During the Warranty Period, Motorola warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship. If Acceptance is delayed beyond six (6) months after shipment of the Products by events or causes within Customer's control, this warranty expires eighteen (18) months after the shipment of the Products.

8.2. MOTOROLA SOFTWARE WARRANTY. Unless otherwise stated in the Software License Agreement, during the Warranty Period, Motorola warrants the Motorola Software in accordance with the terms of the Software License Agreement and the provisions of this Section that are applicable to the Motorola Software. If Acceptance is delayed beyond six (6) months after shipment of the Software by events or causes within Customer's control, this warranty expires eighteen (18) months after the shipment of the Software.

8.3. EXCLUSIONS TO EQUIPMENT AND MOTOROLA SOFTWARE WARRANTIES. These warranties do not apply to: (i) defects or damage resulting from: use of the Equipment or Motorola Software in other than its normal, customary, and authorized manner; accident, liquids, neglect, or acts of God; testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Motorola; Customer's failure to comply with all applicable industry and OSHA standards; (ii) breakage of or damage to antennas unless caused directly by defects in material or

workmanship; (iii) Equipment that has had the serial number removed or made illegible; (iv) batteries (because they carry their own separate limited warranty) or consumables; (v) freight costs to ship Equipment to the repair depot; (vi) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (vii) normal or customary wear and tear.

8.4. **WARRANTY CLAIMS.** To assert a warranty claim, Customer must notify Motorola in writing of the claim before the expiration of the Warranty Period. Upon receipt of this notice, Motorola will investigate the warranty claim. If this investigation confirms a valid warranty claim, Motorola will (at its option and at no additional charge to Customer) repair the defective Equipment or Motorola Software, replace it with the same or equivalent product, or refund the price of the defective Equipment or Motorola Software. That action will be the full extent of Motorola's liability for the warranty claim. If this investigation indicates the warranty claim is not valid, then Motorola may invoice Customer for responding to the claim on a time and materials basis using Motorola's then current labor rates. Repaired or replaced product is warranted for the balance of the original applicable Warranty Period. All replaced products or parts will become the property of Motorola.

8.5. **ORIGINAL END USER IS COVERED.** These express limited warranties are extended by Motorola to the original user purchasing the Products for commercial, industrial, or governmental use only, and are not assignable or transferable.

8.6. **DISCLAIMER OF OTHER WARRANTIES.** THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND MOTOROLA SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

## **Section 9 DELAYS**

9.1 Neither Party will be liable for its non-performance or delayed performance if caused by a Force Majeure. A Party that becomes aware of a Force Majeure that will significantly delay performance will notify the other Party promptly (but in no event later than fifteen days) after it discovers the Force Majeure. If a Force Majeure occurs, the Parties will execute a change order to extend the performance schedule for a time period that is reasonable under the circumstances.

## **Section 10 DISPUTES**

The Parties will use the following procedure to address any dispute arising under this Agreement (a "Dispute").

10.1. **GOVERNING LAW.** This Agreement will be governed by and construed in accordance with the laws of the State in which the Products are delivered.

10.2. **NEGOTIATION.** Either Party may initiate the Dispute resolution procedures by sending a notice of Dispute ("Notice of Dispute"). The Parties will attempt to resolve the Dispute promptly through good faith negotiations including 1) timely escalation of the Dispute to executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for the matter and 2) direct communication between the executives. If the Dispute has not been resolved within ten (10) days from the Notice of Dispute, the Parties will proceed to mediation.

10.3 **MEDIATION.** The Parties will choose an independent mediator within thirty (30) days of a notice to mediate from either Party ("Notice of Mediation"). Neither Party may unreasonably withhold consent to the selection of a mediator. If the Parties are unable to agree upon a mediator, either Party may request that American Arbitration Association nominate a mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Each Party will participate in the

mediation in good faith and will be represented at the mediation by a business executive with authority to settle the Dispute.

10.4. LITIGATION, VENUE and JURISDICTION. If a Dispute remains unresolved for sixty (60) days after receipt of the Notice of Mediation, either Party may then submit the Dispute to a court of competent jurisdiction in the State in which the Products are delivered. Each Party irrevocably agrees to submit to the exclusive jurisdiction of the courts in such state over any claim or matter arising under or in connection with this Agreement.

10.5. CONFIDENTIALITY. All communications pursuant to subsections 10.2 and 10.3 will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality protections provided by applicable law. The use of these Dispute resolution procedures will not be construed under the doctrines of laches, waiver or estoppel to affect adversely the rights of either Party.

## **Section 11      DEFAULT AND TERMINATION**

If either Party fails to perform a material obligation under this Agreement, the other Party may consider the non-performing Party to be in default (unless a Force Majeure causes the failure) and may assert a default claim by giving the non-performing Party a written and detailed notice of the default. Except for a default by Customer for failing to pay any amount when due under this Agreement which must be cured immediately, the defaulting Party will have thirty (30) days after receipt of the notice of default to either cure the default or, if the default is not curable within thirty (30) days, provide a written cure plan. The defaulting Party will begin implementing the cure plan immediately after receipt of notice by the other Party that it approves the plan. If Customer is the defaulting Party, Motorola may stop work on the project until it approves the Customer's cure plan. If the non-performing Party fails to cure the default, the performing Party may terminate any unfulfilled portion of this Agreement and recover damages as permitted by law and this Agreement. In the event Customer elects to terminate this Agreement for any reason other than default, Customer shall pay Motorola for the conforming Equipment and/or Software delivered and all services performed.

## **Section 12      INDEMNIFICATION**

12.1. GENERAL INDEMNITY BY MOTOROLA. Motorola will indemnify and hold Customer harmless from any and all liability, expense, judgment, suit, cause of action, or demand for personal injury, death, or direct damage to tangible property which may accrue against Customer to the extent it is caused by the negligence of Motorola, its subcontractors, or their employees or agents, while performing their duties under this Agreement, if Customer gives Motorola prompt, written notice of any claim or suit. Customer will cooperate with Motorola in its defense or settlement of the claim or suit. This section sets forth the full extent of Motorola's general indemnification of Customer from liabilities that are in any way related to Motorola's performance under this Agreement.

12.3. RESERVED.

### **12.3. PATENT AND COPYRIGHT INFRINGEMENT INDEMNIFICATION**

12.3.1. Motorola will defend at its expense any suit brought against Customer to the extent it is based on a third-party claim alleging that the Equipment manufactured by Motorola or the Motorola Software ("Motorola Product") directly infringes a United States patent or copyright ("Infringement Claim"). Motorola's duties to defend and indemnify are conditioned upon: Customer promptly notifying Motorola in writing of the Infringement Claim; Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and Customer providing to Motorola cooperation and, if requested by Motorola, reasonable assistance in the defense of the Infringement Claim. In addition to Motorola's obligation to defend, and subject to the same conditions, Motorola will pay all damages finally

awarded against Customer by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Motorola in settlement of an Infringement Claim.

12.3.2. If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense: (a) procure for Customer the right to continue using the Motorola Product; (b) replace or modify the Motorola Product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the Motorola Product and grant Customer a credit for the Motorola Product, less a reasonable charge for depreciation. The depreciation amount will be calculated based upon generally accepted accounting standards.

12.3.3. Motorola will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the combination of the Motorola Product with any software, apparatus or device not furnished by Motorola; (b) the use of ancillary equipment or software not furnished by Motorola and that is attached to or used in connection with the Motorola Product; (c) Motorola Product designed or manufactured in accordance with Customer's designs, specifications, guidelines or instructions, if the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions; (d) a modification of the Motorola Product by a party other than Motorola; (e) use of the Motorola Product in a manner for which the Motorola Product was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by Customer to install an enhancement release to the Motorola Software that is intended to correct the claimed infringement. In no event will Motorola's liability resulting from its indemnity obligation to Customer extend in any way to royalties payable on a per use basis or the Customer's revenues, or any royalty basis other than a reasonable royalty based upon revenue derived by Motorola from Customer from sales or license of the infringing Motorola Product.

12.3.4. This Section 12 provides Customer's sole and exclusive remedies and Motorola's entire liability in the event of an Infringement Claim. Customer has no right to recover and Motorola has no obligation to provide any other or further remedies, whether under another provision of this Agreement or any other legal theory or principle, in connection with an Infringement Claim. In addition, the rights and remedies provided in this Section 12 are subject to and limited by the restrictions set forth in Section 13.

## **Section 13      LIMITATION OF LIABILITY**

Except for personal injury, death or damage to tangible property, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of the Equipment, Software, or services with respect to which losses or damages are claimed. **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, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT.** This limitation of liability provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision. 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.

## **Section 14      CONFIDENTIALITY AND PROPRIETARY RIGHTS**

### **14.1.    CONFIDENTIAL INFORMATION.**

14.1.1. Each party is a disclosing party ("Discloser") and a receiving party ("Recipient") under this agreement. All deliverables will be deemed to be Motorola's Confidential Information. During the term of this Agreement and for a period of three (3) years from the expiration or termination of this Agreement, Recipient will (i) not disclose Confidential Information to any third party; (ii) restrict disclosure of Confidential Information to only those employees (including, but not limited to, employees of any wholly

owned subsidiary, a parent company, any other wholly owned subsidiaries of the same parent company), agents or consultants who must be directly involved with the Confidential Information for the purpose and who are bound by confidentiality terms substantially similar to those in this agreement; (iii) not copy, reproduce, reverse engineer, de-compile or disassemble any Confidential Information; (iv) use the same degree of care as for its own information of like importance, but at least use reasonable care, in safeguarding against disclosure of Confidential Information; (v) promptly notify Discloser upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this Agreement; and (vi) only use the Confidential Information as needed to fulfill this Agreement.

14.1.2. Recipient is not obligated to maintain as confidential, Confidential Information that Recipient can demonstrate by documentation (i) is now available or becomes available to the public without breach of this agreement; (ii) is explicitly approved for release by written authorization of Discloser; (iii) is lawfully obtained from a third party or parties without a duty of confidentiality; (iv) is known to the Recipient prior to such disclosure; or (v) is independently developed by Recipient without the use of any of Discloser's Confidential Information or any breach of this Agreement.

14.1.3. All Confidential Information remains the property of the Discloser and will not be copied or reproduced without the express written permission of the Discloser, except for copies that are absolutely necessary in order to fulfill this Agreement. Within ten (10) days of receipt of Discloser's written request, Recipient will return all Confidential Information to Discloser along with all copies and portions thereof, or certify in writing that all such Confidential Information has been destroyed. However, Recipient may retain one (1) archival copy of the Confidential Information that it may use only in case of a dispute concerning this Agreement. No license, express or implied, in the Confidential Information is granted other than to use the Confidential Information in the manner and to the extent authorized by this Agreement. The Discloser warrants that it is authorized to disclose any Confidential Information it discloses pursuant to this Agreement.

#### 14.2. PRESERVATION OF MOTOROLA'S PROPRIETARY RIGHTS.

Motorola, the third party manufacturer of any Equipment, and the copyright owner of any Non-Motorola Software own and retain all of their respective Proprietary Rights in the Equipment and Software, and nothing in this Agreement is intended to restrict their Proprietary Rights. All intellectual property developed, originated, or prepared by Motorola in connection with providing to Customer the Equipment, Software, or related services remain vested exclusively in Motorola, and this Agreement does not grant to Customer any shared development rights of intellectual property. Except as explicitly provided in the Software License Agreement, Motorola does not grant to Customer, either directly or by implication, estoppel, or otherwise, any right, title or interest in Motorola's Proprietary Rights. Customer will not modify, disassemble, peel components, de-compile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, or export the Software, or permit or encourage any third party to do so. The preceding sentence does not apply to Open Source Software which is governed by the standard license of the copyright owner.

### Section 15 GENERAL

15.1. TAXES. The Contract Price does not include excise, sales, lease, use, property, or other taxes, assessments or duties, all of which will be paid by Customer except as exempt by law. If Motorola is required to pay any of these taxes, Motorola will send an invoice to Customer and Customer will pay to Motorola the amount of the taxes (including any interest and penalties) within thirty twenty (30) days after the date of the invoice. Customer will be solely responsible for reporting the Equipment for personal property tax purposes, and Motorola will be solely responsible for reporting taxes on its income or net worth.

15.2. ASSIGNABILITY AND SUBCONTRACTING. 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. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

15.3 WAIVER. Failure or delay by either Party to exercise any right or power under this Agreement will not be a waiver of the right or power. For a waiver of a right or power to be effective, it must be in a writing signed by the waiving Party. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

15.4. SEVERABILITY. If a court of competent jurisdiction renders any part of this Agreement invalid or unenforceable, that part will be severed and the remainder of this Agreement will continue in full force and effect.

15.5. INDEPENDENT CONTRACTORS. Each Party will perform its duties under this Agreement only as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership or formal business organization of any kind.

15.6. HEADINGS AND SECTION REFERENCES; CONSTRUCTION. The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.

15.7. NOTICES. Notices required under this Agreement to be given by one Party to the other must be in writing and either personally delivered or sent to the address by the other Party by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as Federal Express, UPS, or DHL), or by facsimile with correct answerback received, and will be effective upon receipt.

15.8. COMPLIANCE WITH APPLICABLE LAWS. Each Party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement or use of the Products or services. Customer will obtain and comply with all Federal Communications Commission ("FCC") licenses and authorizations required for the installation, operation and use of the Products or services before the scheduled installation of the Equipment. Although Motorola might assist Customer in the preparation of its FCC license applications, neither Motorola nor any of its employees is an agent or representative of Customer in FCC or other matters.

15.9. AUTHORITY TO EXECUTE AGREEMENT. Each Party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; the person executing this Agreement on its behalf has the authority to do so; upon execution and delivery of this Agreement by the Parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the Party.

15.10. SURVIVAL OF TERMS. The following provisions will survive the expiration or termination of this Agreement for any reason: Section 3.6 (Motorola Software), Section 3.7 (Non-Motorola Software); if any payment obligations exist, Sections 5.1 and 5.2 (Contract Price and Invoicing and Payment); Subsection 9.7 (Disclaimer of Implied Warranties); Section 10 (Disputes); Section 13 (Limitation of Liability); Section 14 (Confidentiality and Proprietary Rights; and all of the General terms in this Section 15.


15.11. ENTIRE AGREEMENT. This Agreement, including all Exhibits, constitutes the entire agreement of the Parties regarding the subject matter of the Agreement and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be executed in multiple counterparts, and shall have the same legal force and effect as if the Parties had executed it as a single document. The Parties may sign in writing, or by electronic signature, including by email. An electronic signature, or a facsimile copy or computer image, such as a PDF or tiff image, of a signature, shall be treated as and shall have the same effect as an original signature. 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. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Customer purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each Party signs that document.

The Parties hereby enter into this Agreement as of the Effective Date.

Motorola Solutions, Inc.

Customer

By: 

By: 

Name: Michael Leonard

Name: Malena Harding

Title: MSSSI Territory Vice President

Title: Senior Procurement Specialist

Date: June 13, 2022

Date: 6/14/2022

## **EXHIBIT A MOTOROLA SOFTWARE LICENSE AGREEMENT**

This Exhibit A Motorola Software License Agreement ("Agreement") is between Motorola Solutions, Inc., ("Motorola"), and **Public Service Commission, WV** ("Licensee").

For good and valuable consideration, the parties agree as follows:

### **Section 1      DEFINITIONS**

1.1 "Designated Products" means products provided by Motorola to Licensee with which or for which the Software and Documentation is licensed for use.

1.2 "Documentation" means 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 such information is provided).

1.3 "Open Source Software" means software with either freely obtainable source code, license for modification, or permission for free distribution.

1.4 "Open Source Software License" means the terms or conditions under which the Open Source Software is licensed.

1.5 "Primary Agreement" means the agreement to which this exhibit is attached.

1.6 "Security Vulnerability" means a flaw or weakness in system security procedures, design, implementation, or internal controls that could be exercised (accidentally triggered or intentionally exploited) and result in a security breach such that data is compromised, manipulated or stolen or the system damaged.

1.7 "Software" (i) means proprietary software in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by Motorola; and (iii) may contain one or more items of software owned by a third party supplier. The term "Software" does not include any third party software provided under separate license or third party software not licensable under the terms of this Agreement.

### **Section 2      SCOPE**

Motorola and Licensee enter into this Agreement in connection with Motorola's delivery of certain proprietary software or products containing embedded or pre-loaded proprietary software, or both. This Agreement contains the terms and conditions of the license Motorola is providing to Licensee, and Licensee's use of the proprietary software and affiliated documentation.

### **Section 3      GRANT OF LICENSE**

3.1. Subject to the provisions of this Agreement and the payment of applicable license fees, Motorola grants to Licensee a personal, limited, non-transferable (except as permitted in Section 7) and non-exclusive license under Motorola's copyrights and Confidential Information (as defined in the Primary Agreement) embodied in the Software to use the Software, in object code form, and the Documentation solely in connection with Licensee's use of the Designated Products. This Agreement does not grant any rights to source code.

3.2. If the Software licensed under this Agreement contains or is derived from Open Source Software, the terms and conditions governing the use of such Open Source Software are in the Open Source Software Licenses of the copyright owner and not this Agreement. If there is a conflict between the terms and conditions of this Agreement and the terms and conditions of the Open Source Software Licenses governing Licensee's use of the Open Source Software, the terms and conditions of the license grant of the applicable Open Source Software Licenses will take precedence over the license grants in this Agreement. If requested by Licensee, Motorola will use commercially reasonable efforts to: (i) determine whether any Open Source Software is provided under this Agreement; and (ii) identify the Open Source Software (or specify where that license may be found).

3.3. If the Designated Products being acquired by Licensee include a Microsoft SQL Server or a Microsoft System Center Operations Manager, the Microsoft software for these Microsoft Products is sublicensed to Licensee from Motorola and is subject to additional Microsoft End-User License Agreement terms.

3.4 TO THE EXTENT, IF ANY, THAT THERE IS A SEPARATE LICENSE AGREEMENT PACKAGED WITH, OR PROVIDED ELECTRONICALLY WITH, A PARTICULAR PRODUCT THAT BECOMES EFFECTIVE ON AN ACT OF ACCEPTANCE BY THE END USER, THEN THAT AGREEMENT SUPERCEDES THIS SOFTWARE LICENSE AGREEMENT AS TO THE END USER OF EACH SUCH PRODUCT.

#### **Section 4      LIMITATIONS ON USE**

4.1. Licensee may use the Software only for Licensee's internal business purposes and only in accordance with the Documentation. Any other use of the Software is strictly prohibited. Without limiting the general nature of these restrictions, Licensee will not make the Software available for use by third parties on a "time sharing," "application service provider," or "service bureau" basis or for any other similar commercial rental or sharing arrangement.

4.2. Licensee will not, and will not allow or enable any third party to: (i) reverse engineer, disassemble, peel components, decompile, reprogram or otherwise reduce the Software or any portion to a human perceptible form or otherwise attempt to recreate the source code; (ii) modify, adapt, create derivative works of, or merge the Software; (iii) copy, reproduce, distribute, lend, or lease the Software or Documentation to any third party, grant any sublicense or other rights in the Software or Documentation to any third party, or take any action that would cause the Software or Documentation to be placed in the public domain; (iv) remove, or in any way alter or obscure, any copyright notice or other notice of Motorola's proprietary rights; (v) provide, copy, transmit, disclose, divulge or make the Software or Documentation available to, or permit the use of the Software by any third party or on any machine except as expressly authorized by this Agreement; or (vi) use, or permit the use of, the Software in a manner that would result in the production of a copy of the Software solely by activating a machine containing the Software. Licensee may make one copy of Software to be used solely for archival, back-up, or disaster recovery purposes; *provided* that Licensee may not operate that copy of the Software at the same time as the original Software is being operated. Licensee may make as many copies of the Documentation as it may reasonably require for the internal use of the Software.

4.3. Unless otherwise authorized by Motorola in writing, Licensee will not, and will not enable or allow any third party to: (i) install a licensed copy of the Software on more than one unit of a Designated Product; or (ii) copy onto or transfer Software installed in one unit of a Designated Product onto one other device. Licensee may temporarily transfer Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Licensee provides written notice to Motorola of the temporary transfer and identifies the device on which the Software is transferred. Temporary transfer of the Software to another device must be discontinued when the original Designated Product is returned to operation and the Software must be removed from the other device. Licensee must provide prompt written notice to Motorola at the time temporary transfer is discontinued.

4.4 Licensee will maintain, during the term of this Agreement and for a period of two years thereafter, accurate records relating to this license grant to verify compliance with this Agreement. Motorola or an independent third party ("Auditor") may inspect Licensee's premises, books and records, upon reasonable prior notice to Licensee, during Licensee's normal business hours and subject to Licensee's facility and security regulations. Motorola is responsible for the payment of all expenses and costs of the Auditor. Any information obtained by Motorola and the Auditor will be kept in strict confidence by Motorola and the Auditor and used solely for the purpose of verifying Licensee's compliance with the terms of this Agreement.

## **Section 5 OWNERSHIP AND TITLE**

Motorola, its licensors, and its suppliers retain all of their proprietary rights in any form in and to the Software and Documentation, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the Software and Documentation (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, emulations to or derivative works from the Software or Documentation, whether made by Motorola or another party, or any improvements that result from Motorola's processes or, provision of information services). No rights are granted to Licensee under this Agreement by implication, estoppel or otherwise, except for those rights which are expressly granted to Licensee in this Agreement. All intellectual property developed, originated, or prepared by Motorola in connection with providing the Software, Designated Products, Documentation or related services, remains vested exclusively in Motorola, and Licensee will not have any shared development or other intellectual property rights.

## **Section 6 LIMITED WARRANTY; DISCLAIMER OF WARRANTY**

6.1. Unless otherwise stated in the Primary Agreement, the commencement date and the term of the Software warranty will be a period of ninety (90) days from Motorola's shipment of the Software (the "Warranty Period"). If Licensee is not in breach of any of its obligations under this Agreement, Motorola warrants that the unmodified Software, when used properly and in accordance with the Documentation and this Agreement, 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 by Motorola solely with reference to the Documentation. Motorola does not warrant that Licensee's use of the Software or the Designated Products will be uninterrupted, error-free, completely free of Security Vulnerabilities, or that the Software or the Designated Products will meet Licensee's particular requirements. Motorola makes no representations or warranties with respect to any third party software included in the Software. Notwithstanding, any warranty provided by a copyright owner in its standard license terms will flow through to Licensee for third party software provided by Motorola.

6.2 Motorola's sole obligation to Licensee and Licensee's exclusive remedy under this warranty is to use reasonable efforts to remedy any material Software defect covered by this warranty. These efforts will involve either replacing the media or attempting to correct significant, demonstrable program or documentation errors or Security Vulnerabilities. If Motorola cannot correct the defect within a reasonable time, then at Motorola's option, Motorola will replace the defective Software with functionally-equivalent Software, license to Licensee substitute Software which will accomplish the same objective, or terminate the license and refund the Licensee's paid license fee.

6.3. Warranty claims are described in the Primary Agreement.

6.4. The express warranties set forth in this Section 6 are in lieu of, and Motorola disclaims, any and all other warranties (express or implied, oral or written) with respect to the Software or Documentation, including, without limitation, any and all implied warranties of condition, title, non-infringement, merchantability, or fitness for a particular purpose or use by Licensee (whether or not Motorola knows, has reason to know, has been advised, or is otherwise aware of any such purpose or use), whether

arising by law, by reason of custom or usage of trade, or by course of dealing. In addition, Motorola disclaims any warranty to any person other than Licensee with respect to the Software or Documentation.

## **Section 7 TRANSFERS**

Licensee will not transfer the Software or Documentation to any third party without Motorola's prior written consent. Motorola's consent may be withheld at its discretion and may be conditioned upon transferee paying all applicable license fees and agreeing to be bound by this Agreement. If the Designated Products are Motorola's radio products and Licensee transfers ownership of the Motorola radio products to a third party, Licensee may assign its right to use the Software (other than CPS and Motorola's FLASHport® software) which is embedded in or furnished for use with the radio products and the related Documentation; *provided* that Licensee transfers all copies of the Software and Documentation to the transferee, and Licensee and the transferee sign a transfer form to be provided by Motorola upon request, obligating the transferee to be bound by this Agreement.

## **Section 8 TERM AND TERMINATION**

8.1 Licensee's right to use the Software and Documentation will begin when the Primary Agreement is signed by both parties and will continue for the life of the Designated Products with which or for which the Software and Documentation have been provided by Motorola, unless Licensee breaches this Agreement, in which case this Agreement and Licensee's right to use the Software and Documentation may be terminated immediately upon notice by Motorola.

8.2 Within thirty (30) days after termination of this Agreement, Licensee must certify in writing to Motorola that all copies of the Software have been removed or deleted from the Designated Products and that all copies of the Software and Documentation have been returned to Motorola or destroyed by Licensee and are no longer in use by Licensee.

8.3 Licensee acknowledges that Motorola made a considerable investment of resources in the development, marketing, and distribution of the Software and Documentation and that Licensee's breach of this Agreement will result in irreparable harm to Motorola for which monetary damages would be inadequate. If Licensee breaches this Agreement, Motorola may terminate this Agreement and be entitled to all available remedies at law or in equity (including immediate injunctive relief and repossession of all non-embedded Software and associated Documentation unless Licensee is a Federal agency of the United States Government).

## **Section 9 Commercial Computer Software**

9.1 *This Section 9 only applies to U.S. Government end users.* The Software, Documentation and updates are commercial items as that term is defined at 48 C.F.R. Part 2.101, consisting of "commercial computer software" and "computer software documentation" as such terms are defined in 48 C.F.R. Part 252.227-7014(a)(1) and 48 C.F.R. Part 252.227-7014(a)(5), and used in 48 C.F.R. Part 12.212 and 48 C.F.R. Part 227.7202, as applicable. Consistent with 48 C.F.R. Part 12.212, 48 C.F.R. Part 252.227-7015, 48 C.F.R. Part 227.7202-1 through 227.7202-4, 48 C.F.R. Part 52.227-19, and other relevant sections of the Code of Federal Regulations, as applicable, the Software, Documentation and Updates are distributed and licensed to U.S. Government end users: (i) only as commercial items, and (ii) with only those rights as are granted to all other end users pursuant to the terms and conditions contained herein.

9.2 If Licensee is licensing Software for end use by the United States Government or a United States Government agency, Licensee may transfer such Software license, but only if: (i) Licensee transfers all copies of such Software and Documentation to such United States Government entity or interim transferee, and (ii) Licensee has first obtained from the transferee (if applicable) and ultimate end user an enforceable end user license agreement containing restrictions substantially identical to the ones contained in this Agreement. Except as stated in the foregoing, Licensee and any transferee(s) authorized by this subsection 9.2 may not otherwise use or transfer or make available any Motorola software to any third party nor permit any party to do so.

## **Section 10      CONFIDENTIALITY**

Licensee acknowledges that the Software and Documentation contain Motorola's valuable proprietary and Confidential Information and are Motorola's trade secrets, and that the provisions in the Primary Agreement concerning Confidential Information apply.

## **Section 11      LIMITATION OF LIABILITY**

The Limitation of Liability provision is described in the Primary Agreement.

## **Section 12      NOTICES**

Notices are described in the Primary Agreement.

## **Section 13      GENERAL**

13.1. **COPYRIGHT NOTICES.** The existence of a copyright notice on the Software will not be construed as an admission or presumption of publication of the Software or public disclosure of any trade secrets associated with the Software.

13.2. **COMPLIANCE WITH LAWS.** Licensee acknowledges that the Software is subject to the laws and regulations of the United States and Licensee will comply with all applicable laws and regulations, including export laws and regulations of the United States. Licensee will not, without the prior authorization of Motorola and the appropriate governmental authority of the United States, in any form export or re-export, sell or resell, ship or reship, or divert, through direct or indirect means, any item or technical data or direct or indirect products sold or otherwise furnished to any person within any territory for which the United States Government or any of its agencies at the time of the action, requires an export license or other governmental approval. Violation of this provision is a material breach of this Agreement.

13.3. **ASSIGNMENTS AND SUBCONTRACTING.** Motorola may assign its rights or subcontract its obligations under this Agreement, or encumber or sell its rights in any Software, without prior notice to or consent of Licensee.

13.4. **GOVERNING LAW.** This Agreement is governed by the laws of the United States to the extent that they apply and otherwise by the internal substantive laws of the State to which the Software is shipped if Licensee is a sovereign government entity, or the internal substantive laws of the State of Illinois if Licensee is not a sovereign government entity. The terms of the U.N. Convention on Contracts for the International Sale of Goods do not apply. In the event that the Uniform Computer Information Transaction Act, any version of this Act, or a substantially similar law (collectively "UCITA") becomes applicable to a party's performance under this Agreement, UCITA does not govern any aspect of this Agreement or any license granted under this Agreement, or any of the parties' rights or obligations under this Agreement. The governing law will be that in effect prior to the applicability of UCITA.

13.5. **THIRD PARTY BENEFICIARIES.** This Agreement is entered into solely for the benefit of Motorola and Licensee. No third party has the right to make any claim or assert any right under this Agreement, and no third party is deemed a beneficiary of this Agreement. Notwithstanding the foregoing, any licensor or supplier of third party software included in the Software will be a direct and intended third party beneficiary of this Agreement.

13.6. **SURVIVAL.** Sections 4, 5, 6.4, 7, 8, 9, 10, 11 and 13 survive the termination of this Agreement.

13.7. **ORDER OF PRECEDENCE.** In the event of inconsistencies between this Exhibit and the Primary Agreement, the parties agree that this Exhibit prevails, only with respect to the specific subject matter of this Exhibit, and not the Primary Agreement or any other exhibit as it applies to any other

subject matter.

13.8 SECURITY. Motorola uses reasonable means in the design and writing of its own Software and the acquisition of third party Software to limit Security Vulnerabilities. While no software can be guaranteed to be free from Security Vulnerabilities, if a Security Vulnerability is discovered, Motorola will take the steps set forth in Section 6 of this Agreement.

## **Exhibit B**

- B-1    "Pricing"            See Section XXXXX
- B-2    "Statement of Work"    See Section XXXXX

**Exhibit C**  
**Payment Schedule, as applicable**

Except for a payment that is due on the Effective Date, Customer will make payments to Motorola within thirty (30) days after the date of each invoice. Customer will make payments when due in the form of a check, cashier's check, or wire transfer drawn on a U.S. financial institution.

**Unless otherwise set forth in the proposal, payment for a purchase of Products will be in accordance with the following milestones, excluding Subscribers:**

- 1. 50% of the Contract Price due upon contract execution (due upon effective date);**
- 2. 50% of the Contract Price due upon shipment;**

**If Subscribers are purchased, 100% of the Subscriber Contract Price will be invoiced upon shipment (as shipped).**

Motorola shall make partial shipments of equipment and will request payment upon shipment of such equipment. In addition, Motorola shall invoice for installations completed on a site-by-site basis or when professional services are completed, when applicable. The value of the equipment shipped/services performed will be determined by the value shipped/services performed as a percentage of the total milestone value. Unless otherwise specified, contract discounts are based upon all items proposed and overall system package. For invoicing purposes only, discounts will be applied proportionately to the FNE and Subscriber equipment values to total contract price. Overdue invoices will bear simple interest at the maximum allowable rate by applicable state law.

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**SPECIFICATIONS**

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the Public Service Commission (hereinafter Agency or PSC) to establish an open-end contract for vehicle radios and accessories as specified below. These contract items will be used in Commercial Motor Vehicle Enforcement fleet vehicles and must have the capability to operate on the WV Statewide Interoperability Radio Network (SIRN) system.

Contract items must comply with the WV Statewide Interoperability Radio Network (SIRN) system. See Exhibit B.

2. **DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in section 2 of the General Terms and Conditions.
  - 2.1 **“Contract Item” or “Contract Items”** means the list of items identified in Section 3.1 below and on the Pricing Pages.
  - 2.2 **“Pricing Pages”** means the schedule of prices, estimated order quantity, and totals contained in wvOASIS or attached hereto as Exhibit A, and used to evaluate the Solicitation responses.
  - 2.3 **“Solicitation”** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.
  - 2.4 **“AES Encryption”** means advanced encryption standard and is a symmetric block cipher to protect classified information using keys during the encryption and decryption process.
  - 2.5 **“P25 Trunking”** means the standards for digital mobile radio communications designed for use by public safety organizations where voice traffic is automatically assigned to one or more voice channels by a repeater or base station.
  - 2.6 **“UHF”** means ultrahigh radio frequency in the range of 300 MHz and 3 GHz.
  - 2.7 **“VHF”** means very high frequency and is the range of radio frequency electromagnetic waves from 30 to 300 MHz.

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- 2.8** “West Virginia SIRN” means the West Virginia Statewide Interoperable Radio Network (SIRN), which is a collaborative effort by state, county and municipal public safety entities to establish and maintain a statewide interoperable radio network for emergency service. See <https://sirn.wv.gov/Pages/faq.aspx>, also included as Exhibit B.

**3. GENERAL REQUIREMENTS:**

- 3.1 Contract Items and Mandatory Requirements:** Vendor shall provide Agency with the Contract Items listed below on an open-end and continuing basis. **However, actual quantities ordered may vary.** Contract Items must meet or exceed the mandatory requirements as shown below.

- 3.1.1 Motorola APX 8000 All-Band P25 Portable Radio, or equal, as approved by the WVSIRN (See WVSIRN Exhibit B for approved equivalent brands).**

**3.1.1.1** Radio must be on the approved radio list as provided by WVSIRN. See Exhibit B.

**3.1.1.2** Radio shall meet all Level 1 requirements as approved by WVSIRN.

**3.1.1.3** Each radio shall be programmed with software, firmware, and licenses prior to delivery.

**3.1.1.4** Firmware and software updates shall be no additional cost to Agency for the life of the unit.

**3.1.1.5** At a minimum, the radios shall meet or have the following:

**3.1.1.5.1** Capable of 700/800 MHz VHF, UHF range 1

**3.1.1.5.2** Range 1, VHF 136-174 MHz

**3.1.1.5.3** Range 1, UHF Range 380-520 MhZ

**3.1.1.5.4** 9600 Baud digital APCO P25 Phase 1 FDMA and Phase 2 TDMA trunking

**3.1.1.5.5** Must be able to scan all approved channels

**3.1.1.5.6** AES-256 and RC-4 (ADP) Encryption, no less than 16 separate keys

**3.1.1.5.7** P25 authentication

**3.1.1.5.8** GPS location tracking

**3.1.1.5.9** Dual microphones

**3.1.1.5.10** Single antenna, including cable and connectors for the radio

**3.1.1.5.11** Software keys

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**3.1.1.5.12** Two Li-On Batteries per unit

**3.1.1.5.13** Full color LCD display

**3.1.1.5.14** Backlight for display

**3.1.1.5.15** Direction and navigation keys

**3.1.1.5.16** Full Keypad

**3.1.1.5.17** AC charger for the device

**3.1.1.6** All radios must have a minimum 5 year warranty that starts from the date of shipment to the Agency. Warranty shall include shipping costs for warranty repairs both to and from the repair center. All warranty repairs must be returned to the Agency within fourteen calendar days from receipt at the repair facility.

**3.1.2 Motorola APX 8500 All-Band P25 Mobile Radio, or equal, as approved by the WVSIRN (See WVSIRN attachment for approved equivalent brands).**

**3.1.2.1** Radio must be on the approved radio list as provided by WVSIRN. See Exhibit B.

**3.1.2.2** Radio shall meet all Level 1 requirements as approved by WVSIRN

**3.1.2.3** Each radio shall be programmed with software, firmware, and licenses prior to delivery.

**3.1.2.4** Firmware and software updates shall be no additional cost to Agency for the life of the unit.

**3.1.2.5** At a minimum, the radios shall meet or have the following:

**3.1.2.5.1** Capable of 700/800 MHz VHF,  
UHF Range 1

**3.1.2.5.2** VHF Range 1, 136-174 MHz

**3.1.2.5.3** UHF Range 1, 380-520 Mhz

**3.1.2.5.4** 40W mid power

**3.1.2.5.5** 9600 Baud digital APCO P25 Phase 1  
FDMA and Phase 2 TDMA trunking

**3.1.2.5.6** Must be able to scan all channels

**3.1.2.5.7** AES-265, FIPS 140-2 Level 3, FIPS 197  
security

**3.1.2.5.8** P25 authentication

**3.1.2.5.9** Must include handheld control head (mic)

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- 3.1.2.5.10 GPS location tracking
- 3.1.2.5.11 Software programming keys
- 3.1.2.5.12 Over the air rekey
- 3.1.2.5.13 Full color LCD display
- 3.1.2.5.14 Backlight for display
- 3.1.2.5.15 Direction and navigation keys
- 3.1.2.5.16 Full Keypad
- 3.1.2.5.17 All cords and cables necessary for dash mount installation and power operation out of the box
- 3.1.2.5.18 Low profile antenna with connection cables shall be provided with each radio

**3.1.2.6** All radios must have a minimum 5 year warranty that starts from the date of shipment to the Agency. Warranty shall include shipping costs for warranty repairs both to and from the repair center. All warranty repairs must be returned to the Agency within fourteen calendar days from receipt at the repair facility.

**3.1.3 Wireless Microphone, Motorola RLN6551A, or equal**

- 3.1.3.1 Battery shall be lithium ion
- 3.1.3.2 Maximum 3.6V
- 3.1.3.3 Microphone shall be wireless with Bluetooth connectivity
- 3.1.3.4 Shall have a minimum working range of 100 meters (328 feet) from vehicle
- 3.1.3.5 Shall have charger or charging station
- 3.1.3.6 Microphone shall be compatible with contract item 3.1.1
- 3.1.3.7 Shall have minimum manufacturer warranty or one year

**3.1.4 Lithium Ion Batteries, Motorola part PMNN4486A, or equal**

- 3.1.4.1 Batteries must work in **existing devices** in use at Agency, Motorola portable (handheld) radios APX8000.
- 3.1.4.2 7.4v rechargeable lithium ion battery.

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**3.1.5 Lithium Ion Batteries, Motorola part PMNN4486A, or equal**

- 3.1.5.1** Batteries must work with contract item 3.1.1 as stated or awarded.
- 3.1.5.2** 7.4v rechargeable lithium ion battery.

**3.1.6 Programming cables, Motorola PMKN4013, or equal**

- 3.1.6.1** Programming cables must be compatible with contract items as stated or awarded in 3.1.
- 3.1.6.2** Cables are used for radio programming, test and alignment.

**3.1.7 Programming cables, Motorola HKN6184, or equal**

- 3.1.7.1** Programming cables must be compatible with contract items as stated or awarded in 3.1.
- 3.1.7.2** Cables shall allow mobile radio programming from the front of the radio.
- 3.1.7.3** This is the cable that shall be used to connect directly from radio to PC or laptop USB port to write the program setting and frequency of the radio.

**3.1.8 Earpiece, Motorola RLN4941, or equal**

- 3.1.8.1** Earpiece must be compatible with contract items as stated or awarded in 3.1.1.
- 3.1.8.2** Receive only earpiece with maximum 3.5mm tube and rubber ear tip.
- 3.1.8.3** Device shall be black or clear.

**3.1.9 Portable Radio Holsters, Motorola PMLN7904, or equal**

- 3.1.9.1** Radio holsters must be compatible with contract items as stated or awarded in 3.1.1.
- 3.1.9.2** Item shall be black leather.
- 3.1.9.3** Should have a D ring.
- 3.1.9.4** Shall have a swivel belt loop, maximum size 2.75".

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**3.1.10 Portable Radio Travel Charger, Motorola RLN6434, or equal**

**3.1.10.1** Travel charger shall work contract item 3.1.1 as stated or awarded.

**3.1.10.2** Contract item shall be a small compact design, allowing the radio to be used while rapid charging in the base.

**3.1.10.3** Shall include a voltage regulated vehicular charger adapter, custom charger base, mounting bracket and coil cord.

**3.1.10.4** Device shall not need to be hardwired into the vehicle but use a lighter or other connection port.

**3.1.10.5** Shall have minimum manufacturer warranty or one year.

**3.1.10.6** Shall be black.

**3.1.11** Agency will provide contact information for PSC's Electronics Technician to discuss with the Vendor the required SORN frequencies and to answer any programming questions after the contract is awarded.

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**4. CONTRACT AWARD:**

- 4.1 Contract Award:** The Contract is intended to provide Agencies with a purchase price on all Contract Items. The Contract shall be awarded to the Vendor that provides the Contract Items meeting the required specifications for the lowest overall total cost as shown on the Pricing Pages.
- 4.2 Pricing Pages:** Vendor should complete the Pricing Pages by providing **each unit cost, multiplying the unit cost by the estimated quantity for each contract item, and then provide an extended price. The extended prices will be added together to make the Total Cost.** Vendor should complete the Pricing Pages in their entirety as failure to do so may result in Vendor's bids being disqualified.

**VENDOR SHOULD RETURN A COPY OF THE PRICING PAGE (EXHIBIT A) WITH THE BID. VENDOR SHOULD PROVIDE SPEC SHEETS FOR "OR EQUAL" ITEMS WITH THE BID. THESE ITEMS WILL BE REQUIRED PRIOR TO A CONTRACT AWARD.**

The Pricing Pages contain a list of the Contract Items and ESTIMATED purchase volume. The estimated purchase volume for each item represents the approximate volume of anticipated purchases only. No future use of the Contract or any individual item is guaranteed or implied.

**VENDOR SHOULD LIST BID AS LUMP SUM IN WVOASIS AND ATTACH THE EXHIBIT A PRICING PAGE, IF BIDDING THROUGH WVOASIS.**

**5. ORDERING AND PAYMENT:**

- 5.1 Ordering:** Vendor shall accept orders through wvOASIS, regular mail, facsimile, e-mail, or any other written form of communication. Vendor may, but is not required to, accept on-line orders through a secure internet ordering portal/website. If Vendor has the ability to accept on-line orders, it should include in its response a brief description of how Agencies may utilize the on-line ordering system. Vendor shall ensure that its on-line ordering system is properly secured prior to processing Agency orders on-line.

- 5.1.1 Agency may order as little as one device at a time, depending on need and budgeting.**

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**5.2 Payment:** Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

**5.2.1 Vendor name and address on the invoice must match the contract exactly in order to avoid payment processing delays.**

**6. DELIVERY AND RETURN:**

**6.1 Delivery Time:** Vendor shall deliver standard orders within thirty (30) working days after orders are received. Vendor shall deliver emergency orders within five (5) working day(s) after orders are received. Vendor shall ship all orders in accordance with the above schedule and shall not hold orders until a minimum delivery quantity is met.

**6.1.1 Deliveries are accepted Monday through Friday 8:00am ET to 5:00pm ET. This may be considered by couriers as an inside delivery. There are no steps to the delivery area, its flat ground from the parking area. Delivery will be to the main lobby and couriers shall be responsible to unload and transport items to the lobby.**

**6.2 Late Delivery:** The Agency placing the order under this Contract must be notified in writing if orders will be delayed for any reason. Any delay in delivery that could cause harm to an Agency will be grounds for cancellation of the delayed order, and/or obtaining the items ordered from a third party.

Any Agency seeking to obtain items from a third party under this provision must first obtain approval of the Purchasing Division.

**6.3 Delivery Payment/Risk of Loss:** Standard order delivery shall be F.O.B. destination to the Agency's location. Vendor shall include the cost of standard order delivery charges in its bid pricing/discount and is not permitted to charge the Agency separately for such delivery. The Agency will pay delivery charges on all emergency orders provided that Vendor invoices those delivery costs as a separate charge with the original freight bill attached to the invoice.

**6.4 Return of Unacceptable Items:** If the Agency deems the Contract Items to be unacceptable, the Contract Items shall be returned to Vendor at Vendor's expense and with no restocking charge. Vendor shall either make arrangements for the return within five (5) days of being notified that items are unacceptable, or permit the Agency to arrange for the return and reimburse Agency for delivery expenses. If the original packaging cannot be utilized for the return, Vendor will supply the Agency with appropriate return packaging upon request. All returns of unacceptable items shall be F.O.B. the Agency's location. The returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price, at the Agency's discretion.

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- 6.5 Return Due to Agency Error:** Items ordered in error by the Agency will be returned for credit within 30 days of receipt, F.O.B. Vendor's location. Vendor shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.

**7. VENDOR DEFAULT:**

**7.1** The following shall be considered a vendor default under this Contract.

- 7.1.1** Failure to provide Contract Items in accordance with the requirements contained herein.
- 7.1.2** Failure to comply with other specifications and requirements contained herein.
- 7.1.3** Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.
- 7.1.4** Failure to remedy deficient performance upon request.

**7.2** The following remedies shall be available to Agency upon default.

- 7.2.1** Immediate cancellation of the Contract.
- 7.2.2** Immediate cancellation of one or more release orders issued under this Contract.
- 7.2.3** Any other remedies available in law or equity.

**8. MISCELLANEOUS:**

- 8.1 No Substitutions:** Vendor shall supply only Contract Items submitted in response to the Solicitation unless a contract modification is approved in accordance with the provisions contained in this Contract.
- 8.2 Vendor Supply:** Vendor must carry sufficient inventory of the Contract Items being offered to fulfill its obligations under this Contract. By signing its bid, Vendor certifies that it can supply the Contract Items contained in its bid response.

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**8.3 Reports:** Vendor shall provide quarterly reports and annual summaries to the Agency showing the Agency's items purchased, quantities of items purchased, and total dollar value of the items purchased. Vendor shall also provide reports, upon request, showing the items purchased during the term of this Contract, the quantity purchased for each of those items, and the total value of purchases for each of those items. Failure to supply such reports may be grounds for cancellation of this Contract.

**8.4 Contract Manager:** During its performance of this Contract, Vendor must designate and maintain a primary contract manager responsible for overseeing Vendor's responsibilities under this Contract. The Contract manager must be available during normal business hours to address any customer service or other issues related to this Contract. Vendor should list its Contract manager and his or her contact information below.

**Contract Manager:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Fax Number:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

## EXHIBIT B

	<b>Approved Equipment List</b>		
	Title / Subject <b><u>SIRN Approved Equipment List</u></b>	Effective Date 09/01/2011	Revision Date 04/26/2021
	Level 99 radios identified and added.		

### Contents

1.	Introduction	Page 1
2.	Levels	Page 1
3.	Testing	Page 2
4.	Approved Equipment List	Page 3
5.	Previously Approved Equipment	Page 5

### 1. Introduction:

- 1.1. In an effort to maintain system integrity and proper operation of the Statewide Interoperable Radio Network (SIRN), the Statewide Interoperability Executive Committee (SIEC) has determined the need to test and maintain a list of radios approved for operation on the SIRN. This list will be updated when new radios are added or reevaluated. Radios not listed as Approved Equipment herein cannot be activated on the network.

### 2. Levels:

- 2.1 Per FCC licensing, mobile unit output power is limited to 40 watts.
- 2.2 Site equipment (such as new sites or related equipment) will be evaluated on a case by case basis. Parties interested in purchasing a new site or spare site equipment should contact the Statewide Interoperability Coordinator (SWIC) to begin the process.
- 2.3 All equipment must be evaluated and approved as per the Subscriber Unit Equipment Test SOP prior to being placed on the SIRN Approved Equipment List.
- 2.4 The approved radios will be broken down in the following format utilizing 4 Levels;
- ❖ **Level 1** – Radios in this section shall meet or exceed ALL the below criteria
    - Operational Frequency Range of 400-470 MHz
    - Capable of AES Encryption with Multi-Key
    - At Least 1000 Channels
    - Capable of Mixing Conventional and Trunking in the Same Zone
    - Capable of Scanning Conventional and Trunking in the Same List
    - Capable of TDMA (Phase 2) Operation

- ❖ **Level 2** – Radios in this section shall meet or exceed ALL the below criteria:
  - Operational Frequency Range of 400-470 MHz
  - Capable of AES Encryption with Multi-Key
  - 512 or More Channels
  - Capable of Mixing Conventional and Trunking in the Same Zone
  - Capable of Scanning Conventional and Trunking in the Same List
  
- ❖ **Level 3** – Radios in this section will meet 1 or more of the below criteria:
  - Operational Frequency Range of 400-470 MHz  
NOTE: Only radios approved prior to 04/12/16 with an operating range other than 400-470 MHz are authorized for operation on SIRN.
  - NOT Capable of AES Encryption with Multi-Key
  - LESS than 512 Channels
  - NOT Capable of Mixing Conventional and Trunking in the Same Zone
  - NOT Capable of Scanning Conventional and Trunking in the Same List
  
- ❖ **Level 4** – Special Circumstance Radios (Not Recommended For Purchase)  
Special Note: Radios in this Level have significant limitations or operational concerns when operating on the system. Please check the notes to determine if the limitations will affect your planned operations.
  
- ❖ **Level 99** – No longer recommended for use (End of life)  
 The radio listings in Level 99 are radios that are no longer being supported by the manufacturer. While the device may still work to some level of usability on SIRN, the radio has noted significant issues. The radio is NOT RECOMMENDED for use or purchase by the SIEC.

**Note to Vendors,** the SIEC will only test and approve radios based on the data available from the vendors and the configuration of the radio sent for testing. Please submit properly equipped radios and proper documentation with the radios for testing. The SIEC will not incur any expense for the evaluation of radios or be limited by time on software provided.

**Note to users,** the Approved Equipment List is based on properly equipped radios. Due to different options available from various manufacturers please ensure the radio is properly configured for operation on the SIRN.

**Firmware Notation,** users and vendors should always consult the SIEC most current monthly meeting minutes, Technical Committee Section, to verify the recommended firmware version for use on SIRN.

❖ **Mobiles**

- Bendix-King KNG-400M
- EF Johnson 53xx Series
- Harris XG-25
- Harris Unity XG-100M
- Harris M7300
- Motorola XTL-2500 (Range 1 Only)
- Motorola XTL-5000 (Range 1 Only)
- Tait TM91xx

### **3.3 Level 3 – (*Level criteria above*)**

❖ **Portables**

- ICOM IC-F9021
  - Cannot Scan Conventional and Trunking in the same List
  - Not capable of operator programmable scan list
- Harris P3300
  - No Encryption
- Kenwood TK-5320
  - Will not mix Conventional and Trunking in the same Zone; and
  - Cannot Scan Conventional and Trunking in the same List
- Motorola APX-900
- Motorola APX-1000 (Range 1 Only)
  - Only 512 Channels;
  - Not capable of multi-key Encryption; and
  - No AES Encryption
- Motorola XTS-1500 (Range 1 Only)
  - No AES Encryption

❖ **Mobiles**

- Harris M3300
  - No Encryption
- ICOM IC-F9521
  - Cannot Scan Conventional and Trunking in the same List
- Kenwood TK-5820
  - Will not mix Conventional and Trunking in the same Zone; and
  - Cannot Scan Conventional and Trunking in the same List
- Motorola APX-1500 (Range 1 Only)
  - Not capable of multi-key encryption; and
  - No AES Encryption
- Motorola XTL-1500 (Range 1 Only)
  - No AES Encryption

### 3.4 Level 4 (Special Operational Condition Radios) – (Level criteria above)

Special Note: These radios are Special Condition Radios, Caution Should Be Taken before purchasing these radios. Please read the notes and understand the limitations before purchasing.

#### ❖ Portables

- No radios currently in this level.

#### ❖ Mobiles

- No radios currently in this level.

### 3.5 Level 99 (No longer recommended for use, End of Life) – (Level criteria above)

#### ❖ Portables

- Kenwood 10 series, version 2 status
  - Limited support from the manufacturer
  - Poor roaming ability
  - No future firmware updates beyond what is currently available

#### ❖ Mobiles

- Kenwood 10 series, version 2 status
  - Limited support from the manufacturer
  - Poor roaming ability
  - No future firmware updates beyond what is currently available

**Note:** Most radio manufactures have options when ordering equipment, the tested and approved equipment should be reviewed, and the purchaser should ensure that a radio is properly configured for operation on the SIRM before purchasing. Proper Make and Model numbers do not always indicate proper configuration.

## 4. Previously Approved Equipment:

- 4.1** Equipment listed in this Section is no longer authorized to be newly activated on the SIRM as of the date being placed into this Section. Equipment with currently assigned Radio ID's and active on the SIRM as of the noted date for each radio may continue to be operated on the SIRM.

## 4.2 Equipment:

### ❖ Portables

- Harris P5400 (Effective 04/12/16)
  - Frequency range is 450-470)
- Harris XG15P (Effective 04/12/16)
  - Frequency range is 440-512
  - No AES Encryption

### ❖ Mobiles

- No radios currently in this level.

**EXHIBIT A - Pricing Page - Radios and Accessories**

Contract Item	Description	Equal Brand and Item Number	Unit Cost	Estimated Qty	Extended Price
3.1.1	Motorola APX 8000 All-Band P25 Portable Radio, or equal, as approved by the WVSIRN		7,014.24		
3.1.2	Motorola APX 8500 All-Band P25 Mobile Radio, or equal, as approved by the WVSIRN		6,797.52		
3.1.3	Wireless Microphone, Motorola RLN6551A, or equal		243.00		
3.1.4	Lithium Ion Batteries, Motorola part PMNN4486A, or equal (for use in existing devices APX8000)		134.25		
3.1.5	Lithium Ion Batteries, Motorola part PMNN4486A, or equal (for use in new devices as awarded)		134.25		
3.1.6	Programming cables, Motorola PMKN4013, or equal		103.40		
3.1.7	Programming cables, Motorola HKN6184, or equal		57.20		
3.1.8	Earpiece, Motorola RLN4941, or equal		76.76		
3.1.9	Portable Radio Holsters, Motorola PMLN7904, or equal		85.32		
3.1.10	Portable Radio Travel Charger, Motorola RLN6434, or equal		119.99		

**TOTAL COST:**

**\*\* ESTIMATED QUANTITIES ARE FOR BIDDING PURPOSES ONLY. Actual Qty ordered MAY VARY.**

**\*\*Pricing sheet shall be completed and returned with the bid.**