



MOTOROLA SOLUTIONS

Proposal

The State of West Virginia

Two Way Radios & Accessories - SIRN Network

CRFQ 0212 SWC2400000003

January 30, 2024

RECEIVED

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WV PURCHASING
DIVISION

Technical Proposal

The design, technical, and price information furnished with this proposal is proprietary information of Motorola Solutions, Inc. (Motorola). Such information is submitted with the restriction that it is to be used only for the evaluation of the proposal, and is not to be disclosed publicly or in any manner to anyone other than those required to evaluate the proposal, without the express written permission of Motorola Solutions, Inc.

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January 30, 2024

Mark A. Atkins
Department of Administration, Purchasing Division
2019 Washington Street, East
Charleston, WV 25305-0130

Subject: Request for Quotation, Solicitation No. CRFQ 0212 SWC2400000003
Two-Way Radios & Accessories for the WVSIRN Network

Dear Sir:

Motorola Solutions, Inc. ("Motorola") is honored to present the enclosed proposal for WV EMD Request for Quote for radios and accessories. Motorola, as an innovator and manufacturer of Public Safety Solutions, will ensure all equipment, technology, implementation and services come together to create and sustain West Virginia's Public Safety Needs. Motorola will leverage its experiences with similar systems and intimate knowledge of the WV SIRN Mission-critical system, to meet today's needs with a path to incorporate tomorrow's capabilities.

This proposal is subject to this cover letter, the Motorola Solutions List of Clarifications and attachments, and the terms and conditions of the enclosed Communications Products Agreement, together with its Exhibits included in this proposal, or a negotiated version thereof. This proposal shall remain valid for a period of 90 days from the date of this cover letter. If you have any questions or require additional information, please contact Peter Marotta at Motorola 304-860-5051, or by email at petermarotta@motorolasolutions.com.

We, at Motorola, look forward to working with you on this essential communications system and becoming your trusted partner in your goal to provide the best public safety equipment.

Sincerely,
Motorola Solutions, Inc.



Michael Leonard
Mid-Atlantic Territory Vice President
North America Government Markets

Table of Contents

Section 1

Bid Forms 1-1

Section 2

Exceptions and Clarifications 2-1

2.1 Exceptions and Clarifications 2-1

2.2 Terms and Conditions 2-13

2.3 Evidence of Insurance 2-16

Section 1

Bid Forms

Motorola Solutions (Motorola) has included the forms listed below on the following pages.

- CRFQ Form
- Contract Manager Form
- Designate Contact and Certification and Signature Page
- Prohibition on Certain Telecommunications and Surveillances Services or Equipment Page
- Addendum Acknowledgement Form

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

State of West Virginia
 Centralized Request for Quote
 Telecomm

Proc Folder: 1360263		Reason for Modification:	
Doc Description: (CMA SIRNRADIO24) Two-Way Radios & Accessories- SIRN Network		ADDENDUM_01	
Proc Type: Statewide MA (Open End)			
Date Issued	Solicitation Closes	Solicitation No	Version
2024-01-22	2024-01-30 13:30	CRFQ 0212 SWC2400000003	2

BID RECEIVING LOCATION

BID CLERK
 DEPARTMENT OF ADMINISTRATION
 PURCHASING DIVISION
 2019 WASHINGTON ST E
 CHARLESTON WV 25305
 US

VENDOR

or Customer Code:

Vendor Name :

Address :

Street :

City :

State : **Country :** **Zip :**

Principal Contact :

Vendor Contact Phone: **Extension:**

FOR INFORMATION CONTACT THE BUYER
 Mark A Atkins
 (304) 558-2307
 mark.a.atkins@wv.gov

Vendor Signature X  **FEIN#** **DATE**

All offers subject to all terms and conditions contained in this solicitation

ADDITIONAL INFORMATION

ADDENDUM_1

Addendum_1 is issued for the following:

1. To publish the State's response to technical questions received.

No Other Changes

The West Virginia Purchasing Division is soliciting bids on behalf of the State of West Virginia to establish an Open-End, Statewide Contract for SIRN Approved Level_1 and Level_2, Portable, Mobile, Single Base and Desktop two-way radios.

The Contract may be utilized by all West Virginia State Agencies and Political Subdivisions in the State's fifty-five (55) counties, per the attached documents.

INVOICE TO**SHIP TO**

ALL STATE AGENCIES
VARIOUS LOCATIONS AS
INDICATED BY ORDER

STATE OF WEST VIRGINIA
VARIOUS LOCATIONS AS
INDICATED BY ORDER

No City WV
US

No City WV
US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	SIRN Two-Way Radios and Accessories	0.00000	EA		

Comm Code**Manufacturer****Specification****Model #**

52161511

Extended Description:

Note: Vendor shall complete Exhibit_A Pricing Pages for bid pricing and must attach with bid.

If vendor is submitting a bid online via wvOasis, Vendor should enter \$0.00 in the wvOasis commodity line and attach the Exhibit_A Pricing Pages to their bid.

See Section #6 BID SUBMISSION in the Instructions to Bidders document for additional information.

SCHEDULE OF EVENTS

<u>Line</u>	<u>Event</u>	<u>Event Date</u>
1	Technical Questions due by 10:00am EDT	2024-01-19

REQUEST FOR QUOTATION
CRFQ 0212 SWC2400000003
Two Way Radios & Accessories for the WVSIRN Network
(CMA 0212 SIRNRADIO24)

9.3 Reports: Vendor shall provide quarterly utilization reports containing at a minimum the following information pertaining to the State of West Virginia agencies, boards, commissions, and political subdivisions:

- 9.3.1** Ordering Entity;
- 9.3.2** Ship to address;
- 9.3.3** Purchase/Delivery Order number;
- 9.3.4** Product description;
- 9.3.5** Quantity;
- 9.3.6** Contract Sale Price;
- 9.3.7** Date of Sale.

These reports will be provided in Excel format and sent via email to: Mark.A.Atkins@wv.gov and copy: purchasing.division@wv.gov on a quarterly basis as follows:

<u>PERIOD END</u>	<u>REPORT DUE</u>
December 31	January 31
March 31	April 30
June 30	July 31
September 30	October 31

Failure to provide the required reports may be grounds for contract cancellation.

9.4 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:	Peter Marotta
Telephone Number:	304-860-5051
Fax Number:	410-712-6501
Email Address:	petermarotta@motorolasolutions.com

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.

(Printed Name and Title) Peter Marotta, Account Manager

(Address) 809 Pinnacle Drive, Suite G, Linthicum, MD 21090

(Phone Number) / (Fax Number) 304-860-5051 / 410-712-6501

(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 this bid or offer was made without prior understanding, agreement, or connection with any entity submitting a bid or offer for the same material, supplies, equipment or services; that this bid or offer is in all respects fair and without collusion or fraud; 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; 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 of Authorized Representative)

Michael Leonard, MSSSI Vice President & Director of Sales

(Printed Name and Title of Authorized Representative) (Date)

443-691-4845 / NA

(Phone Number) (Fax Number)

michael.leonard@motorolasolutions.com

(Email Address)

In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

State of West Virginia
Purchasing Division

By: _____

Printed Name: Mark Atkins

Title: Buyer Supervisor

Date: _____

Vendor Name:

By:  _____

Printed Name: Michael Leonard

Title: MSSSI Vice President & Director of Sales

Date: January 30, 2024

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.: CRFQ 0212 SWC2400000003

Instructions: Please acknowledge receipt of all addenda issued with this solicitation by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

Acknowledgment: I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

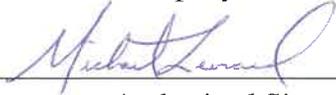
Addendum Numbers Received:

(Check the box next to each addendum received)

- | | |
|--|--|
| <input checked="" type="checkbox"/> Addendum No. 1 | <input type="checkbox"/> Addendum No. 6 |
| <input type="checkbox"/> Addendum No. 2 | <input type="checkbox"/> Addendum No. 7 |
| <input type="checkbox"/> Addendum No. 3 | <input type="checkbox"/> Addendum No. 8 |
| <input type="checkbox"/> Addendum No. 4 | <input type="checkbox"/> Addendum No. 9 |
| <input type="checkbox"/> Addendum No. 5 | <input type="checkbox"/> Addendum No. 10 |

I understand that failure to confirm the receipt of addenda may be cause for rejection of this bid. I further understand that that any verbal representation made or assumed to be made during any oral discussion held between Vendor's representatives and any state personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

Motorola Solutions, Inc.

Company


Authorized Signature
January 30, 2024

Date

NOTE: This addendum acknowledgement should be submitted with the bid to expedite document processing.

Section 2

Exceptions and Clarifications

2.1 Exceptions and Clarifications

Motorola Solutions, Inc. ("Motorola") respectfully proposes the Communications Product Agreement ("CPA") and its Exhibits, incorporated herein, and the following clarifications to the General Terms and Conditions, and Specifications provided in the RFQ.

INSTRUCTIONS TO VENDORS SUBMITTING BIDS

GENERAL TERMS AND CONDITIONS

8. INSURANCE

Attached to this List of Legal Clarifications are the changes to the customer's Insurance Requirements based on a review by MSI Global Insurance.

8. INSURANCE: The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below ~~prior upon~~ to Contract award execution. 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. Annually, during term of the Contract, Vendor must also provide Agency with immediate notice of any changes in its insurance policies that do not meet these requirements, 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 the amount of: \$1,000,000.00 per occurrence, and \$2,000,000.00 general aggregate.

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 at least an the 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.

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 Sate Rules § 148-1-5.2.b.

Motorola proposes that this provision applies reciprocally. Motorola proposes to replace this Section, as follows:

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.

Please reference all these details that are also included in Section 11 of the enclosed CPA attached in Section 2.2: Terms and Conditions.

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.

Motorola proposes to delete this section, and respectfully proposes the CPA and its Exhibits, incorporated herein and attached in Section 2.2: Terms and Conditions.

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.

Motorola proposes to the following language in lieu of this Section in the RFQ. The assignment language is included as well in the proposed CPA, in Section 15.2 incorporated herein and attached Section 2.2: Terms and Conditions of this proposal.

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.

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.

Motorola proposes to replace this Section, as follows:

8.1. EQUIPMENT WARRANTY. During the Warranty Period (means five (5) year from the date of shipment of the Products), Motorola warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship.

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.

Please reference all these details that are also included in Section 8 of the enclosed CPA attached in Section 2.2: Terms and Conditions.

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 www.state.wv.us/admin/purchase/privacy.

Motorola proposes that the termination provision apply reciprocally. Motorola proposes to replace this Section, as follows:

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.

Please reference all these details that are also included in Section 14 of the enclosed CPA attached in Section 2.2: Terms and Conditions.

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 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 the West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

Motorola proposes to delete this section, based on the West Virginia Code §29B-1-4 - Exemptions.

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.

Attached to this List of Legal Clarifications you can find the Certificate of Good Standing of Motorola from the State of West Virginia.

36. INDEMNIFICATION.

The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (a) 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 failures 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.

Motorola proposes an Indemnification section in lieu of Section 32, the inclusion of a limitation of liability section to bind risk and provide more favorable pricing to EMD (State of West Virginia), and a Section of infringement of patent or copyright, as follows:

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.

*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.

PATENT AND COPYRIGHT INFRINGEMENT

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.

1. 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.

2. 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.

3. This Section 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 are subject to and limited by the restrictions set forth in the Limitation of Liability Section.

Please reference all these details that are also included in Sections 12 and 13 of the enclosed CPA attached to this List of Legal Clarifications.

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 the 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.

Motorola acknowledges that EMD WV officials have the right to inspect certain Motorola books and records for the purpose of verifying performance in accordance with the terms of the contract. EMD WV's inspection is limited to the verification of shipment to invoice quantities and shipment receipts. After EMD WV provides (30) thirty days' written notice, EMD WV may send a representative to a Motorola facility during normal business hours to conduct such limited review, or at EMD WV's request Motorola will provide copies of the specific documents to EMD WV's location for its review. Motorola books and records provided to EMD pursuant to this provision shall not be used, duplicated or disclosed to any other third party without the express written permission of Motorola. In no circumstances will Motorola be required to create or maintain documents not kept in the ordinary course of Motorola's business operations, nor will Motorola be required to disclose any information, including but not limited to product cost data, which it considers confidential or proprietary to Motorola.

41. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS AND 42. PREFERENCE FOR USE DOMESTIC ALUMINUM, GLASS AND STEEL.

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 are 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 operations, from steel made by the open heath, 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 products 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 reasonable available to meet contract requirements.

Motorola clarifies, that we view these requirements as not applicable to the products (i.e. Motorola APX radios) proposed herein. The above said, Motorola makes no representation as to the country of origin of any steel, glass or aluminum that may be incorporated into the products proposed herein.

SPECIFICATIONS

7.4 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. The vendor shall either make arrangements for the return within five (5) calendar 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.

Motorola proposes to add the language at the end of this Section. The Warranty Claims language is included as well in the proposed CPA, in Section 8.4 incorporated herein and attached in Section 2.2: Terms and Conditions of this proposal.

***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. VENDOR DEFAULT

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

- 8.1.1 Failure to provide Contract Items in accordance with the requirements contained herein.
- 8.1.2 Failure to comply with other specifications and requirements contained herein.
- 8.1.3 Failure to comply with any laws, rules, and ordinances applicable to the Contract Items provided under this Contract.
- 8.1.4 Failure to remedy deficient performance upon request.

8.2 The following remedies shall be available to the State upon default.

- 8.2.1 Immediate cancellation of Contract.
- 8.2.2 Immediate cancellation of one or more release orders issued under this Contract.
- 8.2.3 Any other remedies available in law or equity.

Motorola proposes that this provision applies reciprocally. Motorola proposes to replace this Section, as follows:

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.

Please reference all these details that are also included in Section 11 of the enclosed CPA attached in Section 2.2: Terms and Conditions of this proposal.

9.3 REPORTS

Vendor shall provide quarterly utilization reports containing at a minimum the following information pertaining to the State of West Virginia agencies, boards, commissions, and political subdivisions:

- 9.3.1 Ordering Entity;
- 9.3.2 Ship to address;
- 9.3.3 Purchase/Delivery Order number;
- 9.3.4 Product description;
- 9.3.5 Quantity;
- 9.3.6 Contract Sale Price;
- 9.3.7 Date of Sale.

These reports will be provided in Excel format and sent via email to:

Mark.A.Atkins@wv.gov and copy: purchasing.division@wv.gov on a quarterly basis as follows:

PERIOD END	REPORT DUE
December 31	January 31
March 31	April 30
June 30	July 31
September 30	October 31

Failure to provide the required reports may be grounds for contract cancellation.

Motorola acknowledges that EMD WV officials have the right to inspect certain Motorola books and records for the purpose of verifying performance in accordance with the terms of the contract. EMD WV's inspection is limited to the verification of shipment to invoice quantities and shipment receipts. After EMD WV provides (30) thirty days' written notice, EMD WV may send a representative to a Motorola facility during normal business hours to conduct such limited review, or at EMD WV's request Motorola will provide copies of the specific documents to EMD WV's location for its review. Motorola books and records provided to EMD pursuant to this provision shall not be used, duplicated or disclosed to any other third party without the express written permission of Motorola. In no circumstances will Motorola be required to create or maintain documents not kept in the ordinary course of Motorola's business operations, nor will Motorola be required to disclose any information, including but not limited to product cost data, which it considers confidential or proprietary to Motorola.

ADDITIONAL TERMS AND CONDITIONS PROPOSED TO BE ADDED TO THE AGREEMENT

As mentioned above, Motorola respectfully proposes the CPA and its Exhibits, incorporated herein, the Legal Clarifications to the General Terms and Conditions, and Specifications provided in the RFQ, and also proposes the following language to be included in the General Terms and Conditions provided in the RFQ, which are included in the CPA proposed and incorporated herein.

DELAYS

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.

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.

*****END*****

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2.2 Terms and Conditions

Motorola's Communications Product Agreement and the Certificate of Good Standing are included on the following pages.

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COMMUNICATIONS PRODUCTS AGREEMENT

Motorola Solutions, Inc. ("Motorola") and _____ ("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 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 (this means five (5) years from the date of shipment), Motorola warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship.

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 of West Virginia.

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 of West Virginia. 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: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

MOTOROLA SOFTWARE LICENSE AGREEMENT

This Exhibit A Motorola Software License Agreement ("Agreement") is between Motorola Solutions, Inc., ("Motorola"), and _____ ("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 of West Virginia. 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.

State of West Virginia



Certificate

I, Mac Warner, Secretary of State of the State of West Virginia, hereby certify that

MOTOROLA SOLUTIONS, INC.

a corporation formed under the laws of Delaware filed an application to be registered as a foreign corporation authorizing it to transact business in West Virginia. The application was found to conform to law and a "Certificate of Authority" was issued by the West Virginia Secretary of State on May 07, 1973.

I further certify that the corporation has not been revoked by the State of West Virginia nor has a Certificate of Withdrawal been issued to the corporation by the West Virginia Secretary of State.

Accordingly, I hereby issue this Certificate of Authorization

CERTIFICATE OF AUTHORIZATION

Validation ID:1WV3W_DB3HW



*Given under my hand and the
Great Seal of the State of
West Virginia on this day of*

January 24, 2024

Mac Warner

Secretary of State

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2.3 Evidence of Insurance

The Certificate of Liability Insurance is included on the following page.

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MOTOROLA SOLUTIONS

Proposal

The State of West Virginia

Two Way Radios & Accessories - SIRN Network

CRFQ 0212 SWC2400000003

January 30, 2024

Cost Proposal

The design, technical, and price information furnished with this proposal is proprietary information of Motorola Solutions, Inc. (Motorola). Such information is submitted with the restriction that it is to be used only for the evaluation of the proposal, and is not to be disclosed publicly or in any manner to anyone other than those required to evaluate the proposal, without the express written permission of Motorola Solutions, Inc.

MOTOROLA, MOTO, MOTOROLA SOLUTIONS, and the Stylized M Logo are trademarks or registered trademarks of Motorola Trademark Holdings, LLC and are used under license. All other trademarks are the property of their respective owners. © 2024 Motorola Solutions, Inc. All rights reserved.

Table of Contents

Section 1

Exhibit A, Pricing Pages	1-1
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Section 1

Exhibit A, Pricing Pages

The Pricing Page is included on the pages that follow.

Specification #	Contract Item #	Description	Brand Name	Item/Part Number	Estimated Quantity* (Per Year)	Unit Cost (each)	Extended Price
DASH MOUNT MOBILE RADIO							
3.2	Contract Item #1	Single-Band Dash Mount Mobile Radio w/ Microphone	Level 2, APX4500	M22QSS9PW1BN, includes ADP encryption	250	\$ 4,681.62	\$ 1,170,405.00
3.2	Contract Item #1	Multi-Band Dash Mount Mobile Radio w/ Microphone	Level 1, APX 8500	M37TSS9PW1AN, includes ADP encryption	250	\$ 6,907.29	\$ 1,726,823.00
3.2.5	Contract Item #1	Microphone, Microphone clip, mounting hardware, power and accessory cable (additional purchase option)	Motorola Kit set	HLMN1090D, HLN6863B, HKN4191C, HLN7002A	250	\$ 160.79	\$ 40,198.13
HANDHELD PORTABLE RADIO							
3.3	Contract Item #2	Single-Band Portable (Handheld) Radio w/ 2 Lithium-Ion Batteries 3000 milliampere hours and Desktop Charger.	Level 2, APX 6000	H98QDF9PW6BN, includes ADP encryption	250	\$ 5,826.31	\$ 1,456,576.88
3.3	Contract Item #2	Multi-Band Portable (Handheld) Radio w/ 2 Lithium-Ion Batteries 3000 milliampere hours and Desktop Charger.	level 2, APX8000	H91TGD9PW6AN, includes ADP encryption	250	\$ 7,890.66	\$ 1,972,665.83
3.3.7.1	Contract Item #2	Remote Palm Speaker/Microphone, Corded	Motorola	PMMN4062AL	250	\$ 95.34	\$ 23,835.00
3.3.7.2	Contract Item #2	Remote Palm Speaker/Microphone, Wireless	Motorola	RLN6544A	250	\$ 202.50	\$ 50,625.00
3.3.8.1	Contract Item #2	Duty belt clip for 2.25 inch belt	Motorola	PMLN4651A	250	\$ 9.72	\$ 2,430.00
3.3.9	Contract Item #2	Desktop Charger designed to Recondition and Recharge Lithium-ion Batteries.	Motorola	NNTN8863A	250	\$ 127.17	\$ 31,792.50
BASE RADIO							
3.4	Contract Item #3	Single-Band Base Radio w/ Microphone	Level 2, APX4500	M22QSS9PW1BN, includes ADP encryption	25	\$ 5,012.82	\$ 125,320.59
3.4	Contract Item #3	Multi-Band Base Radio w/ Microphone	APX 8500	M37TSS9PW1AN, includes ADP encryption	25	\$ 7,602.08	\$ 190,051.98
3.4.6	Contract Item #3	Microphone w/ Power Connction Cables Included (additional purchase option)	Motorola Kit set	HMN1090D, HLN6961A, HKN4192C, HKN6186A	25	\$ 166.53	\$ 4,163.25
REMOTE MOUNT MOBILE RADIO							
3.5	Contract Item #4	Multi-Band Remote Mount Mobile Radio w/ Microphone	Level 2 APX 8500	M37TSS9PW1AN, includes ADP encryption	100	\$ 7,428.89	\$ 742,888.92
3.5.5	Contract Item #4	Microphone, Microphone clip, mounting hardware, power and accessory cable (additional purchase option)	Motorola Kit set	HMN1090D, HLN6961A, HKN4192C, HKN6186A	100	\$ 166.53	\$ 16,653.00
BATTERIES							
3.6.2.1	Contract Item #5	Handheld Lithium-Ion Battery Minimum 3000 milliampere (3000mAh) (for 3.3 radio Contract Item #2)	Impress Battery	PMNN4486A	100	\$ 141.20	\$ 14,120.00
3.6.2.2	Contract Item #5	Handheld Lithium-Ion Battery Minimum 4000 milliampere (4000 mAh) (for 3.3 radio Contract Item #2)	Impress Battery	PMNN4487A	250	\$ 163.73	\$ 40,932.50
3.6.2.3	Contract Item #5	Handheld Lithium-Ion Battery Minimum 5000 milliampere (5000 mAh) (for 3.3 radio Contract Item #2)	Impress Battery	PMNN4494A	250	\$ 171.52	\$ 42,880.00
TRAVEL CHARGER (HANDHELD RADIO)							
3.7	Contract Item #6	Handheld Radio Portable Travel Charger (for 3.3 radio Contract Item #2)	Motorola	RLN6434B	100	\$ 89.99	\$ 8,999.00

		PROGRAMMING CABLES					
3.8	Contract Item #7	Programing Cables for (Contract Item #1 3.2 Radio)	Mobile Prog Cble	HKN6184C	100	\$ 42.90	\$ 4,290.00
3.8	Contract Item #7	Programing Cables for (Contract Item #2 3.3 Radio)	Port Prog Cble	PMKN4012B	100	\$ 63.53	\$ 6,353.00
3.8	Contract Item #7	Programing Cables for (Contract Item #3 3.4 Radio)	Mobile Prog Cble	HKN6184C	100	\$ 42.90	\$ 4,290.00
3.8	Contract Item #7	Programing Cables for (Contract Item #4 3.5 Radio)	Mobile Prog Cble	HKN6184C	100	\$ 42.90	\$ 4,290.00
3.9.1.1	Contract Item # 8	Bluetooth	Motorola Flash Upgrade	Enable Bluetooth onto P25 digital radio	250	\$ 161.50	\$ 40,375.00
3.9.1.2	Contract Item # 8	P25 Data Conventional	Motorola Flash Upgrade	Enable P25 Data conventional onto analog com. radio	250	\$ 553.35	\$ 138,337.50
3.9.1.3	Contract Item # 8	P25 Data Trunking	Motorola Flash Upgrade	Enable P25 Data Trunking onto P25 Data Com. radio	250	\$ 1,451.80	\$ 362,950.00
3.9.1.4	Contract Item # 8	P25 Authentication	Motorola Flash Upgrade	Enable P25 Authentication onto P25 Digital radio	250	\$ 107.95	\$ 26,987.50
3.9.1.5	Contract Item # 8	P25 OTAR	Motorola Flash Upgrade	Enable P25 OTAR onto P25 Digital radio	250	\$ 441.15	\$ 110,287.50
3.9.1.6	Contract Item # 8	GPS	Motorola Flash Upgrade	Enable GPS onto P25 Digital radio	250	\$ 161.50	\$ 40,375.00
3.9.1.7	Contract Item # 8	Keypad Programing	Motorola Flash Upgrade	Enable Keypad prog onto P25 Digital radio standard feature	250	\$ 161.50	\$ 40,375.00
3.9.1.8	Contract Item # 8	MDC1200	Motorola Flash Upgrade	Enable MDC onto P25 Digital radio standard feature	250	\$ -	\$ -
3.9.1.9	Contract Item # 8	OTAP	Motorola Flash Upgrade	Enable OTAP onto P25 Digital radio	250	\$ 107.95	\$ 26,987.50
3.9.1.10	Contract Item # 8	Enhanced VRS	Motorola Flash Upgrade	Enable VRS (DVRS) onto P25 Digital radio	250	\$ 107.95	\$ 26,987.50
3.9.1.11	Contract Item # 8	P25 Two-Tone Paging Encode and Decode	Motorola Flash Upgrade	Enable P25 2 (one (DTS) onto P25 Digital radio	250	\$ 161.50	\$ 40,375.00
3.9.1.12	Contract Item # 8	Man Down	Motorola Flash Upgrade	Enable ManDown onto P25 Digital radio	250	\$ 161.50	\$ 40,375.00
3.9.1.13	Contract Item # 8	Instant Recording Replay	Motorola Flash Upgrade	Enable IRR onto P25 Digital radio standard feature	250	\$ -	\$ -
3.9.1.14	Contract Item # 8	WIFI	Motorola Flash Upgrade	Enable WIFI onto P25 Digital radio	250	\$ 190.00	\$ 47,500.00
3.9.1.15	Contract Item # 8	ARC4/ADP Encryption	Motorola Flash Upgrade	ADD ADP Encryption via K.VL onto P25 Digital radio	250	\$ 375.70	\$ 93,925.00
						Total Bid Amount	\$ 8,716,421.07
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