

STATE TERM CONTRACT

THIS CONTRACT (the "Contract") is between the State of Ohio ("State"), through its Office of Information Technology ("OIT" or "Licensee"), IT Governance Division, with offices at 30 East Broad Street, Columbus, Ohio 43215 and Motorola, Inc. ("Contractor" or "Motorola"), with an office at 789 International Parkway, FL25, S3H, Sunrise, FL 33325.

BACKGROUND

The State recognizes that it is sometimes advantageous to do business with some manufacturers under a State term contract rather than through a competitive bidding or proposal process, provided the State attains attractive pricing, such as GSA-based pricing or pricing achieved by another governmental entity through a competitive process. The State also recognizes that some manufacturers work primarily through dealers for various reasons, including offering States better support through dealers that have a local presence in a service area. Because of this, the State may sometimes agree to work directly with a manufacturer's dealers.

This Contract establishes terms and conditions under which State agencies (including any board, instrumentality, commission, or other political body) and Ohio political subdivisions, such as counties, municipalities, and townships, may acquire the Contractor's products or services at the pricing identified below. But this Contract only permits such; it is not a requirements contract and does not obligate any State agency or political subdivision to acquire the Contractor's products or services.

TERMS AND CONDITIONS

1 - TERM

1.1 TERM. This Contract is effective on the date the State's duly authorized representative executes it, as evidenced by the date appearing with the representative's signature, below. Unless this Contract is terminated or expires without renewal, it will remain in effect until the end of the State's current fiscal biennium, which is June 30, 2007. Termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid for before termination or limit the State's rights in such.

1.2 CONTRACT RENEWAL. In the State's sole discretion, it may renew this Contract for a period of one month at the end of each biennium during which this Contract remains in place. Any further renewals will be only by written agreement between the State and the Contractor. Such renewals may be for any number of times for any period not to exceed the time remaining in the State's then-current biennium.

2 - PRICING AND PAYMENT

2.1 CERTIFICATION OF ACCURACY. By checking one of the following three items, the Contractor certifies that the Contractor's prices under this Contract are based on prices offered to the State of Indiana under a competitive procurement called Project Hoosier.



2.2 PRICE ADJUSTMENTS. The State will be entitled to any price decreases that the Contractor offers to the State of Indiana under its Project Hoosier contract for any of its products and services during the term of this Contract. The Contractor must give the State any reduction in pricing that it offers to the State of Indiana under Project Hoosier Safety-T pricing.

2.2 PRICELIST. The Contractor's pricelist for the products and services that the Contractor may provide to the State under this Contract is attached as Exhibit I. For convenience, those products and services are called "Deliverables" in this Contract. Any custom materials resulting from the Contractor's services also are called "Deliverables" in this Contract. The Contractor may not provide any other Deliverables under this Contract without a prior written amendment to this Contract that both the State and the Contractor have signed. Furthermore, the Contractor may not charge the State greater prices for these Deliverables than the prices on the Exhibit I. If Exhibit I contains or incorporates by reference any terms or conditions other than a description of the scope of license for software, a description of the Contractor's product and service, and the prices for those product and service, those terms or conditions are excluded from this Contract and are of no effect. Exhibit I is identified as the following commercial pricelist:

Project Hoosier Safe-T Pricing Guide

The Contractor will not sell to the State any notebook computers with less than a 1.60 Ghz internal clock -speed. And the Contractor will not sell to the State any PCs or servers using CPUs with less than a 3.0 Ghz internal clock speed. Additionally, the Contractor will not sell to the State any term software licenses. And except in the case of operating systems licensed in conjunction with desktop PCs, notebook computers, PDAs, and similar personal computing devices that the OEM does not distribute without an operating system, the Contractor will not sell or license any Microsoft software to the State. If any of the foregoing items are listed in the Contractor's pricelist, they are deleted for purposes of this Contract.

2.3 NOTIFICATION OF PRICE INCREASES. If this Contract permits any price increases, the Contractor must notify the State and any affected State agencies of the increase at least 60 days before the effective date of the price increase. The Contractor must notify affected State agencies at their purchase order "bill to" address contained in the applicable purchase orders. This notification must specify, when applicable, the product serial number, location, current price, increased price, and applicable purchase order number.

2.4 PAYMENT DUE DATE. Payments will be due on the 30th day after the later of:

- (a) The date the State actually receives a proper invoice at the office designated in the applicable purchase order to receive it; or
- (b) The date the State accepts the applicable Deliverables. Acceptance will be governed by Section 4.1.

The date the State issues a warrant (the State's equivalent to a check) in payment of an invoice will be considered the date payment is made. Without diminishing the Contractor's right to timely payment, the payment will be overdue only if it is not received by the 30th day after the payment's due date. If the State has not issued payment by then, interest will begin to accrue under Ohio Revised Code (the "Code") § 126.30.

2.5 INVOICE REQUIREMENTS. The Contractor must submit an original invoice with three copies to the office designated in the purchase order as the "bill to" address. To be a proper invoice, the invoice must include the following information:

- (a) Name and address of the Contractor as designated in this Contract;

- (b) That the Contractor's federal tax identification number is 36-1115800;
- (c) The Contractor's invoice remittance address as designated in this Contract;
- (d) The purchase order number authorizing the delivery of the Deliverables;
- (e) A description of the Deliverables, including, as applicable, the time period, serial number, unit price, quantity, and total price of the Deliverables; and
- (f) If the invoice is for a lease, the Contractor also must include the payment number (e.g., 1 of 36).

If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information. If an invoice does not meet this section's requirements, or if the Contractor fails to give proper notice of a price increase (see the next section), the State will send the Contractor written notice. The State will send the notice, along with the improper invoice, to the Contractor's address designated for receipt of purchase orders within 15 days. The notice will contain a description of the defect or impropriety and any additional information the Contractor needs to correct the invoice. If such notification has been sent, the payment due date will be 30 days after the State receives a proper invoice and has accepted the Contractor's Deliverable.

2.6 OHIO PAYMENT CARD. Participating State agencies issuing orders under this Contract may use the Ohio Payment Card. Such purchases may not exceed \$2,500 unless the Office of Budget and Management ("OBM") has authorized the agency to exceed this limit. If OBM increases the dollar limit for payment cards for all State agencies, the State will post notice of that on its Procurement Website. Participating State agencies are required to use the Ohio Payment Card in accordance with OBM's current guidelines for the Ohio Payment Card and the agency's approved plan filed with the OBM. The Contractor may process a payment in the payment card network only upon delivery and acceptance of the applicable Deliverables. For partial deliveries or performance, the Contractor may process a payment for the amount delivered or completed only and not for the entire amount ordered by the ordering agency. Upon completion of the delivery of remaining Deliverables, the Contractor may process a payment request in the payment card network for the remainder of the order. The Contractor should receive payment through its merchant bank within the time agreed upon between the Contractor and its merchant bank. And the Contractor should expect normal processing fees from its merchant bank for payment card transactions, which the Contractor may not pass on to the State.

2.7 NON-APPROPRIATION OF FUNDS. The State's funds are contingent on the availability of lawful appropriations by the Ohio General Assembly. If the Ohio General Assembly fails to continue funding for any payments due hereunder, the order or orders under this Contract that are affected by the lack of funding will terminate as of the date that the funding expires, and the State will have no further obligation to make any payments with respect to the affected order or orders.

2.8 OBM CERTIFICATION. This Contract is subject to Code § 126.07. Any orders under this Contract are void until the Director of the OBM certifies that there is a balance in the appropriation available to pay for the order.

2.9 CONTROLLING BOARD AUTHORIZATION. The State's obligations under this Contract are subject to the Ohio Controlling Board continuing to authorize the State's use of its term contracts program. If the Ohio Controlling Board fails to authorize or withdraws its authorization for this program, this Contract will terminate immediately, and the Contractor may not take any more orders under it.

2.10 TRAVEL EXPENSES. Any travel that the Contractor requires to perform its obligations under this Contract will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior written approval. The State will pay for all additional travel expenses that it requests in accordance with OBM's travel policy in Rule126-1-02 of the Ohio Administrative Code (the "Administrative Code").

2.11 TAXES. The State is exempt from all sales, use, excise, and property taxes and will not pay any such taxes. To the extent sales, use, excise, or any similar taxes are imposed on the Contractor in connection with any Deliverable, the Contractor must pay those taxes together with any interest and penalties not successfully disputed with the taxing authority.

2.12 OFFSET. The State may set off any amounts the Contractor owes to the State under this or other contracts against any payments due from the State to the Contractor under this or any other contracts with the State.

3 - CONTRACT ADMINISTRATION

3.1 DEALERS AND DISTRIBUTORS. The State authorizes the Contractor to name one or more dealers to work with the State on behalf of the Contractor. But if the Contractor decides to use any dealers, the Contractor must submit the name, principal business address, addresses for purchase orders and for payments, telephone number, and its federal tax identification number. The Contractor also must submit a completed W9 form for each dealer it wishes to name under this section. The Contractor's submission must be on its official letterhead, signed by an authorized representative, and addressed to the Deputy State Chief Information Officer, Office of Information Technology.

In doing so, the Contractor warrants that:

- (a) The Contractor has provided the dealer with a copy of this Contract, and a duly authorized representative of the dealer has agreed, in writing, to be bound by the terms and conditions in this Contract.
- (b) Such agreement specifically provides that it is for the benefit of the State as well as the Contractor.
- (c) The Contractor will remain liable under this Contract for the services of any dealer and will remedy any breach of the dealer under this Contract.
- (d) Payments under this Contract for the services of any dealer may be made directly to that dealer, and the Contractor will look solely to the dealer for any payments due to the Contractor once the State has paid the dealer.
- (e) To the extent that there is any liability to the State arising from doing business with a dealer that has not signed the agreement required under this section with the Contractor, the Contractor will indemnify the State for such liability.

If the Contractor wants to designate a dealer that will not receive payments (a "distributor"), the Contractor may do so by identifying the person or organization as a distributor in the authorizing letter. In such cases, information regarding taxpayer identification and payment addressing may be omitted, as may the distributor's W9 form. All other requirements and obligations for designating a dealer apply to designating a distributor.

The State strongly encourages the participation of small and disadvantaged businesses in its contracting programs and has created a certification program to Encourage Diversity Growth and Equity (EDGE) in State contracting. State agencies are instructed to include in their procurements such participation, including through the use of State Term Schedule contracts that are either held by EDGE businesses or that offer the opportunity to work with EDGE dealers or distributors.

3.2 AUDITS. During the term of this Contract and for three years after termination, on reasonable notice and during customary business hours, the State may audit the Contractor's records and other materials that relate to the Deliverables and to the pricing representations that the Contractor has made to acquire this Contract. This audit right also will apply to the State's duly authorized representatives and any organization providing funding for any Deliverable.

Unless it is impracticable to do so, all records related to this Contract must be kept in a single location, either at the Contractor's principle place of business or the facilities where the Contractor substantially performed under this Contract. If this is not practical, the Contractor must assume the cost of collecting, organizing, and relocating the records, along with any technology needed for accessing the records, to its office nearest Columbus, Ohio whenever the State or any entity with audit rights requests access to the records. The Contractor must do so within 15 days of receiving the State's written notice of its intent to audit the Contractor's records and must notify the State as soon as the records are ready for audit.

If any audit reveals any material misrepresentation or overcharge to the State, the State will be entitled to recover its damages, including the cost of the audit. The State may audit the Contractor's records only to verify that the pricing furnished by the Contractor pursuant to this Contract was equal to or less than the prices for the same products provided to the State of Indiana under the Project Hoosier Safe-T Pricing Guide. The Contractor will not be required to disclose any other cost or pricing data.

3.3 INSURANCE. The Contractor must provide the following insurance coverage at its own expense throughout the term of this Contract:

- (a) Workers' compensation insurance, as required by Ohio law, and if some work will be done outside Ohio, the laws of the appropriate states where work will be done. The Contractor also must maintain employer's liability insurance with at least a \$1,000,000.00 limit.
- (b) Commercial General Liability insurance coverage for bodily injury, personal injury, wrongful death, and property damage. The defense cost must be outside of the policy limits. Such policy must designate the State of Ohio as an additional insured, as its interest may appear. The policy also must include a blanket waiver of subrogation. At a minimum, the limits of the insurance must be:

- \$ 2,000,000 General Aggregate
- \$ 2,000,000 Products/Completed Operations Aggregate
- \$ 1,000,000 Per Occurrence Limit
- \$ 1,000,000 Personal and Advertising Injury Limit
- \$ 100,000 Fire Legal Liability
- \$ 10,000 Medical Payments

The Contractor will provide the State with 30-days prior written notice of cancellation or material change to the policy. And the Contractor's Commercial General Liability must be primary over any other insurance coverage.

- (c) Commercial Automobile Liability insurance with a combined single limit of \$500,000.
- (d) Professional Liability insurance covering all staff with a minimum limit of \$1,000,000 per incident and \$3,000,000 aggregate. In lieu of the need to provide Professional Liability insurance, Contractor may be self-insured for any part of the insurance requirement under this item (d). In the case of self-insurance, the Contractor will issue a letter of insurance to the State in the form of an Exhibit IV concurrent with the execution of this contract.

All certificates must be in a form that is reasonably satisfactory to the State as to the contents of the policies and the quality of the insurance carriers. All carriers must have at least an "A-" rating by A.M. Best.

3.4 CONTRACT COMPLIANCE. Any State agency that uses this Contract will be responsible for the administration of this Contract with respect to the orders that it places and may monitor the Contractor's performance and compliance with this Contract. If an agency becomes aware of any noncompliance with the terms of this Contract or the specifications of an order, the agency may document the noncompliance and give the Contractor written notice of the noncompliance for immediate correction. If the Contractor fails to cure the noncompliance, the agency may notify the State through OIT Contract Management, by executing a Complaint to Vendor form ("CTV") to help resolve the issue. Should the State determine that the CTV identifies an uncured breach of this Contract, the State may terminate this Contract and seek such other remedies as may be available to it.

3.5 POLITICAL SUBDIVISIONS. Ohio political subdivisions, such as Ohio cities, counties, and townships ("Political Subdivisions"), may rely on this Contract. Whenever a Political Subdivision relies on this Contract to issue a purchase order, the Political Subdivision will step into the shoes of the State under this Contract for purposes of its order, and, as to the Political Subdivision's order, this Contract will be between the Contractor and the Political Subdivision. The Contractor must look solely to the Political Subdivision for performance, including but not limited to payment, and must hold the State harmless with regard to such orders and the Political Subdivision's performance. But the State will have the right to terminate this Contract and seek such remedies on termination as this Contract provides should the Contractor fail to honor its obligations under an order from a Political Subdivision. Nothing in this Contract requires the Contractor to accept an order from a Political Subdivision, if the Contractor reasonably believes that the Political Subdivision is or will be unable to perform its obligations in relation to that order.

3.6 RECALLS. If a Deliverable is recalled, seized, or embargoed, or if the Contractor, a manufacturer, packer, processor, or regulatory body finds that a Deliverable has been misbranded, adulterated, or is unsafe, the Contractor must notify the State, through OIT Contract Management, as well as all agencies that have ordered the Deliverable, within ten business days after the Contractor learns of any of the above events. At the option of the State, the Contractor must either reimburse the State for the purchase price of each affected Deliverable or provide an equal or better replacement for each Deliverable at no additional cost to the State. The Contractor also must remove and replace all affected Deliverables within a reasonable time, as determined by the State. And at the option of the State, the Contractor may be required to reimburse the State for storage costs and handling fees, which the State may calculate from the time of delivery of each affected Deliverable to the Deliverable's actual removal. Furthermore, the Contractor must bear all costs associated with the removal and proper disposal of the affected Deliverables. The State will treat any failure to refund the purchase price or provide a suitable replacement within a reasonable time, not to exceed 30 days, as a default.

3.7 TERMINATION. The State may terminate this Contract or any order under this Contract if the Contractor defaults in meeting its obligations and fails to timely cure its default. The State also may terminate this Contract or any order under it if a petition in bankruptcy is filed by or against the Contractor and not dismissed within 60 days. And the State may terminate this Contract or any order under it if the Contractor violates any law or regulation while performing under this Contract or if it appears to the State that the Contractor's performance is substantially endangered through no fault of the State. In all of the foregoing cases, the termination will be for cause.

On written notice, the Contractor will have 30 days to cure any breach of its obligations under this Contract, provided the breach is curable. If the Contractor fails to cure the breach within 30 days after written notice or if the breach is not one that is curable, the State will have the right to terminate this Contract, the applicable orders, or both immediately upon written notice to the Contractor. Some provisions of this Contract may provide for a shorter cure period than 30 days or for no cure period at all. Those provisions will prevail over this one. If a particular section does not state what the cure period will be, this provision will govern.

The State also may terminate this Contract in the case of breaches that are cured within 30 days but are persistent. "Persistent" in this context means that the State has notified the Contractor in writing of the Contractor's failure to meet any of its obligations two times. After the second such notice, the State may terminate this Contract without a cure period if the Contractor again fails to meet any obligation. The three defaults do not have to relate to the same obligation or type of failure.

The State also may terminate this Contract or any order under this Contract for its convenience and without cause. And the State may terminate this Contract or any order under it if the Ohio General Assembly fails to appropriate funds for any order under this Contract. Further, if a third party is providing funding for an order, the State also may terminate this Contract or any order under it should that third party fail to release any funds related to this Contract or an order under it.

Any notice of termination will be effective as soon as the Contractor receives it. On receipt of the notice of termination, the Contractor will immediately cease all work on any Deliverables affected by the termination and take all steps necessary to minimize any costs the Contractor will incur related to the affected orders. The Contractor also must immediately prepare a report and deliver it to the State. The report must detail all open orders at the time of termination.

If the State terminates this Contract or any order for cause, it will be entitled to cover for the affected orders by using another vendor or vendors on such commercially reasonable terms and conditions as it and the covering vendors may agree. The Contractor will be liable to the State for all costs related to covering for the affected orders to the extent that such costs exceed the costs that the State would have incurred under this Contract for those orders. The Contractor also will be liable for any other direct damages resulting from its breach of this Contract or other event leading to termination for cause, subject to Section 7.5 of this Contract.

7.4 WTC C-21-06

If the termination is for the convenience of the State, the Contractor will be entitled to compensation for any Deliverable that the Contractor has delivered before the termination. Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and will be available to the Contractor only once the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount the State determines that it owes the Contractor.

3.8 EXCUSABLE DELAY. Neither party will be liable for any delay in its performance under this Contract that arises from causes beyond its reasonable control and without its negligence or fault. The delayed party must notify the other promptly of any material delay in performance and must specify in writing the proposed revised performance date as soon as practicable after notice of delay. For any such excusable delay, the date of performance or delivery will be extended for a period equal to the time lost by reason of the excusable delay. The delayed party also must describe the cause of the delay and what steps it then is taking or will take to remove the cause. The delayed party may not rely on a claim of excusable delay to avoid liability for a delay if the party has not taken commercially reasonable steps to mitigate or avoid the delay.

3.9 INDEPENDENT STATUS. The parties will be acting as independent entities. The partners, employees, officers, directors, and agents of one party may only act in the capacity of representatives of that party and not as employees, officers, directors, or agents of the other party and will not be deemed as such for any purpose. Each party assumes full responsibility for the actions of its partners, employees, officers, directors, and agents while performing under this Contract and will be solely responsible for paying those people. Additionally, each party will be solely responsible for withholding and paying social security and income taxes, making workers' compensation contributions, paying disability benefits, and providing fringe benefits, if any, for its partners, employees, officers, directors, and agents. And neither party may legally bind the other party in any manner.

3.10 LOCATION OF SERVICES AND DATA. As part of this Contract, the Contractor must disclose the following:

- (a) All locations where any services will be performed;
- (b) All locations where any State data applicable to the Contract will be maintained or made available; and
- (c) The principal place of business for the Contractor and all its subcontractors.

The Contractor may not change any location where any services are performed to a location outside the country of the original location or change any location where the data is maintained or made available to any other location outside the country of the original location without prior written approval of the State, which the State will not be obligated to provide.

4 - DELIVERY AND ACCEPTANCE

4.1 Acceptance. The acceptance procedure for Deliverables will be a limited review, upon delivery, by the agency acquiring the Deliverables to ensure that each Deliverable meets the specifications in this Contract. The State will have up to 30 days after delivery to revoke acceptance of any Deliverable, if upon further inspection it is revealed the Deliverable does not meet the specifications or warranties in this Contract. The State will not issue a formal letter of acceptance, though the State will issue a notice of revocation of acceptance if a Deliverable does not meet the specifications or warranties in this Contract.

If the State issues a revocation letter, the Contractor will have 30 days to correct the problems listed in the letter. If the Contractor fails to do so, the Contractor will be in default without a cure period. If the State has issued a revocation letter, the Deliverable will not be accepted until the State issues a letter of acceptance indicating that each problem noted in the revocation letter has been cured. If the problems have been fixed during the 30-day period, the State will issue the acceptance letter within 15 days after all defects have been fixed.

4.2 TITLE. For subscriber radio equipment and accessories, title and risk of loss will pass to the State upon delivery of the Deliverable, and title and risk of loss for infrastructure will pass to the State upon acceptance of the installation. Title to Software shall not pass to the State for any reason.

4.3 DELIVERIES. The Contractor must make all deliveries F.O.B. destination.

5 - INTELLECTUAL PROPERTY

5.1 Preservation of Proprietary Rights. Under this Contract, the Contractor will only sell to the State commercial material and will not develop any custom material, such as custom software, for the State. The Contractor, 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 any commercial Equipment and Software, and nothing in this Contract is intended to restrict their proprietary rights. Except as explicitly provided in this Contract, the Contractor does not grant to the State, either directly or by implication, estoppel, or otherwise, any right, title, or interest in the Contractor's proprietary rights. The State may not decompile, otherwise reverse engineer, or attempt to reverse engineer, derive source code, or create derivative works from, adapt, translate, merge with other software, reproduce (other than as authorized for the State's own use) distribute, sublicense, sell, or export the Software. The preceding sentence does not apply to Open Source Software. No license is granted by implication, estoppel, or otherwise under Contractor patent rights or copyrights. The existence of a copyright notice on the Software will not be construed as an admission or presumption that public disclosure of the Software or any trade secrets associated with the Software has occurred.

5.2 CUSTOM DELIVERABLES. The Contractor will not provide any custom software to the State under this Contract.

5.3 CONFIDENTIALITY. The State and the Contractor may disclose to the other written material or oral or other information that they treat as confidential ("Confidential Information"). Title to the Confidential Information and all related materials and documentation the State or Contractor delivers to the other will remain with the owner. The State and Contractor must treat such Confidential Information as secret if it is so marked, otherwise identified as such, or in the case of the State's Confidential Information, when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of the public, other contractors or potential contractors, or individuals or organizations about whom the State keeps information. Neither the Contractor nor the State may disclose any Confidential Information to third parties and must use it solely to perform under this Contract. The State acknowledges that the Software and Documentation, as defined in Exhibit II, contain Contractor's valuable proprietary and Confidential Information and that the provisions in the Contract concerning Confidential Information apply if the Software and Documentation is marked confidential or proprietary or the State otherwise has reasonable notice of such.

If one party discloses Confidential Information ("Disclosing Party") to the other party to this Contract ("Receiving Party"), the Receiving Party's obligation to maintain the confidentiality of the Confidential Information will not apply where such:

- (1) Was already in the possession of the Receiving Party without an obligation of confidence;
- (2) Is independently developed by the Receiving Party, provided documentary evidence exists to support the independent development;
- (3) Is or becomes publicly available without a breach of this Contract;
- (4) Is rightfully received by the Receiving Party from a third party without an obligation of confidence;
- (5) Is disclosed by the Receiving Party with the written consent of the Disclosing Party; or
- (6) Is released under a valid order of a court or governmental agency, provided that the Receiving Party:
 - (a) Notifies the Disclosing Party of the order immediately upon receipt of it; and
 - (b) Makes a reasonable effort to obtain a protective order from the issuing court or agency limiting the disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production.

Except for Confidential Information that the Contractor delivers to the State and that is part of a Deliverable or necessary for the proper use or maintenance of a Deliverable, the Receiving Party must return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Contract.

The disclosure of the Confidential Information of the Disclosing Party in a manner inconsistent with the terms of this provision may cause the Disclosing Party irreparable damage for which remedies other than injunctive relief may be inadequate, and each Receiving Party agrees that in the event of a breach of the Receiving Party's obligations hereunder, the Disclosing Party will be entitled to temporary and permanent injunctive relief to enforce the provisions of this Contract without the necessity of proving actual damages. But this provision does not diminish or alter any right to claim and recover damages.

5.4 USE OF NAME. The Contractor may not publicize that it is doing business with the State or use this Contract or the Contractor's relationship with the State as a marketing or sales tool, unless the State agrees otherwise in writing. The State has no obligation to agree to any such advertising, publicity, sales, or marketing activities.

6 – TRANSACTION REPORTING

6.1 Contractor's SALES REPORT. The Contractor must report the quarterly dollar value (in US currency rounded to the nearest whole dollar) of the sales under this Contract each calendar quarter (i.e., January-March, April-June, July-September and October-December). The dollar value of the sales reported must equal the price paid by all State agencies and Political Subdivisions for Deliverables under this Contract during the reporting period.

The Contractor must report the quarterly dollar value of sales to the State on a form prescribed by OIT. If no sales occur, the Contractor must show zero sales on the report. The report must be submitted 30 days after the completion of the reporting period.

The Contractor also must submit a closeout report within 120 days after the expiration of this Contract. The Contract expires on the physical completion of the last, outstanding task or delivery order of the Contract. The closeout report must cover all sales not shown in the final quarterly report and reconcile all errors and credits. If the Contractor reported all Contract sales and reconciled all errors and credits on the final quarterly report, then the Contractor should show zero sales in the closeout report.

The Contractor must forward each sales report to the following address:

Office of Information Technology
OIT Business Office
30 East Broad Street, 39th Floor
Columbus, Ohio 43215 - 3414

If the Contractor fails to submit any sales report in a timely manner or falsifies any sales report, the State may terminate this Contract for cause.

6.2 Contractor's REVENUE SHARE. The Contractor must pay the State a share of the sales transacted under this Contract. The Contractor must remit the revenue share in US dollars within 30 days after the end of the quarterly reporting period. The revenue share that the Contractor must pay equals .0075 of the total quarterly sales reported. The revenue share is included in the prices reflected on Exhibit I and reflected in the total amount charged to ordering activities, and the Contractor may not add a surcharge to orders under this Contract to cover the cost of the revenue share.

The Contractor must remit any amount due as the result of a quarterly or closeout report at the time the quarterly or closeout report is submitted to OIT. And the Contractor must pay the revenue share by check. To ensure the payment is credited properly, the Contractor must identify the check as a "Revenue Share" and include the applicable State Term Contract Number, total report amount, and reporting period covered.

The Contractor must make each check payable to "Treasurer, State of Ohio", and forward it to the following address:

Department of Administrative Services
Office of Finance
30 East Broad Street, Suite 4060
Columbus, Ohio 43215 – 3414

If the full amount of the revenue share is not paid within 30 days after the end of the applicable reporting period, the non-payment will constitute a contract debt to the State. The State may setoff any unpaid revenue share from any amount owed to the Contractor under this Contract and employ all other remedies available to it under Ohio law for the non-payment of the revenue share. Additionally, if

the Contractor fails to pay the revenue share in a timely manner, the failure will be a breach of this Contract, and the State may terminate this Contract for cause and seek damages for the breach.

7 - WARRANTIES AND LIABILITIES

7.1 WARRANTIES. The Contractor's standard commercial warranty is attached and incorporated herein as Exhibit III.

Additionally, the Contractor warrants that the recommendations, guidance, and performance of the Contractor and all Deliverables under this Contract will:

- (a) Be in accordance with the sound professional standards and the requirements of this Contract and without any material defects;
- (b) be subject to the indemnity set forth in Section 7.4 of this Contract;
- (c) Be the work solely of the Contractor, unless otherwise provided in this Contract; and comply with any applicable specifications, including user documentation, for the Deliverable.

Additionally, with respect to the Contractor's activities under this Contract, the Contractor warrants that:

- (a) The Contractor has the right to enter into this Contract;
- (b) The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract;
- (c) The Contractor will observe and abide by all applicable laws and regulations, including those of the State regarding conduct on any premises under the State's control;
- (d) The Contractor has good and marketable title to any products delivered under this Contract and in which title passes to the State; and
- (e) The Contractor has the right and ability to grant the license provided in any Deliverable in which title does not pass to the State.

If any work of the Contractor or any Deliverable fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor must correct such failure with all due speed, not to exceed 30 days, or refund the amount of the compensation paid for the Deliverable. The Contractor also must indemnify the State for any direct damages and any claims by third parties based on any breach of these warranties.

7.2 SOFTWARE.

The Contractor's Software furnished under this Contract will be licensed and governed by the scope of license in Exhibit II, which is part of this Contract. The Contractor's Radio Service Software, Integration Framework Software, Customer Service Request Software, and Cityworks Software are not available under this Contract. State agencies that seek to license the Radio Service Software from Contractor for equipment purchased under this Contract must have other legal authority to acquire that software and must negotiate a separate software license agreement with the Contractor at the time of purchase.

7.3 INDEMNITY. The Contractor must indemnify the State against all liability or expense resulting from bodily injury to any person (including injury resulting in death) or damage to property arising out of its performance under this Contract, provided such bodily injury or property damage is due to the negligence of the Contractor, its employees, agents, or subcontractors. The Contractor also must indemnify the State against any claim of infringement of a copyright, patent, trade secret, or other intellectual property rights based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified the Deliverable and the claim of U.S. infringement is based on the modification. The State will give the Contractor notice of any such claim as soon as reasonably practicable. If a successful claim of infringement is made, or if the

Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor will do one of the following four things:

- (a) Modify the Deliverable so that is no longer infringing;
- (b) Replace the Deliverable with an equivalent or better item;
- (c) Acquire the right for the State to use the Deliverable as it was intended for the State to use under this Contract; or
- (d) Remove the Deliverable and refund the fee the State paid for the Deliverable and the fee for any other Deliverable that required the availability of the infringing Deliverable for it to be useful to the State.

7.4 LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS CONTRACT OR ANYTHING INCORPORATED BY REFERENCE INTO THIS CONTRACT, THE PARTIES AGREE AS FOLLOWS:

- (a) THE LIMITATION IN PARAGRAPH 7.4(c) DOES NOT APPLY TO LIABILITY ARISING FROM THIRD PARTY CLAIMS OR SECTION 7.3 IN THIS CONTRACT.
- (b) NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAVE BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES;
- (c) THE CONTRACTOR WILL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE CONTRACTOR'S FAULT OR NEGLIGENCE UP TO (3) TIMES THE COST OF THE PRODUCT/SERVICES OR TEN MILLION DOLLARS (\$10,000,000), WHICHEVER IS GREATER IN THE AGGREGATE. THE PARTIES FURTHER AGREE THAT CONTRACTOR SHALL REMAIN LIABLE FOR ALL DIRECT DAMAGES UP TO THREE (3) TIMES THE COST OF THE PURCHASE EVENT FOR SERVICE ENGAGEMENTS VALUED AT TWO MILLION DOLLARS (\$2,000,000) OR LESS.

8 - MAINTENANCE

8.1 For Commercial Software other than PC or PC-based server software costing less than \$10,000.00 per copy or license, the Contractor must provide maintenance during the warranty period provided in Exhibit III, for at least five years after the warranty period. In the event that:

- (A) The Contractor discontinues support for: (i) an item of Contractor Software furnished under this Contract, or (ii) subsequent releases of such Software, if any; and
- (B) The State is, and remains, in use of the Software and not in breach of this Contract, and
- (C) The State maintains the Contractor Software by accepting all core releases of the applicable Software provided under the maintenance program;

Then at the State's request, the Contractor will:

- (A) Continue support for such item of Contractor Software; or
- (B) Arrange for support by an entity that has access to the source code for such item of Contractor Software; or
- (C) Grant the State a license, under separate terms and conditions, such separate terms and conditions contingent upon approval by the Contractor's STAMP Senior Management Steering Board (STAMP), to use the Contractor-owned source code corresponding to the item of Contractor Software for the State's internal use by the State's employees, agents, consultants, and independent contractors ("State Personnel"), solely for purposes of trouble

analysis, namely, isolating, diagnosing, and fixing problems in the Software, provided that prior to receiving access to such source code, the State Personnel will enter into a confidentiality agreement in form and substance reasonably satisfactory to the Contractor.

8.2 SOFTWARE UPGRADES. After an initial acquisition of a license in Commercial Software, the State may want to migrate to another platform for the Commercial Software. Upon the State's request, the Contractor will provide the State with a then current proposal plan with pricing for migration.

8.3 EQUIPMENT MAINTENANCE. If this Contract involves computer or telecommunications hardware or other mechanical or electrical equipment ("Equipment") as a Deliverable, then, during the warranty period and during any period covered by annual maintenance, the Contractor must provide maintenance to keep the Equipment in or restore the Equipment to good working order. This maintenance must include preventative and remedial maintenance, installation of safety changes, and installation of engineering changes based upon the specific needs of the individual item of Equipment. This maintenance also must include the repair, replacement, or exchange deemed necessary to keep the Equipment in good working order. For purposes of this Contract, Equipment restored to good working order means Equipment that performs in accordance with the manufacturer's published specifications. The Contractor must use its reasonable efforts to perform all fault isolation and problem determination attributed to the Equipment. The following services are outside the scope of this Contract:

- (a) Maintenance to bring the Equipment into compliance with any law, rule, or regulation, if such law, rule, or regulation was not in effect on the acceptance date;
- (b) Repair and replacement work or increase in maintenance time as a result of damage or loss resulting from accident, casualty, neglect, misuse, or abuse, if such is the State's fault (and beyond normal wear and tear), damage resulting from improper packing or failure to follow prescribed shipping instruction (if such is done by the State), failure of electrical power, air conditioning or humidity control, use of supplies not approved by the original manufacturer of the Equipment as describe in the Equipment's documentation, or causes other than ordinary use of Equipment;
- (c) Furnishing platens, supplies, or accessories, making specification changes, or adding or removing approved accessories, attachments, or other devices except as permitted in the Equipment's user documentation;
- (d) Maintenance or increased maintenance time resulting from any improper use, maintenance, or connection to other equipment (not done by the Contractor) that results in damage to the Equipment;
- (e) Repairs needed to restore the Equipment to good operating condition if the Equipment has been damaged by anyone other than the Contractor's authorized service personnel repairing, modifying, or performing maintenance on the Equipment.
- (f) Service does not include the repair or replacement of Equipment that has become defective or damaged due to physical or chemical misuse or abuse or from causes such as lightning, power surges, or liquids;
- (g) Unless specifically included, service does not include repair or maintenance of any transmission line, antenna, tower or tower lighting, duplexer, combiner, or multicoupler unless the State acquired that Equipment by or through the Contractor. Contractor has no obligation or responsibility for any third-party transmission medium, such as telephone lines, computer networks, or the worldwide web, or for Equipment malfunction caused by such transmission medium;
- (h) Unless specifically included in the Exhibits, service of Equipment does not include items that are consumed in the course of normal operation of the Equipment, such as, but not limited to, batteries, magnetic tapes, and computer supplies;

- (i) Service does not include reprogramming of Equipment; accessories, belt clips, or battery chargers; custom or special products; modified units; or software if a software support plan is not included in the sale.

8.4 EQUIPMENT MAINTENANCE STANDARDS. Except in the case of excusable delay, remedial Equipment maintenance by the Contractor will be completed within eight business hours after notification by the State that maintenance is required. In the case of preventative maintenance, the Contractor will perform such in accordance with the manufacturer's published schedule and specifications. If maintenance is not completed within eight hours after notification by the State, the Contractor will be in default. Failure of the Contractor to meet or maintain these requirements will provide the State with the same rights and remedies as specified elsewhere in this Contract for default, except that the Contractor will only have eight hours to remedy a default. The Contractor will provide adequate staff to provide the maintenance required by this Contract.

8.5 EQUIPMENT MAINTENANCE CONTINUITY. If the Contractor is unable to provide Equipment maintenance to meet the State's ongoing performance requirements and if, in the State's reasonable opinion, the Contractor is unlikely to resume providing warranty services that meets the State's ongoing performance requirement, the Contractor will be in default, and the State will be entitled to the remedies in the default section of this Contract. The State may terminate the Contract by giving Contractor 30-days' prior written notice.

But the State will also be entitled to the following items from the Contractor:

- (a) All information necessary for the State to perform the maintenance, including but not limited to logic diagrams, maintenance manuals, and system and unit schematics, with all changes noted;
- (b) A listing of suppliers capable of supplying necessary spare parts;
- (c) Adequate information to permit the State to have spare parts manufactured elsewhere; and
- (d) A listing of spare parts and their recommended replacement schedule to enable the State to create a centralized inventory of spare parts.

The State will treat as Confidential Information in accordance with the Confidentiality Section of this Contract any information in items (a) through (d) above that the Contractor rightfully identifies in writing as confidential. And when disclosure to a third-party is necessary for the State to continue the maintenance, the State will require any third-party to whom disclosure is made to agree to hold the Confidential Information in confidence and to make no further disclosure of it. Further, the State agrees that any such Confidential Information will be used solely to perform maintenance for the State and will be returned to the Contractor or destroyed when such use is no longer needed.

8.6 PRINCIPAL PERIOD OF MAINTENANCE (GENERAL). Software and Equipment maintenance must be available nine working hours per weekday, between 8:00 a.m. and 5:00 p.m. Eastern Standard Time. Travel time and expenses related to remedial and preventative maintenance will not be billable and must be included in the price of the maintenance.

8.7 MAINTENANCE ACCESS (GENERAL). For all Software and Equipment maintenance under this Contract, the State will provide the Contractor with reasonable access to the Deliverable to perform maintenance. All maintenance that requires a Deliverable to be inoperable must be performed outside the State's customary working hours, except when the Deliverable is already inoperable. Preventative or scheduled maintenance must be performed at mutually agreeable times, within the parameters of the manufacturer's published schedule.

9 - ASSIGNMENT AND SUBCONTRACTING

9.1 ASSIGNMENT. Except for the Contractor's affiliates and authorized Contractor Service Shops, the Contractor may not assign this Contract without the written consent of the State, which the State will not be obligated to provide. But the Contractor may assign all its rights and obligations with respect to any Software licensed to the State under this Contract, provided it notifies the State within a reasonable time after such assignment.

9.2 SUBCONTRACTING. The State recognizes that it may be necessary for the Contractor to use subcontractors to perform portions of the work under this Contract. In those circumstances, before the Contractor engages any such subcontractor, the Contractor must submit a list identifying its subcontractors or joint venture partners performing portions of the work under the Contract. If any changes to that list occur during the term of the Contract, the Contractor must immediately provide the State an updated list of subcontractors or joint venture business partners. In addition, all subcontractors and joint venture business partners must agree in writing to be bound by all of the terms and conditions of this Contract and any specifications of any order under this Contract for which they perform work. The State may reject any subcontractor submitted by the Contractor.

10 – CONSTRUCTION

10.1 HEADINGS. The headings used in this Contract are for convenience only and may not be used in interpreting this Contract.

10.2 ENTIRE DOCUMENT. This Contract, which includes the Contractor's pricelist attached as Exhibit I and all documents referred to in this Contract, constitutes the entire agreement between the parties with respect to the subject matter and supersedes any previous agreements, whether oral or written.

10.3 BINDING EFFECT. This Contract will be binding on and inure to the benefit of the respective successors and assigns of the State and the Contractor.

10.4 AMENDMENTS – WAIVER. No amendment or modification of this Contract will be effective unless it is in writing and signed by both parties. The failure of either party at any time to demand strict performance by the other party of any of the terms or conditions of this Contract may not be construed as a waiver of any those terms or conditions. And either party may at any time demand strict and complete performance by the other party.

10.5 SEVERABILITY. If a court of competent jurisdiction finds any provision of this Contract to be unenforceable, the remaining provisions of this Contract will remain in full force and affect.

10.6 CONSTRUCTION. This Contract must be construed in accordance with the plain meaning of its language and neither for nor against the drafting party.

10.7 NOTICES. For any notice under this Contract to be effective, the noticing party must make it in writing and send it to the address of the other party first appearing above, unless that party has notified the other party, in writing and in accordance with the provisions of this section, of a new mailing address for the receipt of notices. This notice requirement will not apply to any notices that this Contract expressly authorizes to be made orally.

For the Contractor:

Judy Jean-Pierre
Motorola, Inc.
Director, Commercial Attorney
789 International Parkway, FL25, S3H
Sunrise, FL 33076

For the State:

Contract Management
Office of Information Technology
30 East Broad Street, 39th Floor
Columbus, Ohio 43215

10.8 CONTINUING OBLIGATIONS. Any terms, conditions, representations, or warranties contained in this Contract that must survive termination or expiration of this Contract to be fully effective will survive the termination or expiration of the Contract. Additionally, termination or expiration of this Contract will not affect the State's right to continue to use any Deliverable for which it has paid, including licensed material. And no termination or expiration of the Contract will affect the State's right to receive maintenance, warranty work, or other services for which the State has paid.

10.9 PRIORITY. If there is any inconsistency or conflict between this document and any provision of anything incorporated by reference, this document will prevail.

10.10 DAYS. When this Contract refers to days, it means calendar days, unless it expressly provides that the reference is to business days.

11 - LAW AND COURTS

11.1 EEO. The Contractor must comply with all Ohio laws regarding equal employment opportunity, including among others Code § 125.111, as well as all related Executive Orders of the Governor of Ohio.

11.2 DRUG FREE WORKPLACE. The Contractor must comply with all Ohio laws regarding maintaining a drug-free workplace and make a good faith effort to ensure that all its employees do not possess and are not under influence of illegal drugs or alcohol or abuse prescription drugs while working on State property.

11.3 ETHICS AND ELECTIONS LAW. The Contractor certifies that it is currently in compliance and will continue to comply with the requirements of the Ohio ethics law, Code § 102.04. The Contractor affirms that, as applicable to the Contractor, no party listed in Division (I) or (J) of § 3517.13 of the Code or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Governor or to his campaign committees.

11.4 LAW AND VENUE. This Contract is governed by and will be construed under Ohio law, and venue for all disputes will lie exclusively with the appropriate court in Franklin County, Ohio.

The State as licensee of Software will comply with all applicable laws and regulations, including export laws and regulations of the United States. The State will not, without the prior authorization of Contractor 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 will be a material breach of this Contract, permitting immediate termination by Contractor of the affected Software licenses.

11.5 UNRESOLVED FINDINGS. The Contractor represents that it is not subject to an unresolved finding for recovery under Code § 9.24. If this warranty proves false when the parties sign this Contract, the

Contract will be void. Additionally, if this representation proves false on the date of any renewal or extension of the Contract, the renewal or extension will be void.

To SHOW THEIR AGREEMENT, the parties have executed this Contract on the date(s) identified below, and this Contract will be effective as of the date it is signed on behalf of the State.

MOTOROLA, INC.

STATE OF OHIO,
OFFICE OF INFORMATION TECHNOLOGY

BY: Mark F. Moon
MARK F. MOON

Mary F. Carroll
MARY F. CARROLL
DIRECTOR, OFFICE OF INFORMATION TECHNOLOGY
STATE CHIEF INFORMATION OFFICER

TITLE: Corporate Vice President
CORPORATE VICE PRESIDENT
GENERAL MANAGER
NETWORKS AND ENTERPRISE
NORTH AMERICA

BY: W. F. Callahan
WALTER F. CALLAHAN
DEPUTY STATE CHIEF INFORMATION OFFICER
INVESTMENT AND GOVERNANCE DIVISION

DATE: 6-19-06

DATE: 6-21-06

LEGAL APPROVAL
[Signature]

**Contract Summary
for
Motorola STS Contract**

Background. At Motorola's request, we modified the Background Section to remove references to the GSA and its process and inserted language more appropriate to a contract based on another state's competitive process. OIT has authority to contract with vendors seeking an STS contract based on several pricing models: GSA, best pricing, or competitively awarded contracts with other governmental entities. We have done STS's based on this authority with Cisco and EDS in the recent past.

Also at Motorola's request, we modified the Background Section to remove references to certification letters from suppliers. The potential number of suppliers of goods to Motorola makes such a process unmanageable, and this is something we have done for other large vendors, since there is no legal requirement for this.

Certification of Accuracy. At Motorola's request, we modified the Certification of Accuracy Section to track the pricing model we are using with them: Indiana Project Hoosier Safe-T Pricing.

Payment Due Date. At Motorola's request, we modified the Payment Due Date section to address booking issues they had with acceptance of products. We have provided similar changes for other vendors, giving less than a 30 day acceptance period.

Audits. At Motorola's request, we modified the Audits Section to limit our audits to information needed to verify that we are getting the same pricing as Indiana. Our ability to check our pricing with that paid by Indiana remains unaffected, which is the purpose of the section.

Insurance. At Motorola's request, we modified the insurance section to permit self insurance for professional liability coverage since Motorola does not carry professional liability insurance.

Termination. We added language that specifically refers to the limits on liability. Motorola requested this as a point of clarification. We believe the liability limitations apply anyway.

Delivery and Acceptance. At Motorola's request, we have modified the Delivery and Acceptance section to reflect that acceptance is immediate on a visual inspection but can be withdrawn within 30 days. Motorola believes this will help them in recognizing the revenue.

Title. At Motorola's request, we modified the section to provide that title passes on delivery for equipment. Title to infrastructure installations passes on acceptance. We also note that title to software does not pass, since we take a license rather than title to it.

Commercial Material. At Motorola's request, we have replaced this section with a Preservation of Proprietary Rights section, since Motorola does not intend to do any custom work for us and is prohibited from doing so in the contract.

Custom Deliverables. We added this section to prohibit Motorola from doing custom work to compliment the deletion of the Commercial Materials section.

Confidentiality. At Motorola's request, we modified the confidentiality section to make it mutual and to provide that Motorola's software will be treated as confidential if it is marked as such. In the past, our standard confidentiality clause for STS contracts was mutual, so most vendors have a mutual clause in their STS contract.

Warranties. At Motorola's request, we added language that incorporates their standard warranty by reference. We also made that warranty an exhibit to the contract. Also, at Motorola's request we changed the infringement warranty to reference the indemnity for infringement, since the result is essentially the same. We have done this for other vendors, who resist having indefinite

infringement warranties but are willing to accept indefinite indemnity obligations. Also at Motorola's request, we changed the merchantability and fitness for a particular purpose warranties to a warranty to comply with specifications and documentation. This a common request that we frequently agree to.

Software Warranty. At Motorola's request, we replaced this section in favor of their standard software warranty, which is contained in Exhibit II. The software warranty they provided is tailored to their product line and is commercially reasonable. Most of their software is actually embedded software rather than computer-based applications, which is what the state's provisions are geared to. It is common for us to incorporate GSA or commercial warranties into an STS contract.

Equipment Warranty. At Motorola's request, we replaced this section in favor of their standard equipment warranty, which is contained in Exhibit II. The equipment warranty they provided is tailored to their product line and is commercially reasonable.

Limitation of Liability. At Motorola's request, we inserted the same limitation of liability language as contained in IBM's STS contract. Motorola has prepared a justification letter that notes the significance of MARC to the state and local authorities in Ohio.

Software Maintenance. At Motorola's request, we modified this section by deleting all references to custom software, since no custom software is available under the contract. We also modified to section to make it more consistent with Motorola's standard provisions, since most of their software is embedded software rather than traditional computer-based applications.

Software Upgrades. At Motorola's request, we modified this section by deleting all references to custom software, since no custom software is available under the contract. Also at Motorola's request, we modified the section to make it more consistent with Motorola's standard provisions, since most of their software is embedded software rather than traditional computer-based applications.

Equipment Maintenance. At Motorola's request we changed the standard under this section from a best efforts standard to a reasonable efforts requirement. This standard is more in line with commercial practices. We also added a number of additional exclusions to their maintenance obligations, which are aimed more closely with their type of equipment. All are reasonable exclusions and relate to events for which we would not expect Motorola to be liable, e.g., lightning strikes.

Equipment Maintenance Continuity. At Motorola's request, we changed the standard of "the State's sole opinion" regarding maintenance continuity to "reasonable opinion." This is a more consistent with commercial practices. Also at Motorola's request, we added a thirty day notice before termination.

Assignment. At Motorola's request, we eased the assignment restrictions to permit assignment to affiliated entities and to allow the sale of software product lines without prior consent.

Notice. At Motorola's request, we added addresses for notices under the contract.

Law and Venue. At Motorola's request, we added an express requirement for the State to comply with laws relating to software, particularly the US export laws. This provides Motorola with protection with respect to sensitive software that requires an export license before being exported to another country. The State must comply with such laws anyway, but this provision demonstrates that Motorola engaged in due diligence should the State violate such a restriction.