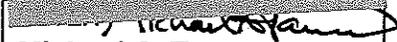


Form No. 234A (Rev. 3/82)  
 Act No. of 1984  
 REQUIREMENTS: Require.  
 LIABILITY: Failure to deliver in accordance with contract terms  
 and conditions and this notice, may be considered in default of  
 contract

STATE OF MICHIGAN  
 DEPARTMENT OF MANAGEMENT AND BUDGET  
 OFFICE OF PURCHASING  
 P.O. BOX 30026, LANSING, MICHIGAN 48909

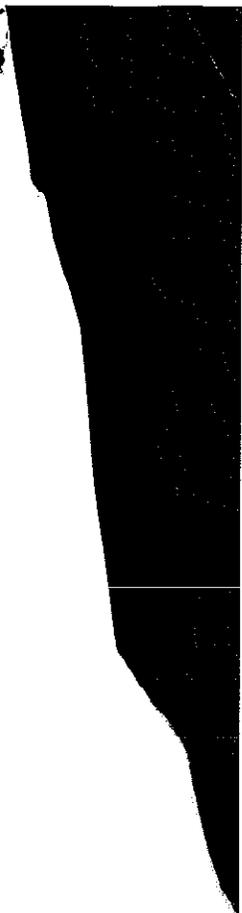
December 2, 1994

NOTICE  
 OF  
 CONTRACT AGREEMENT NO. 071B5000240  
 between  
 THE STATE OF MICHIGAN  
 and

NAME & ADDRESS OF CONTRACTOR <b>Motorola, Incorporated</b> <b>DBA/Motorola Communications &amp; Electronics, Inc.</b> <b>1303 E. Algonquin Road</b> <b>Schaumburg, IL 60196</b>		TELEPHONE <b>(708) 590-0000</b>   <b>Michael A. Tanner</b>
<b>800 MHz Radio System - Department of State Police</b>		
CONTRACT PERIOD 175 months From: <b>December 8, 1994</b>		To: <b>June 8, 2009</b>
TERMS <b>Net 30 Days</b>	SHIPMENT <b>As Specified Herein</b>	
F.O.B. <b>Delivered/Installed</b>	SHIPPED FROM <b>Various Locations</b>	
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>		

**Contract for the Provision and Installation of a Statewide 800 MHz Radio System and Telecommunications Backbone Network for the Department of State Police in accordance with the appended terms, conditions and attachments.**

**Maximum Contract Value: \$187,275,915.00**



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800 MHz RADIO SYSTEM & TELECOMMUNICATIONS BACKBONE NETWORK  
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**1. CONTRACT TERMS AND CONDITIONS**

Contract made this \_\_\_\_\_ day of December 1994 by and between the State of Michigan Office of Purchasing with offices located at Second Floor, Stevens T. Mason Building, Lansing, Michigan 48909, acting on behalf of the Department of State Police, and Motorola Communications and Electronics, Incorporated, an Illinois Corporation, with offices located at 1301 East Algonquin Road, Schaumburg, Illinois 60196.

**1.1. Definitions**

The following definitions shall apply to this Contract.

1. "800 MHz" shall mean a band of frequencies assigned to public safety agencies, 806-824 MHz Mobile transmit and 851-869 MHz Base transmit.
2. "Acceptance" shall mean successful completion of the Acceptance Test Plan, as set forth in Exhibit C.
3. "Acceptance Test Plan" ("ATP") shall mean the negotiated, mutually agreed upon method of testing the System, as set forth in Exhibit C.
4. "Approved Subcontractor" shall mean any Subcontractor of Motorola that the State has approved to perform certain of the services and functions under this Contract, as indicated in Exhibit B.
5. "Day" or "Days" shall mean weekdays, Monday through Friday from 8:00 a.m. - 5:00 p.m., inclusive, except for holidays observed by the State.
6. "Cause" shall have the meaning specified in Section 1.17.
7. "Contract Change Notice" is a document issued by the State and accepted by Motorola delineating a change to this Contract.
8. "Contract" shall mean this Contract for a Public Safety Communications System, including the Exhibits, Schedules, and their attachments, if any.
9. "Contract Release" shall mean a written Purchase Order ("Purchase Order") from the State which will serve as the authority for Motorola to manufacture, construct, implement, and invoice for the System components described therein. Purchase Orders shall be subject to acceptance or rejection by an authorized representative of Motorola. The State shall issue a Contract Release after each Detailed Design Review Process to capture the final System design as agreed to during the Detailed Design Review Process. The date of the Contract Release will be the effective start date for that phase of the project.
10. "Contract Term" shall have the meaning specified in Section 1.4.
11. "DAG" is the abbreviation for the State of Michigan Department of Attorney General.
12. "DMB" is the abbreviation for the State of Michigan Department of Management and Budget.
13. "Detailed Design Review" ("DDR") shall mean the process by which Motorola and the State meet to finalize the technical details of each phase. This process shall result in a "Detailed Design Plan" ("DDP") which will be signed by Motorola and the State. As a minimum this plan shall include, grade of service

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review, frequency allocations and interference analysis, RF coverage review; microwave design review; results of the Site acquisition process; Site by Site equipment review; final Statement of Work by phase; equipment list revisions; and schedule adjustment for each phase.

14. "Effective Date" shall mean the effective date of this Contract as agreed upon between the Parties on Page 1 hereof.
15. "Exhibit" or "Exhibits" shall mean the Exhibits attached to this Contract, including their attachments, which are hereby incorporated as part of this Contract.
16. "FAA" is the abbreviation for Federal Aviation Administration.
17. "FCC" is the abbreviation for Federal Communications Commission.
18. "Factory Tests" shall mean that portion of the ATP, as set forth in Exhibit C, which is to be performed on the System in Motorola's manufacturing facility, with the State's participation, prior to shipment.
19. "Field Functional/Operational Test" shall mean that portion of the ATP, as set forth in Exhibit C, which shall include tests to demonstrate the functional and operational features of the System.
20. "Field Specification Test" shall mean that portion of the ATP, as set forth in Exhibit C, which shall demonstrate adherence to the specifications of the System.
21. "Hardware" shall mean all physical structures including towers, shelters, generators, and associated facilities required to produce the 800 MHz Radio System and Telecommunications Backbone Network and all physical equipment required of same, including but not limited to mechanical, magnetic, electrical, or electronic device as contrasted to "Software".
22. "Hazardous Materials and/or substance" means asbestos, ACBMs (Asbestos containing building materials), PCBs (polychlorinated Biphenyls), petroleum products, such construction materials as paint thinners, solvents, gasoline, oil, etc. and any other material for which the manufacture, use, treatment, storage, transportation or disposal is regulated by federal or State laws governing the protection of public health, natural resources, or the environment, or defined in the environmental response act, 1982 pa 307, § 603 (p).
23. "MDNR" is the abbreviation for the State of Michigan Department of Natural Resources.
24. "MDOC" is the abbreviation for the State of Michigan Department of Corrections.
25. "MDOT" is the abbreviation for the State of Michigan Department of Transportation.
26. "MSP" is the abbreviation for State of Michigan Department of State Police.
27. "MSP District" shall mean the seven geographic areas identified as MSP Districts and as defined in the Exhibit A, Figure 2.2.
28. "Motorola" shall mean Motorola Communications and Electronics, Incorporated, an Illinois Corporation, with offices located at 1301 East Algonquin Road, Schaumburg, Illinois 60196.
29. "Notice to Proceed" (NTP) shall mean the written notice from the State of Michigan Project Director to begin the Detailed Design Review process for each phase.

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30. "Operational Use" shall be defined as use of the System or any subsystem thereof by the State, for its intended purpose, other than for the express purposes of training or testing, prior to the achievement of the Phase Acceptance or the Statewide System Acceptance Milestone Dates.
31. "Party" shall mean either Motorola or the State, as appropriate; "Parties" shall mean both Motorola and the State.
32. "Punch List" shall mean a list of items, as defined in Exhibit C, which the Parties have agreed, through performance of the ATP, are not functioning in accordance with Exhibit A.
33. "Purchasing Director" shall mean the individual who is serving, whether on an acting or permanent basis, as the Purchasing Director, Office of Purchasing, DMB.
34. "Radio Coverage Test" shall mean that portion of the ATP, as set forth in Exhibit C, which shall be performed by a team composed of designated representatives of both Parties, to determine if the System meets the coverage requirements of this Contract.
35. "RF" is the abbreviation for Radio Frequency.
36. "Schedule" or "Schedules" shall mean the implementation Schedules attached to this Contract as Exhibit D, including their attachments, which are hereby incorporated as part of this Contract.
37. "Shelter" shall mean a building used to house RF, TBN and associated electronic equipment required at a particular Site.
38. "Site" shall mean the property location including any of the following: tower, shelter, equipment room, dispatch center, generator room, compound fencing, access road, and associated excavation and landscaping.
39. "Software" shall mean programs, routines, code, and other licensed information for use with the System equipment, as contrasted to "Hardware."
40. "State" shall mean the State of Michigan acting as the buyer.
41. "Statement of Work" shall mean the document that specifies the work to be completed, and the responsibilities of both Parties, as set forth in Exhibit B.
42. "State Project Director" shall mean the State official designated by the State in a written notice to Motorola as having been assigned to serve as the sole point of contact for all contractual matters related to this Contract.
43. "State Project Engineer" shall be the State's appointed technical representative for the project. The State Project Engineer shall participate in the DDR, review the System design, and approve modifications by Motorola to the System design in order to meet the State's requirements as defined in this Contract.
44. "State's Field Representative(s)" shall be the State's expressly appointed representative in the field. They will be available during the progress of the work for inspection of construction to determine the compliance with this Contract and the specifications. They will have authority to approve, reject, or stop work for the same purpose, but they will not have authority to exercise control over the method or manner of execution of the work by Motorola. They also may approve minor changes in the work to facilitate construction and resolve unforeseen difficulties in construction, but will not have the authority to approve

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changes that increase the cost or time to complete the work, or change the functionality or intent of the design.

45. "State Project Manager" shall be the senior technical representative for the project. The Project Manager will be designated in writing by the State Project Director to serve in such capacity by the State Project Director and perform specific activities within the scope of this Contract.
46. "Site Representative" shall be the State's representative to serve as the liaison with Motorola for Site acquisition. The Site Representative will be responsible for facilitating the Site access applications and the acquisition process for all State-owned and Non-State-owned Sites listed in Exhibit B to include any, alternate State-owned and Non-State owned Sites proposed by Motorola in connection with any primary Site application.
47. "Statewide" shall mean the geographic boundaries of the mainland of the State of Michigan including the islands of Beaver, Bois Blanc, Mackinac and Drummond.
48. "State Departments" shall mean, for Site acquisition purposes, the MDNR, MDOT, MSP, MDOC, AND DMB and any other State Department charged with administration of State owned real property, which may be included as a potential Site.
49. "System" shall mean the 800 MHz Radio System and Telecommunications Backbone Network (TBN) operating all Hardware and Software statewide, as set forth in Exhibit A.
50. "Tower" shall mean the antenna support structure, and as applicable, all associated site work, foundations, ancillary support systems, equipment, secondary power and facilities, as otherwise detailed in Exhibit A.
51. "Work around" shall mean any alternate plans, means or methods permitted under this Contract or approved by the State for achieving a requirement imposed on Motorola under this Contract.

**1.2. Scope of Work**

- A. Subject to the terms and conditions set forth herein, Motorola shall engineer, provide, deliver, install, test, maintain, and document an 800 MHz Trunked Radio System and Telecommunications Backbone Network for the State. The System as provided shall, consist of certain Towers, Shelters, equipment and generator rooms, and dispatch centers, all equipped with requisite support systems, as reflected by the terms of Exhibit A (e.g. HVAC, generator set, transfer switch, fire suppression system, secondary AC power distribution, cable trays, lighting, lightning protection interior and exterior, and interior equipment layout with cable and RF transmission lines). The System shall furthermore consist of the equipment, including Hardware and certain Software embodied in or associated with such Hardware as detailed in Exhibit A - System Description & Specifications, Exhibit B - Statement of Work, Exhibit C - Testing and Acceptance, Exhibit D - Schedule, Exhibit E - Equipment and Price List, and Exhibit F - Software Agreement, Exhibit G - Optional Life Cycle Maintenance and Exhibit H - Site Acquisition Application Form. Motorola shall install the System, as required by Exhibits A, B & C, at Sites specified in Exhibit B, or as mutually agreed to by the Parties. Motorola shall be responsible for all construction, and building renovation at all Sites required as part of the System installation as described in Exhibits A-C. Motorola shall perform all necessary work to accomplish the migration of the State's two-way radio users from the existing low-band radio system to the new System as detailed in Exhibit B. Motorola shall remove the existing low band mobile radios and antennas from State vehicles and console equipment from dispatch centers as required to install the new equipment to be provided under this Contract. The removed low band equipment in each MSP District will be shipped to a single location designated by MSP within the MSP District.

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- B. Except as otherwise provided herein, Motorola shall provide everything necessary for the performance of its obligations under this Contract, including but not limited to, System design, supervision, labor, materials, tools, supplies, programming equipment, test equipment, and all incidental services to complete the work in a professional, workmanship like manner.
- C. The State shall be responsible for the coordination of the State's resources to aid in the progress by Motorola for the tasks defined in this Contract.

**1.3. Specific Contractual Responsibilities**

**1.3.1. Motorola's Responsibilities**

Motorola shall in addition to the responsibilities described in the Statement of Work included in Exhibit B, perform the following coincident with performance of this Contract:

- A. Motorola shall be responsible for maintaining a tranquil working relationship between the Motorola work force, their subcontractor and their work force, State employees, and other construction contractors present at the work site. The State shall be responsible for maintaining a tranquil working relationship between the State's work force, their subcontractor and their work force, Motorola employees and other construction contractors at the work site. Labor disputes which result from Motorola's employees presence on the work site, or other action under the control of Motorola shall be quickly resolved by Motorola. Labor disputes by the work force of Motorola shall not be deemed sufficient cause to any claim by Motorola for additional compensation for loss or damage nor shall disputes be deemed sufficient reason to relieve Motorola from any of his/her obligations under the Contract.
- B. The installation of the specified System shall be accomplished by Motorola with minimum disruption or interruption to the State's normal business operation at the Sites.
- C. The Hardware and/or Software contracted for by the State hereunder, shall be delivered to its proper location and installed by Motorola without additional cost or expense to the State. The State shall not be deemed to have accepted, for purposes of its Phase Acceptance Milestone, any component or piece of Hardware and/or Software until such time as said Hardware and/or Software has been installed, is operating in accordance with the specifications and is accepted by the State in completion of that Phase Acceptance Milestone.
- D. Achievement by Motorola of the Phase One Acceptance Milestone is a conditions precedent to payment by the State of any monies otherwise specified in Exhibit E.
- E. Prior to achievement of the Phase Acceptance Milestone for Hardware and/or Software contracted for by the State hereunder, Motorola shall be responsible for destruction or damage of such Hardware and/or Software while in transit, storage, or installed. In the event destruction or damage occurs to such Hardware and/or Software, Motorola shall replace or repair such Hardware and/or Software without additional cost or expense to the State to the extent that such destruction or damage is caused by the fault or negligence of Motorola.
- F. Where penetration of any fire or smoke barrier is necessary, barriers shall be restored by approved method as specified in the National Fire Protection Association (NFPA) codes, National Building Codes, and State fire codes.
- G. Motorola shall obtain written permission from the State Project Director before proceeding with any work requiring cutting into or through any part of the building structure as girders, beams, concrete, or tile

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- floors. This includes, but is not limited to, any part of the building structure where the fireproofing or moisture barrier may be impaired.
- H. Motorola shall exercise reasonable care to avoid damage to the State's property or to property being made ready for the State's use, and to all property adjacent to any site. Motorola shall promptly report any damage, regardless of cause, to the State.
- I. Motorola shall ensure that required fire fighting apparatus is accessible at all times and that his/her employees are trained in its use. The use and/or storage at the Site of flammable, explosive and/or toxic components including (but not limited to) gasoline, benzene, alcohol, naphtha, carbon tetrachloride or turpentine for cleaning any of the Hardware on the State's premises is prohibited.
- J. Motorola shall keep itself fully informed of all applicable Federal and State laws; applicable regulations pertaining to the Occupational Safety and Health Act (OSHA); all applicable local ordinances and regulations; and all applicable orders and decrees of bodies and tribunals having any jurisdiction or authority, which in any manner affect the conduct of the work. Motorola shall, at all times, observe and comply with all applicable ordinance regulations, laws, orders and decrees, pay for all required construction permits, and shall protect and indemnify the State and its representatives against all adjudged claims and liabilities arising from or based on violations committed by Motorola's employees or subcontractors.
- K. Motorola shall remove all debris generated by Motorola or its subcontractors, and remove surplus material, tools and construction equipment, prior to the achievement of the Integration Milestone and prior to requesting payment in accordance with the payment milestones in Section 1.22. Prior to requesting payment with respect to any Phase Integration Milestone, Motorola shall leave the site, including any roadways to and from the site, in a satisfactory and usable condition.
- L. To the extent that Hazardous Materials are unexpectedly encountered, by Motorola, it shall respond pursuant to the terms of Sections M and N herein.
- M. Motorola shall use, handle, store, dispose of, process, transport and transfer any material or substance considered a Hazardous Material, as defined in Section 1.1.22, in accordance with federal and State Laws. If Motorola encounters any material reasonably believed to be a Hazardous Material and which may present a substantial danger, Motorola shall (a) immediately stop all affected work, (b) give written notice to the State of the conditions encountered, and (c) take appropriate health and safety precautions.
- N. If the Hazardous Material was brought to the Site by Motorola or its existence results in whole or in part from any violation by Motorola of any laws covering the use, transportation, storage, handling, processing, or transfer of any Hazardous Material, or from any other acts or omissions within the control of Motorola, Motorola shall be responsible for any delay and all costs involved in cleaning up the Site and removing and rendering harmless such Hazardous Materials. If Motorola fails to proceed with due diligence to take appropriate action pursuant to applicable law, the State may act accordingly, in which case Motorola shall defend, indemnify and hold the State harmless from and against all claims arising from the State's exercise of such appropriate action.
- O. Motorola shall comply with the requirements of 1974 P. A. 53, MCL 460.701 et seq. governing construction and demolition activities near public utilities and all other laws concerning underground utilities. In addition Motorola shall be responsible for immediately notifying the State of any contact with or damage to, underground utilities, unless, the existence or location of said utilities vary from that indicated by Miss-Dig or by the State. Motorola shall be responsible for any delay and all costs relating to the obligations set forth in this paragraph.

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- P. Access to the job site will be restricted to authorized personnel. All Motorola and subcontractor personnel shall be required to wear a project identification badge while on the job site.
- Q. The State will consult with Motorola regarding approved methods of janitorial and maintenance services at the job site such that the least amount of dust, dirt, moisture, or gaseous chemical evaporation is created while meeting these service needs.
- R. Emergencies - In emergencies affecting the safety or protection of persons or the work or property at or adjacent to any Site, Motorola, without special instruction or authorization, is obligated to act or prevent threatened damage, death, injury or loss. Motorola shall give the state prompt written notice of any changes in the work resulting from the action taken. The State shall order the required changes in the work, and unless the emergency resulted from negligent acts or omissions within the control of Motorola, correspondingly adjust the Contract price or Contract time.
- S. Motorola shall provide for the construction and installation of, Towers, Shelters, and renovation of facilities as specified in Exhibits A and B. The Shelters and Towers shall be designed and constructed in accordance with drawings and specifications approved by the State as provided in Exhibits A and B.

**1.3.2. State's Responsibilities**

Coincident with Motorola's performance of this Contract, the State shall, in addition to the responsibilities described in the Statement of Work included in Exhibit B, perform the following tasks:

- A. Provide a designated State Project Director.
- B. Provide a designated State Project Manger.
- C. Provide a designated State Project Engineer.
- D. Provide a designated State Field Representative(s).
- E. Provide a designated Site Representative.
- F. Provide ingress and egress to the State's facilities and/or Sites as requested by Motorola and have such facilities available for installation of the Hardware.
- G. Appoint a Site Representative immediately upon execution of this Contract.
- H. The State shall provide leased telephone lines for diagnostic and troubleshooting of the System. Additionally, the State shall provide leased telephone service for Site workarounds as outlined in Section 1.35.
- I. The State shall provide primary AC power as specified in Exhibit B.
- J. The State shall provide, in accordance with an agreed upon delivery and installation schedule, a designated work area with adequate heat and light, and security to facilitate dispatch and mobile installations.
- K. The State shall provide a suitable operating environment, safe storage, and power for the installation and operation of the System in accordance with the requirements of Exhibit B.

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- L. The State shall keep areas provided for the System equipment installation, free from storage of combustible items, corrosive chemicals, or bulky items. Such areas will be virtually free from any use not associated with the operation of the System as specified in this Contract.

**1.4. Terms of Contract**

- A. This Contract is effective from the date of execution for a period of 175 months.
- B. Spare and repair parts and support for the 800 MHz radio equipment shall be made available to the State at Motorola's then current prices for similarly situated customers for ten (10) years following the Acceptance of the latest phase during which the product was ordered on a Contract Release.
- C. Spare and repair parts and support for the Telecommunication Backbone Network equipment shall be made available to the State at Motorola's then current prices for ten (10) years following the Acceptance of the latest phase during which the product was ordered on a Contract Release.
- D. If the structural integrity of any prefabricated building, provided by Motorola under this Contract, fails within ten (10) years after Acceptance of each phase, Motorola shall repair or replace the structure at no cost to the State.
- E. For purposes of the State purchasing additional subscriber units and base stations, the prices quoted in Exhibit E shall be firm until Statewide System Acceptance or 63 months after the effective date of the Phase 1 Contract Release, whichever occurs first, being hereinafter referred to as the "Price Validity Date". Beyond the Price Validity Date, the State shall be entitled to purchase such additional subscriber and base station equipment at the Contract prices, adjusted annually on the Price Validity Date anniversary. Annual adjustment shall be based upon the previous year's prices and changes in the Detroit Consumer's Price Index (CPI) over the subsequent twelve (12) month period. The base year for purposes of this Contract shall be the year in which Motorola has achieved the Final Statewide Acceptance or 63 months after the effective date of Phase 1 Contract Release, whichever occurs first. The price for the System subscriber unit Software to use the Software shall not increase during the term of the Contract.
- F. If there are any general price reductions during the term of the Contract, the State shall pay the reduced price for any Hardware and/or Software ordered after the reduction takes effect provided the State agrees to any terms and conditions associated with that price reduction.

**1.5. Installation and Delivery Dates**

- A. Motorola shall be responsible for furnishing, fabricating, delivering, unloading, installing, programming, setting into operation and testing all System equipment at the Site(s). The work shall be performed in accordance with Exhibit D.
- B. Any changes to the Schedule set forth in Exhibit D, shall only be valid if documented in a Contract Release issued by the State and accepted by an authorized representative of Motorola.
- C. Motorola acknowledges that there may be delays to the implementation of the System. The State may unilaterally invoke such delays during any installation. The State shall provide written notice to Motorola of its intent to invoke such delays at least thirty (30) days prior to any scheduled installation. The State shall be allowed delays that do not total more than six (6) months commencing with the Phase 1 purchase order issuance. The State recognizes, however, that the Contract price is based upon Motorola being able to perform a contiguous implementation of the System.

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**1.6. Liquidated Damages**

- A. The installation dates of the System have been fixed so that the utilization of the System is consistent with the timing schedules of the State's programs. If any of the System components are not accepted as outlined in Exhibit C within the time specified, then the delay will interfere with the proper implementation of the State's programs utilizing the System pursuant to this Contract, to the loss and damage of the State. From the nature of the case, it would be impracticable and extremely difficult to fix the actual damage sustained in the event of any such delay. The State and Motorola, therefore, presume that in the event of any such delay, the amount of damage which will be sustained from a delay will be the amount set forth in paragraph 1.6.1. A, and the State agrees that in the event of any such delay, the State shall notify Motorola in writing thirty (30) days prior of their intent to invoke this clause, and Motorola shall pay such amount as liquidated damages and not as a penalty. The State, at its option, for amounts due the State as liquidated damages, may deduct such from any money payable to Motorola or may bill Motorola as a separate item.

**1.6.1. Hardware and/or Software**

- A. If Motorola does not complete the System or any features, Software programs or accessories with the System (designated by Motorola's type and model number), ready for Operational Use on the Phase Acceptance Milestone date for each phase or the Statewide System Acceptance Milestone date as set forth in Exhibit D, Motorola shall pay to the State, as fixed and agreed, liquidated damages, for each calendar day Motorola delays the Phase Acceptance Milestone date or Statewide System Acceptance Milestone date for such System components, but not more than 180 calendar days in lieu of all other damages due to such non-acceptance, an amount of 1/1095th of the purchase price for the incomplete phase.
- B. If some but not all of the System equipment, Software or accessories are installed or delivered ready for Operational Use, by the Phase Acceptance Milestone or Statewide System Acceptance Milestone date, and the State makes Operational Use of any such installed System equipment, liquidated damages shall not accrue against those pieces of System equipment. The liquidated damages payment will be prorated accordingly.
- C. If the Phase Acceptance Milestone or Statewide System Milestone date is delayed more than one hundred and eighty (180) calendar days, then by written notice to Motorola, the State may terminate the right of Motorola to install and may obtain substitute System components. Motorola shall also be liable for outbound preparation and shipping costs for contracted items returned under this clause.

**1.6.2. Exception**

- A. Motorola shall not be liable for liquidated damages when delays arise out of causes beyond the control of Motorola. Such causes may include, but are not limited to, lightning, tornadoes, earthquakes, floods, natural fires, or acts of the public enemy, acts of the State in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but, in every case, the delays must be beyond the control of Motorola. Motorola is liable for liquidated damages for delays, if the supplies or services to be furnished by subcontractors were obtainable from other sources in sufficient time to permit Motorola to meet the required performance schedule.

**1.7. Patent and Copyright Protection**

- A. Motorola shall indemnify, defend, and hold harmless the State, its agencies, officers, employees, and agents from and against all losses, liabilities, damages (including taxes) and all related costs and expenses (including reasonable attorneys fees, disbursements and costs of investigation, litigation, settlement, judgments interest and penalties), incurred in connection with any claim, lawsuit or proceeding brought

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against the State by any third party, to the extent that such claim, action, or proceeding is based on a claim that any Hardware or Software furnished herein, or the operation of such Hardware or Software, infringes any intellectual property right, or other proprietary right of any person or entity, which right is enforceable under the laws of the U.S. Any claimed infringement that results from the combination of Hardware and/or Software furnished hereunder with other Hardware and/or Software apparatus, or devices not furnished hereunder and not integrated together with the written advice and consent of the Motorola project manager is specifically excluded from the terms of this indemnification provision. It is further agreed, except as provided herein, that Motorola's obligation to indemnify, defend, and hold harmless the State herein, is subject to the State granting Motorola the exclusive right to control the corresponding settlement and or legal proceedings. Without affecting its indemnification obligations, Motorola's right to the exclusive control of settlement and or legal proceedings as set forth herein shall be waived to the extent that Motorola has: filed under any chapter of the bankruptcy code, as amended, or for the appointment of a receiver, or if an involuntary petition in bankruptcy is filed against Motorola and said petition is not discharged within sixty (60) days, or becomes insolvent or makes a general assignment for the benefit of its creditors, or if its business or property shall come into the possession of its creditors, a receiver or any governmental agency.

- B. The State shall promptly, after receiving notice of the commencement or threatened commencement of any action or proceedings pertaining to an alleged infringement of any intellectual property right with respect to Hardware or Software provided by Motorola, notify Motorola of such claim. No failure to promptly notify Motorola shall relieve Motorola of its indemnification obligations except to the extent that Motorola can demonstrate specific injury attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to such claim, Motorola shall notify the State in writing that it will assume control of the defense and settlement of that claim.
- C. If in Motorola's opinion, the Hardware and/or Software furnished hereunder is likely to or does become the subject of a claim of infringement as set forth in this provision, Motorola shall immediately notify the State in writing and without diminishing Motorola's indemnification obligations, may at its option, (a) obtain the right for the State to continue the use of such Hardware and/or Software at Motorola's expense; or (b) if such option is not available to Motorola on commercially reasonable terms, replace or modify to the reasonable satisfaction of the State, the Hardware and/or Software at issue with Hardware or Software of equivalent function and performance so as to make it non-infringing, at Motorola's expense. If the use of such Hardware and/or Software by the State is otherwise prevented by law, Motorola agrees to take back such Hardware and/or Software. The State will pay for the use and maintenance of the Hardware and/or Software from the Acceptance date until the State is enjoined from its use, according to the terms of its Contract. Motorola agrees to grant the customer a credit for returned Hardware and/or Software as depreciated. The depreciation shall be an equal amount per year over the life of the Hardware and/or Software in accordance with prevailing U.S. Tax laws.
- D. Motorola shall reserve the right to exclusive control of the settlement negotiations and all legal proceedings to the extent it acknowledges its full indemnification obligations hereunder and can demonstrate to the satisfaction of the State its financial ability to carry out its defense and indemnity obligations.

**1.8. Disclaimer of Patent License**

- A. Nothing contained in this Contract shall be deemed to grant, either directly or by implication, estoppel, or otherwise, any license under any patents or patent applications of Motorola, except that the State shall have the normal non-exclusive royalty-free license to use that is implied, or otherwise arises by operation of law, in the sale of a product.

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**1.9. Transportation, Installation, Relocation, and Return of Hardware and/or Software**

**1.9.1. Transportation**

- A. Cost for shipments to Site(s) specified by the State shall be Motorola's responsibility.
- B. Transportation charges for the shipment of empty packing cases shall be paid by Motorola.
- C. Motorola shall bear the cost of transportation when the Hardware and/or Software is replaced at Motorola's request.

**1.9.2. Installation**

- A. The State shall pay only those rigging and drayage costs as indicated in Exhibit E.
- B. Supervision of installation of Hardware and/or Software shall be furnished by Motorola in accordance with the administrative charges set forth in Exhibit E. No additional supervision charges shall be allowed unless authorized by the State in a Contract Change Notice.

**1.9.3. Relocation**

- A. System Hardware and Software provided under this Contract shall be installed only once by Motorola, subject to the following exceptions:
  - 1) Removals and installation because of Hardware and Software failure or malfunction during the warranty period.
  - 2) Removals and installations to facilitate troubleshooting and malfunction investigation during the warranty period.
  - 3) Removals and installation to upgrade Hardware and Software during the warranty period.
  - 4) Removals and installation because of System design failure during the warranty period.
- B. Prior to installation of any System Hardware and Software under this Contract, the State reserves the right to move the Hardware and/or Software from the designated Site to any other designated Site, provided the relocation Site conforms to Motorola's original System design criteria and the State shall reimburse Motorola for any additional costs incurred.
- C. Rearrangement of Hardware and/or Software after the initial installation within the same office for State convenience shall be at the State's expense.

**1.10. Risk of Loss or Damage and Title Transfer**

- A. All risks of loss and damage to the System and its component Hardware and/or Software transfers to the State upon Motorola's achievement of the Phase Acceptance Milestone for each phase.
- B. Title to the Hardware and accessories purchased under this Contract shall pass to the State upon installation and inventory by the State of the System equipment at the Site(s).

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**1.11. Indemnification...**

- A. Except for claims, damages, losses and expenses resulting from the sole negligence of the State, Motorola shall indemnify and hold harmless the State of Michigan, its agents, officers, and employees, from and against all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from, the performance of the work under this Contract, which includes all labor, material and Hardware and/or Software required to produce the commodity, construction and/or service required by the Contract and any concomitant Contract Release, provided such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible personal property (other than the work itself) and (2) to the extent caused by any negligent act or omission of Motorola, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.
- B. In any and all claims against the State of Michigan or any of its agents or employees by any employee of Motorola, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this indemnification agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Motorola or any Subcontractor under Worker compensation acts, disability benefit acts or other employee benefit acts.
- C. The obligations of Motorola under this Indemnification agreement shall not extend to the liability of the State of Michigan, its agents or employees arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Contract Change Notice, designs or specifications, or (2) the giving of or the failure to give directions provided such giving or failure to give is the primary cause of the injury or damage.

**1.12. Limitation of Liability**

- A. Except for personal injury or death to public safety providers or the public to whom a duty is owed, and the indemnification provisions of Section 1.11 for which no specific limitation shall exist, both Parties total liability whether for breach of contract, warranty, negligence, strict liability in tort or otherwise, is limited to an amount not to exceed twenty million dollars and no cents (\$20,000,000.00).

**EXCEPT FOR GROSS NEGLIGENCE AND WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOSS OF USE, LOSS OF TIME, INCONVENIENCE, COMMERCIAL LOSS, LOST PROFITS OR SAVINGS OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES TO THE FULL EXTENT SUCH MAY BE DISCLAIMED BY LAW.**

**1.13. Motorola's Liability Insurance**

- A. Motorola shall purchase and maintain such insurance as will protect Motorola from claims set forth in the Section 1.13.2 paragraphs A, B, and C which may arise out of or result from Motorola's operations under the Contract (Purchase Order), whether such operations be by Motorola or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Motorola's liability insurance shall be endorsed to add as additional insured the State and the State's consultants and agents. The insurance afforded the additional insured shall be primary insurance and the coverage and limits provided under Motorola's policies shall not be reduced or prorated by the existence of any other insurance applicable to any loss the additional insured may have suffered. Motorola's liability insurance shall remain in effect until the end of the warranty periods, when it may be correcting or removing and replacing defective work. If Motorola obtains Claims Made Insurance issued on a claims made basis it shall be maintained for two (2) years after final payment and evidence of coverage shall be furnished to the State yearly. Insurance shall be provided by insurers authorized to do business in the State

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of Michigan (unless otherwise authorized by the State), an "A" Best's Rating and a Class VII or better financial size category as shown in the most current A.M. Best Company ratings. Motorola shall not start to perform and furnish any part of the Work unless it has in full force and effect all the required policies of insurance.

**1.13.1. Workers Compensation Act**

- A. Claims under Workers compensation, disability benefit and other similar employee benefit act. As a non-resident Motorola shall have insurance for benefits payable under Michigan's Workers Law for any employee resident of and hired in Michigan; and as respects any other employee protected by Worker compensation laws of any other state Motorola shall have insurance or participate in a mandatory state fund to cover the benefits payable to any such employee.

**1.13.2. Claims for Damages**

- A. Motorola shall maintain or purchase Commercial General Liability Insurance, as required to protect the State with respect to Motorola's obligations under the Indemnification clauses, that shall provide coverage for claims for damages because of bodily injury liability, sickness, disease or death, property damage liability, personal and advertising injury liability and medical payment liability, products and completed operations, premises operations, independent contractors, broad form contractual liability, underground, explosion and collapse hazard exposures, including product and completed operations hazards.
- B. Claims for damage for bodily injury and or property damage arising out of ownership, maintenance, operation, use or loading and unloading of any owned and or non-owned vehicle (Commercial Automobile Liability Insurance).
- C. Excess Liability Insurance shall be provided with respect to employer's liability, general liability and automobile liability, and coverage shall be at least as broad as the underlying policies of liability insurance.
- D. Before commencing work Motorola must furnish to the Director, Office of Purchasing, DMB, certificate(s) of insurance verifying liability coverage. The Contract number must be shown on the certificate of insurance to assure correct filing. These certificates shall contain a provision that coverage afforded under the policies will not be canceled until at least fifteen days prior notice bearing the Contract number has been given to the Director of Purchasing, Department of Management and Budget.

**1.13.3. Coverage Limits**

- A. Coverage Limits - Commercial General Liability limits shall be no less than \$5,000,000 per occurrence and \$5,000,000 annual aggregate, \$5,000,000 products and completed operations aggregate and \$5,000,000 personal and advertising injury. Commercial Automobile Liability limits shall be no less than \$5,000,000 combined single limit. Excess Liability limits shall be \$10,000,000 each occurrence and \$10,000,000 aggregate deductible amounts shall not exceed \$250,000.

**1.13.4. Failure to Maintain Insurance**

- A. In the event Motorola fails to maintain the minimum required coverage as set forth herein, the State may at its option purchase same, and invoice or offset Motorola's invoices for the cost of said insurance.

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**1.14. Bonds**

- A. Pursuant to Public Act No. 213 of 1963, as amended by Public Act No. 351 of 1972 and Public Act No. 11 of 1982, Motorola shall purchase and maintain a performance bond and a payment bond for each of the phases in the amount of 25 percent of the cost of the construction associated with each phase. Attorneys-in-Fact who sign bonds shall attach a certified copy of their Power of Attorney to sign such bonds and conduct business in the State of Michigan. For purposes of this section performance and payment bonds shall be obtained by Motorola prior to the issuance of a Contract Release for each individual phase.

**1.15. Taxes-Federal, State and Local**

- A. The State of Michigan is exempt from Federal Excise Tax, State and Local Sales Taxes. Such taxes shall not be included in contract prices as long as the State maintains such exemptions. Federal Excise Tax and State Tax exemption certificates will be furnished by the State to Motorola upon execution of the Contract.
- B. Property acquired for the State or a State agency through an installment lease contract as public property shall be considered exempt for purposes of the General Property Tax Act, Act No. 206 of the Public Acts of 1893, being Sections 211.1 to 211.157 of the Michigan Compiled Laws.

**1.16. Assignment**

- A. Motorola may, with the prior written approval of the State, which shall not be unreasonably withheld, assign its right to receive payments hereunder, provided, that such assignment shall not relieve Motorola of its responsibility to perform any duty imposed upon it herein, and that all payments shall be made to one entity.

**1.17. Termination**

**1.17.1 Termination by the State for Cause**

- A. In the event that Motorola breaches any of its material duties or obligations under this Contract, which breach is not cured, or for which the State has not in its reasonable discretion accepted a plan to cure, within the time period specified by the State in its reasonable judgment as set forth in a written notice of breach to the Contract, such time period to be at least 90 calendar days ("Cause"), then the State may, by giving written notice to Motorola, terminate this Contract for Cause, in whole or in part, as of a date specified (the "Termination Date") in the notice of termination.

**1.17.2 Termination by Motorola for Nonpayment**

- A. In the event that the State fails to pay Motorola any undisputed charges when due under the Contract totaling at least \$100,000 and fails to pay such overdue amounts within ninety (90) days after receipt of written notice from Motorola of failure to make such payments, Motorola may, by giving another written notice to the State, suspend its work hereunder. In the event that the State still does not make all payments as due under the Contract within ninety (90) days from the date of the original notice date under this paragraph, then Motorola may at its option terminate this Contract for nonpayment to be effective as of the Termination Date specified in the notice of termination.

**1.17.3 Termination for Lack of Funding**

- A. Motorola acknowledges that the Contract term extends for a number fiscal years and that payment obligations of the State are intended to be funded by the State through the sale of the System to the State

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Building Authority ("SBA") and the purchase by the SBA is to be financed by the sale of tax exempt long and short term debt obligations issued by the SBA. It is intended that the System will be leased by the SBA to the State and the rentals received by the SBA from the State will be pledged towards payment of the debt obligations. Motorola acknowledges that continuation of this Contract is subject to the ability of the SBA to legally issue and sell the aforementioned debt obligations, (as determined by opinion of bond counsel and or the Internal Revenue Service) and to do so in a commercially viable manner, and is furthermore subject to the lawful continual appropriation of funds by the State. Motorola therefore agrees that the State shall have the right to terminate this Contract in whole or in part without penalty in the event that:

- 1) the SBA is unable to issue the debt obligations for sale because of a legal infirmity as otherwise determined by SBA Bond counsel or the Internal Revenue Service, or
  - 2) the SBA is unable to market and or timely sell the required amount of debt obligations required to fund the System in whole or in part, or
  - 3) the money required to enable the State to pay the SBA rentals is either not appropriated or made available pursuant to law, or such funding appropriations have been reduced pursuant to law.
- B. In the event that the long and or short term debt obligations that are proposed to fund the System cannot be issued or sold, the Governor shall recommend the necessary appropriation in the Governor's budget bills submitted to the Michigan State Legislature.
- C. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available by law, the State shall have the right to terminate this Contract without penalty at the end of the last period for which funds have been appropriated or otherwise made available by law by giving written notice of termination to Motorola.
- D. If funding is reduced by law, or funds to pay Motorola for the agreed to level of the products, services and functions to be provided by Motorola under this Contract are not appropriated or otherwise made available by law, the State may, upon ten (10) days written notice to Motorola, reduce the level of the products, services or functions in such manner and for such periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect such reduced level of products, services or functions.
- E. In no event shall the State be obligated to pay or otherwise compensate Motorola for any lost expected future profits.

**1.17.4. Title to the Hardware**

- A. If in the event the State terminates this Contract for cause or funding, prior to achievement of the Phase Acceptance Milestone, in whole or in part, title to the System Hardware for that portion of the System Hardware that has been terminated shall revert to Motorola.

**1.17.5. Rights Upon Cancellation or Termination**

**A. Termination for Cause**

- 1) In the event the State terminates this Contract prior to the achievement of the Phase 1 Acceptance Milestone, in whole for Cause, the State shall return such terminated System Hardware and/or Software. The State shall have no financial obligation to compensate Motorola for such terminated

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System Hardware and Software. Motorola shall be liable for costs incurred by the State, including but not limited to court costs and reasonable attorney's fees, in terminating this Contract in whole or in part.

- 2) In the event that the State terminates this Contract, in any Phase, in part for Cause, the charges payable under this Contract shall be equitably adjusted in accordance with Exhibit E, to reflect those services and functions that are terminated. Motorola shall be liable for costs incurred by the State, including but not limited to court costs and reasonable attorney's fees, in terminating this Contract in part for Cause.

B. Termination by Motorola for Non-payment

- 1) In the event of termination by Motorola for non-payment, Motorola shall have recourse to the Michigan state courts as set forth in Section 1.37.1.

- 2) Termination by Motorola for nonpayment shall not be considered to be a claim, counterclaim, or dispute giving rise to the dispute resolution procedure in Section 1.37.

C. Termination for Lack of Funding

- 1) In the event of termination by the State for lack of funding, the State shall pay Motorola the Contract prices set forth in Exhibit E for all services and System Hardware and Software installed as of the Termination Date and for services and System Hardware and Software that have not been delivered but which have been manufactured or prepared for this Contract, subject to any saving for reselling of any equipment prior to the Termination Date.

- 2) In the event of termination by the State for lack of funding, the State shall reimburse Motorola for any reasonable termination fees or expenses incurred by Motorola in connection with third party contracts it has entered into specifically for the purposes of performing its obligations under this Contract.

- 3) In the event of termination by the State for lack of funding, Motorola and its subcontractors shall also be entitled to necessary and unavoidable expenses that arise as a result of an abrupt termination, including reasonable demobilization costs occasioned thereby as the Parties may reasonably determine. Motorola and its subcontractors shall make all reasonable efforts to minimize such expenses and to mitigate their obligations once a notice of termination has been issued. Following receipt by Motorola of a notice of termination, Motorola shall restrict its activities and those of its subcontractors to winding down and demobilization until the Termination Date.

D. In the event of termination, the State shall have the right to assume, at its option, any and all subcontract for products, services and functions provided exclusively under this Contract, including but not limited to any contracts for maintenance services for the Hardware and/or Software, and may further pursue completion of the work under this Contract by replacement contract or otherwise as the State may in its sole judgement deem expedient.

E. In the event of termination, Motorola shall promptly deliver to the State, in a manner reasonably specified by the State, all documents and other tangible items furnished by, or owned, leased, or licensed by, the State.

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**1.17.6. Cancellation or Termination Assistance**

- A. If this Contract is terminated for any reason, Motorola shall provide for up to six (6) months after the Termination Date, all reasonable assistance requested by the State to allow the completed portion of the Contract to continue without interruption or adverse effect and to facilitate the orderly transfer of such services, construction and products to the State or its designees. The price of such assistance shall be provided at Motorola's then current rates.

**1.18. State's Obligation**

- A. The State's obligation is payable only and solely from funds appropriated for the purpose of this Contract. All funds for payments after the end of the current fiscal year are subject to the availability of a legislative appropriation for the purpose of this Contract. Payments during subsequent fiscal periods are dependent upon the same action. The State agrees to give Motorola written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.

**1.19. Motorola's Obligation**

- A. In the event Motorola has provided Hardware and/or Software other than of their own manufacture as specified in all Exhibits, the State will allow Motorola, as prime Contractor, to subcontract to provide the necessary System equipment.

**1.20. Documents**

- A. The following constitute the complete and exclusive statement of the Contract between the Parties as it relates to this transaction:

- Contract Terms and Conditions
- Exhibits A - System Description and Specifications
- Exhibits B - Statement of Work
- Exhibits C - Testing and Acceptance
- Exhibits D - Schedule
- Exhibits E - Equipment and Price List
- Exhibits F - Software License Agreement
- Exhibit G - Optional Life Cycle Maintenance Agreement
- Exhibit H - Site Acquisition Application Form

**1.21. Conflicts or Disputes**

- A. This Contract is the agreement between the Parties and governs all disputes. In the instance of a conflict or dispute over issues not specifically referenced within the Contract, the following documents, in order of precedence, will be used to resolve such conflicts or disputes:

- 1) Motorola's BAFO Proposal,
- 2) State's BAFO guidance documents,
- 3) State RFP, Questions and Answers, and any Addenda,
- 4) Motorola's Original Proposal.

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- B. This statement of precedence supersedes all statements to the contrary occurring either in proposals or other prior agreements, oral or written, and all other communications between the Parties relating to this subject.

**1.22. Release of Work**

- A. Prior to the start of the System implementation for each phase, the State Project Director shall issue to Motorola a written Notice to Proceed (NIP). This NIP shall initiate the Detailed Design Review process. Upon completion of the Detailed Design Review process, a Detailed Design Plan shall be published by Motorola and signed by the State Project Director and the Motorola Project Director.
- B. The State Project Director will issue Contract Releases in the form of Purchase Orders as it's written authorization for the installation and implementation of the System. Purchase Orders issued by the State shall be deemed to be issued in accordance with the terms and conditions of this Contract, whether or not such purchase orders specifically reference this Contract. Any terms and conditions printed on the face of or on the back of the State's Purchase Order form shall be void and shall have no force or effect on Motorola. The Purchase Orders shall particularly describe the System, equipment, services, and amount of payment on a per Site basis, in accordance with Exhibit E and will have as an attachment the Detailed Design Plan, if applicable. Implementation of the System shall be in accordance with Exhibit D. Purchase Orders will serve as the authority for Motorola to manufacture, construct, implement, and invoice for the System components described therein.
- C. Contract Releases shall be subject to written acceptance or rejection by Motorola within thirty (30) days after receipt by Motorola's Contract Manager.

**1.22.1. Subscriber Unit Ordering**

- A. A Contract Release for subscriber units (trunked mobiles, vehicular repeater systems, VHF portables, and 800 MHz portables) for each phase will be issued by the State simultaneously with the Contract Release for each phase. Sixty (60) days prior to the scheduled mobile installation date for each phase, the State may elect to substitute 800 MHz portables for vehicular repeater systems and VHF portables, change the number of units, or cancel any number of units without a penalty charge. Delivery of portables to the State will not be made prior to the Phase Acceptance Milestone Date unless specified by the State in a Contract Release.

**1.23. Payment Terms**

- A. The State will pay Motorola and Motorola shall accept as full compensation, satisfaction and payment for said work and any direct or indirect costs or expenses incurred by Motorola in connection with said work including, but not limited to, cost of supervision, labor, tools, equipment, transportation, insurance, taxes, overhead and profit, the lump sum price for System components as set forth in its respective Contract Release(s). Such lump sum prices will be determined based upon the listing of equipment and services required for each Installation Site or major System component specified in Exhibit A and the prices specified in Exhibit E. The cost to the State for all work hereunder shall not exceed One hundred eighty-seven million, two hundred seventy-five thousand, nine hundred fifteen dollars and no cents (\$187,275,915.00).
- B. All invoices shall reflect work performed and the payment milestones as outlined in this section of the Contract. Payments shall be made in accordance with the payment terms set forth below

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**1.23.1. Phase 1 -The 800 MHz System, TBN System, and Facilities**

Item	Description	Payment Milestone
1	All Central and Fixed Equipment, TBN Equipment, Facilities and Associated Administrative, Installation, Shipping, and Training	90% of all costs upon achievement of Phase 1 Acceptance Milestone
2	All Subscriber Equipment (mobiles, Vehicular repeater systems, control stations) and Associated Administrative, Installation, Shipping, and Training	90% of all costs upon achievement of Phase 1 Installation Milestone
3	All Subscriber Equipment(portables) and Associated Administrative, Installation, Shipping, and Training	90% of all costs upon delivery to the State
4	System Carrying Charges	100% of all costs upon achievement of Phase 1 Acceptance Milestone, or 100% of Phase Cost upon achievement of Associated Phase Acceptance Milestone as outlined in Section 1.22.G.
5	All Equipment, Administrative, Installation, Shipping, and Training	10% of all costs of Phase 1 upon achievement of Statewide System Acceptance Milestone and Phase 4 Acceptance Milestones

**1.23.2. Phases 2, 3 and 4 - 800 MHz System**

Item	Description	Payment Milestone
1	All Central Equipment (Includes system controllers, system managers (TMS & PMS), audio switches and packet switches)	40% of Equipment, Installation, and Shipping costs of Phase 2, 3 or 4 upon achievement of the Installation Milestone
2	All Central Equipment (Includes system controllers, system managers (TMS & PMS), audio switches and packet switches)	40% of Equipment, Installation, and Shipping costs of Phase 2, 3 or 4 upon achievement of the Integration Milestone
3	All Central Equipment (Includes system controllers, system managers (TMS & PMS), audio and packet switches)	10% of Equipment, Installation, and Shipping costs of Phase 2, 3 or 4 upon achievement of the Phase Acceptance Milestone
4	All Central Equipment (Includes system controllers, system managers (TMS & PMS), audio and packet switches)	10% of Equipment, Installation, and Shipping costs of Phase 2,3, or 4 upon achievement of the Statewide System Acceptance and Phase 4 Acceptance Milestones
5	All Fixed Equipment (Includes repeaters, antenna systems, site control, and console)	40% of Equipment, Installation, and Shipping costs of Phase 2, 3 or 4 upon achievement of the Installation Milestone
6	All Fixed Equipment (Includes repeaters, antenna systems, site control, and console)	40% of Equipment, Installation, and Shipping costs of Phase 2, 3 or 4 upon achievement of the Integration Milestone
7	All Fixed Equipment (Includes repeaters, antenna systems, site control, and console)	10% of Equipment, Installation, and Shipping costs of Phase 2, 3 or 4 upon achievement of the Phase Acceptance Milestone
8	All Fixed Equipment (Includes repeaters, antenna systems, site control, and console)	10% of Equipment, Installation, and Shipping costs of Phase 2, 3 or 4 upon achievement of the Statewide System Acceptance and Phase 4 Acceptance Milestones

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9	Subscriber Equipment (Control stations, mobiles, vehicular repeater systems)	90 % of Equipment and Shipping costs of Phase 2, 3 or 4 upon achievement of the Installation Milestone
10	Subscriber Equipment (portables)	90 % of Equipment, and Shipping costs upon delivery to the State
11	All Subscriber Equipment (Control stations, mobiles, and portables)	10% of Equipment, Installation, and Shipping costs of Phase 2, 3 or 4 upon achievement of the Statewide System Acceptance and Phase 4 Acceptance Milestones
12	All Administrative Charges	30% of costs of Phase 2, 3 or 4 upon achievement of the Installation Milestone for the Associated Central, Fixed, and Subscriber Equipment
13	All Administrative Charges	30% of costs of Phase 2, 3 or 4 upon achievement of the Integration Milestone for the Associated Central, Fixed, and Subscriber Equipment
14	All Administrative Charges	20% of costs of Phase 2,3, or 4 upon achievement of the Integration Milestone for the Associated Central, Fixed, and Subscriber Equipment
15	All Administrative Charges	10% of costs of Phase 2,3, or 4 upon achievement of Phase Acceptance Milestone for Central, Fixed, and Subscriber Equipment
16	All Administrative Charges	10% of costs of Phase 2, 3 or 4 upon achievement of the Statewide System Acceptance and Phase 4 Acceptance Milestones
17	All Training Costs	100% of costs for Phase 2,3, or 4 upon conducting and acceptance of the training
18	APCO 25 Trunking Suite	90% of all charges upon successful completion of the Factory Tests for Phase 2, 800 MHz Central equipment
19	APCO 25 Trunking Suite	10% of all charges upon achievement of Phase 4 Acceptance and Statewide System Acceptance Milestones
20	System Carrying Charges By Phase Option, if applicable	100% of all costs upon achievement of Phase Acceptance Milestone as outlined in section 1.22.G.

**1.23.3. Phases 2, 3, and 4 - TBN System**

Item	Description	Payment Milestone
1	All Equipment (Includes microwave, antenna systems, multiplex, alarm and control system (ACS), & DACS )	40% of Equipment, Installation, and Shipping costs of Phase 2, 3 or 4 upon achievement of the Installation Milestone
2	All Equipment (Includes microwave, antenna systems, multiplex, alarm and control system (ACS), & DACS )	40% of Equipment, Installation, and Shipping costs of Phase 2, 3 or 4 upon achievement of the Integration Milestone
3	All Equipment (Includes microwave, antenna systems, multiplex, alarm and control system (ACS), & DACS )	10% of Equipment, Installation, and Shipping costs of Phase 2, 3 or 4 upon achievement of Phase Acceptance Milestone

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4	All Equipment ( Includes microwave, antenna systems, multiplex, alarm and control system (ACS), & DACS)	10% of Equipment, Installation, and Shipping costs of Phase 2, 3 or 4 upon achievement of the Statewide System Acceptance and Phase 4 Acceptance Milestones
5	All Administrative Charges	40% of costs of Phase 2, 3 or 4 upon achievement of the Installation Milestone for all equipment
6	All Administrative Charges	40% of costs of Phase 2, 3 or 4 upon achievement of the Integration Milestone for all equipment
7	All Administrative Charges	10% of costs of Phase 2,3, or 4 upon achievement of Phase Acceptance Milestone for all equipment
8	All Administrative Charges	10% of costs of Phase 2, 3 or 4 upon achievement of the Statewide System Acceptance and Phase 4 Acceptance Milestones
9	All Training Costs	100% of costs for Phase 2,3, or 4 upon conducting and acceptance of the training

**1.23.4. Phases 2, 3, and 4 - Facilities**

Item	Description	Payment Milestone
1	Site Development (Clearing, grading, stone, road)	60% of all costs upon achievement of Installation Milestone
2	Site Development (Clearing, grading, stone, road)	20% of all costs upon achievement of Inspection Milestone
3	Site Development (Clearing, grading, stone, road)	10% of all costs of Phase 2, 3 or 4 upon achievement of Phase Acceptance Milestone
4	Site Development (Clearing, grading, stone, road)	10% of all costs of Phase 2, 3 or 4 upon achievement of the Statewide System Acceptance and Phase 4 Acceptance Milestones
5	Towers (Tower, foundations, shipping, soil borings, re-install existing antennas)	60% of all costs upon achievement of Installation Milestone
6	Towers (Tower, foundations, shipping, soil borings, re-install existing antennas)	20% of all costs upon achievement of Inspection Milestone
7	Towers (Tower, foundations, shipping, soil borings, re-install existing antennas)	10% of all costs of Phase 2, 3 or 4 upon achievement of Phase Acceptance Milestone
8	Towers (Tower, foundations, shipping, soil borings, re-install existing antennas)	10% of all costs of Phase 2, 3 or 4 upon achievement of the Statewide System Acceptance and Phase 4 Acceptance Milestones
9	Shelters (Shelter, foundations, shipping, final site development, final stone, fencing, grounding)	60% of all costs upon achievement of Installation Milestone
10	Shelters (Shelter, foundations, shipping, final site development, final stone, fencing, grounding)	20% of all costs upon achievement of Inspection Milestone
11	Shelters (Shelter, foundations, shipping, final site development, final stone, fencing, grounding)	10% of all costs of Phase 2, 3 or 4 upon achievement of Phase Acceptance Milestone
12	Shelters (Shelter, foundations, shipping, final site development, final stone, fencing, grounding)	10% of all costs of Phase 2, 3 or 4 upon achievement of the Statewide System Acceptance and Phase 4 Acceptance Milestones
13	Emergency Power Systems (Generator, Administrative Charges Shipping, Installation,)	60% of all costs upon achievement of Installation Milestone

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14	Emergency Power Systems (Generator, Administrative Charges Shipping, Installation,)	20% of all costs upon achievement of Inspection Milestone
15	Emergency Power Systems (Generator, Administrative Charges Shipping, Installation,)	10% of all costs of Phase 2, 3 or 4 upon achievement of Phase Acceptance Milestone
16	Emergency Power Systems (Generator, Administrative Charges Shipping, Installation,)	10% of all costs of Phase 2, 3 or 4 upon achievement of the Statewide System Acceptance and Phase 4 Acceptance Milestones

Motorola's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses such as Motorola's travel specifically requested by the State, the State has agreed in advance and in writing to reimburse Motorola for such an expense. Reimbursement for such unusual expenses shall be subject to State travel regulations and guidelines.

- D. The State will pay when due, all undisputed charges properly invoiced in accordance with the Contract, but may withhold payment of any particular charges that the State disputes in good faith. The State will notify Motorola in writing of any disputed charges under this Contract for which the State is withholding payment. Motorola may, with respect to such disputed charges, initiate the dispute resolution procedures set forth in Section 1.37 below within thirty (30) days after such notification by the State, in which case the matters in dispute will be resolved in accordance with such dispute resolution procedures.
- E. The State shall make all payments due under this Contract within thirty (30) days after the invoice date. Payments made after forty-five (45) days are subject to the State paying interest at .075 percent of the payment due for the first month and each succeeding month or portion of a month the payment remains past due, pursuant to Act 279 of the Public Acts of the State of Michigan of 1984, unless the State has disputed such charge(s) in accordance with Section D. above.
- F. For all products, services, functions and items provided or to be provided by Motorola (and its approved subcontractors, if any) under this Contract, the State shall not be obligated to pay any amounts in addition to the charges payable to Motorola under this Contract unless such amounts are covered by a Contract Change Notice.
- G. Motorola shall provide financing to the State in the form of a System Carrying Charge based upon the baseline System costs and the per phase amounts listed below. If the per phase baseline System costs are adjusted in the DDP or subsequent Contract Releases for each phase, then the associated per phase System carry charges shall be adjusted proportionally. The amount of this Baseline System carrying charge shall be \$3,061,382 and shall be payable upon achievement of the Phase I Acceptance as shown in Exhibit E. The State may elect to pay the System Carrying Charge by Phase, upon Achievement of the Phase Acceptance Milestone. The amounts by phase for the Baseline System shall be:

	Baseline Carrying Charge	Baseline System Costs
Phase I	\$ 689,909	\$ 39,618,212
Phase II	\$ 645,679	\$ 37,078,300
Phase III	\$ 878,216	\$ 50,431,798
Phase IV	\$1,047,407	\$ 60,147,604

H. APCO 25 Trunking Suite Compliance

- 1. The APCO 25 Trunking Suite functionality is a selected option in the Baseline Contract Price and shall be provided by Motorola for the System. Motorola's obligation to provide this option is conditioned

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upon the publication of a Telecommunications System Bulletin (TSB) outlining the standards on this suite by the Telecommunications Industry Association (TIA) no later than November 1, 1995. This option may only be deleted by the State during the Phase 1 DDR or it will automatically be deleted if the TIA fails to publish a TSB on this suite by November 1, 1995. The State will issue a Contract Release in order to capture the deletion of this option

2. In the event that the TIA fails to publish at least a TSB on this suite by November 1, 1995, Motorola shall provide proprietary talkgroups and identification numbers as outlined in Exhibit A. The State's cost for use of the subscriber Software shall be \$1,000,000 for each five thousand units, in lieu of the Baseline Contract price of \$1,000,000.00 for the first five thousand (5000) units purchased and \$200 per unit above the five thousand unit quantity. Additionally, the Parties shall re-negotiate the functionality and price of the Trunking Suite, after the TIA has published the Trunking Suite standards in at least a TSB.

**1.24. State Project Director**

- A. The person named below is authorized to administer the Contract on a day-to-day basis during the term of the Contract. However, administration implies no authority to change, modify, amend, or otherwise alter the terms, conditions, and specifications of such Contract. That authority is retained by the Director, Office of Purchasing, Department of Management and Budget. The Project Director for this project is:

Captain Jeffrey J. Steffel  
Division Commander  
Communications Division  
Michigan State Police  
714 S. Harrison Rd.  
East Lansing, MI 48823

- B. The person named below is authorized to administer the Contract on a day-to-day basis during the term of the Contract. However, administration implies no authority to change, modify, amend, or otherwise alter the terms, conditions, and specifications of such Contract. That authority is retained by Motorola's management. The Motorola Contract Administrator for this project is:

Martin J. Rogan  
Division Contract and Compliance Manager  
Motorola, Inc.  
1309 East Algonquin Road (IL 23)  
Schaumburg, Illinois 60196

**1.25. Approval of Motorola Personnel**

- A. The State reserves the right to interview the key personnel assigned by Motorola to this project and to recommend reassignment of personnel deemed unsatisfactory by the State. The State reserves the right to approve Subcontractors for this project and to require Motorola to replace Subcontractors who are found at any time to be unacceptable. This provision will not be deemed to give the State the right to require Motorola to terminate any Motorola employee; it is intended to give the State only the right to recommend that Motorola discontinue using an employee in the performance of services rendered under this Contract.

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**1.26. Prime Contractor Responsibilities**

- A. Motorola shall be required to assume responsibility for all contractual activities offered in this Contract whether or not Motorola performs them. Further, the State will consider Motorola to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. Motorola is totally responsible for adherence by the Approved Subcontractor(s) to all applicable provisions of the Contract.

**1.27. Communications Releases**

- A. Motorola shall not release any information on the State of Michigan Project external to Motorola's organization, unless required by law, without written notification by Motorola to the State Project Director. The State Project Director shall have 48 hours to reply to the proposed release.

**1.28. Accounting Records**

- A. Motorola agrees that its books and records, insofar as they directly pertain to services provided or products supplied pursuant to the Contract shall at all reasonable hours be subject to audit and inspection by the State of Michigan Auditor General at Motorola's State of Michigan Project Office. Requests for audit of Motorola's books and records must be in writing, at least fourteen (14) calendar days prior to the requested date of the audit. The audit shall be limited to the verification of services, Hardware, Software and ancillary equipment and Systems provided pursuant to the Contract. Motorola shall maintain all pertinent financial and accounting records and information pertaining to such verification. Except as otherwise provided by law, nothing contained herein shall authorize the Purchaser to audit particular books or records of Motorola insofar as such particular books or records contain confidential information regarding product and other costs. All audits shall be at the State of Michigan's expense. The State of Michigan Department of Auditor General may request an audit at any time during the contract term and any extension thereof, and for three years from expiration or extension thereof. Motorola will cooperate fully with the State in connection with the State's audit functions. Following any audit or examination, the State may conduct and Motorola agrees to cooperate with an exit conference in an effort to obtain factual concurrence with any issues identified in the audit.

**1.29. Motorola's Authorized Expediter**

- A. The person named below is designated as Motorola's authorized expediter. This person will perform the duties and responsibilities as outlined in Exhibit B:

Robert Knowlton  
Vice President & Director Of System Technology  
Motorola C & E Inc.  
1309 East Algonquin Road (IL 23)  
Schaumburg, IL 60196

**1.30. Licenses/Authorizations**

- A. The State is solely responsible for executing, filing and obtaining licenses required by the FCC. The State and Motorola shall comply with FCC rules. Neither Motorola nor any of its employees is an agent or representative of the State in FCC matters or otherwise. Motorola, however, shall be responsible for the proper preparation of the FCC license form(s) (including all attachments, waivers, other authorizations, exhibits, and supporting documentation) and delivery to the State, for the State's execution and filing.

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Motorola shall prepare the FCC license application form(s) at no charge to the State. The State acknowledges that project implementation is predicated on receipt of proper FCC licensing.

**1.31. Equipment Compatibility**

- A. Motorola agrees that the Hardware and/or Software, together with any and all associated equipment it will provide, as otherwise specified in the Contract and described in the appropriate DDP will perform individually and as an integrated System in accordance with the specifications and representations stated in this Contract. This Contract does not extend to the performance or integration of the System equipment into a different system generally nor specifically to System equipment in combination with products, elements or components not supplied by Motorola.
- B. During the performance of this project, it is understood that Motorola may implement changes in the products set forth in this Contract or substitute products of more recent design. This shall be allowed provided that any such changes, modifications and substitutions, under normal use shall not materially or adversely affect physical or functional interchangeability or performance, or result in price changes except where there is prior written agreement between the Parties that specific characteristics will be so affected and/or price so affected.

**1.32. Confidential Information**

- A. Motorola and the State each acknowledge that the other will possess certain information and material that will be of a confidential nature. Such information shall include Motorola proprietary computer programs as well as other material marked by Motorola and/or the State as proprietary or confidential. Motorola proprietary computer programs and their documentation provided the State through this Contract may be released to the State in accordance with the relevant provisions of the Software Agreement set forth in Exhibit F. Material and information marked as proprietary or confidential, including Motorola's proprietary computer programs (the "Confidential Information"), shall be safeguarded or released as necessary under the following conditions:
  - 1. To the extent that respective security measures for the Confidential Information at issue are otherwise reasonable and prudent, the State and Motorola shall use the same degree of care to prevent disclosing the Confidential Information of the order to third parties as it employs to avoid unauthorized disclosure, publication or dissemination of its own most confidential information. Motorola, or the State where necessary, may recommend specific security measures for each to follow to maintain the confidentiality of the Confidential Information
  - 2. It is recognized and acknowledged by the Parties that the State is subject to the Michigan Freedom of Information Act. The Confidential Information provided by Motorola to the State pursuant to the Contract shall be protected and not disclosed to the extent permitted by Michigan law. The State shall promptly furnish notice of any request for disclosure of such Confidential Information made to the State by a third party, and of any lawsuit filed against the State in an effort by any third party to obtain said Confidential Information. Materials and information not marked Proprietary and Confidential and provided to the State will be subject to disclosure, without notice to Motorola under the provisions of the "Freedom of Information Act, 1979 PA 442, as amended, MCLA 15.231, et seq.
  - 3. The State or Motorola's obligation with respect to confidentiality under this Contract, except for the State's obligation to providing notice to Motorola of a pending disclosure or legal action, shall not apply to any Confidential Information, including computer programs, that:
    - a) becomes publicly known through no wrongful act on the part of the State or Motorola; or

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- b) is rightfully received from sources independent of Motorola or the State and without breach of this Contract; or
- c) is explicitly approved for public release by written authorization of Motorola or the State respectively; or
- d) is required to be disclosed by order of a court of competent jurisdiction.

**1.33. Software Agreement and Warranty**

- A. Motorola shall, in the course of the transaction for the items of equipment identified in the Contract, deliver to the State, on a licensed basis, one or more computer programs (Product Program). Delivery of all Product Programs by Motorola and Acceptance of same by the State shall be made under the terms and conditions of this Contract or otherwise applicable terms and conditions in Exhibit F. The terms and conditions of the Software Agreement contained in Exhibit F shall survive the completion of the Contract.

**1.34. Warranty**

**1.34.1. System Products**

- A. Motorola warrants that the System Hardware (except for the structural integrity of Shelters and Towers, which is separately covered under section 1.4) shall be free from defects in materials and workmanship and shall conform to the specifications contained in Exhibit A. In the event of a defect, malfunction or failure to conform to specifications established by Motorola, or if appropriate, to specifications accepted by Motorola in writing, for a warranty period of one year commencing on the first day following written Acceptance of each phase, Motorola, at its option, will either repair or replace the product (including the shipping and labor costs to replace defective parts) and such action on the part of Motorola shall be the State's exclusive remedy and the full extent of Motorola's liability. Motorola's obligation hereunder shall be to correct such defects in materials and workmanship reported to Motorola within the warranty period, in accordance with the response times defined in the warranty and maintenance requirements of Exhibit B, Section 1.7.

**1.34.2. Software**

- A. For the first year following acceptance of each phase, Motorola warrants that the System Software, shall conform to the specifications contained in Exhibit A and when properly used, its programs will be free from reproducible defects that cause a material variance from its published specification. However, Motorola cannot warrant that program operation will be uninterrupted or error free. The Motorola's obligation hereunder shall be to correct such material variances reported to Motorola within the warranty period, in accordance with the response times defined in the warranty and maintenance requirements of Exhibit B, Section 1.7.

**1.34.3. Pass Through of Manufacturers' Warranties**

- A. If Motorola procures any materials or products (including the Hardware and Software) for the State under this Contract, Motorola shall assign or otherwise transfer to the State, or afford the State the full benefits of any manufacturer's warranty for such materials or products, to the extent that such warranties are assignable or otherwise transferable to the State.

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**1.34.4. Warranty Coverage**

- A. THE EXPRESS WARRANTIES CONTAINED IN THIS SECTION OF THIS CONTRACT ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHICH ARE SPECIFICALLY EXCLUDED INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL MOTOROLA BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES TO THE FULL EXTENT SUCH MAY BE DISCLAIMED BY LAW.

**1.34.5. Items Not Covered Under Warranty**

- A. This warranty does not cover defects or damages to the products resulting from:
- 1) The product is used in other than its normal and customary manner by the State.
  - 2) The product has been subject to accidents, physical or electronic abuse or misuse, neglect, Acts of God, fires or other casualty.
  - 3) Unauthorized, modifications, alterations or repairs have been made, or unapproved parts used in the equipment.
  - 4) Replacement, installation, maintenance or repairs of items which are consumed in the course of normal operation of the System, such as cassettes, magnetic tapes, type elements and computer supplies such as printer paper.
  - 5) Services to the System which are necessary because of the improper installation not in accordance with the manufacturer's recommended installation procedures, or other activities that have altered the System because of other unauthorized connection of the System to other equipment, machines or devices; or because of unauthorized alterations to other equipment, machines or devices to which the System is connected, if performed by a party other than Motorola or its authorized agents, contractors or employees. Authorized alterations or modifications are modifications made by an authorized Motorola Service Station, which is authorized to provide warranty repairs, alterations and modifications on Motorola products. Modification or alterations performed at the request of the State, after being notified that such modification or alteration was not described in a Motorola issued Product Service Bulletin, are not covered by the warranty.

**1.35. Site Acquisition Process**

**1.35.1. General**

- A. The Parties recognize and acknowledge that the Site selection process is complex and that the use of certain of the proposed State-owned Sites may require the approval of several State departments, boards or commissions that are not Parties to this Contract. The Parties further recognize and acknowledge that the acquisition of privately-owned Sites may be required. The Parties further recognize and acknowledge that the coordination and timing of the Site selection process is critical to the implementation of the System.
- B. For Site selection purposes, the State's Project Director shall designate a single Site Representative who shall be Motorola's sole contact for Site selection. It shall be the Site Representative's responsibility to facilitate the Site selection application process set out below.

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- C. The Parties agree that the one hundred eighty one (181) Sites (the "Baseline Number of Sites") identified in Exhibit B (the "Baseline Sites") shall be the Baseline Number of Sites and the Baseline Sites for purposes of this Section.
- D. The Parties agree that the Subscriber Units identified in Exhibit E (the "Baseline Subscriber Units") shall be the Baseline Subscriber Units for purposes of this Section.
- E. The Parties agree that the price of the work, identified in Exhibits A and B, of \$187,275,915.00 as referenced in Section 1.23 A. (the "Baseline Price") shall be the Baseline Price for purposes of this Section.
- F. The Parties agree that the Baseline Price is predicated upon the immediate availability of the Baseline Sites and the acquisition of such Baseline Sites by the State. The Parties further agree that the acquisition of Sites for the System, except as modified in this Section by the assignment of certain responsibilities to Motorola, is a responsibility of the State.
- G. The Parties recognize, however, that over the Contract term, some of the Baseline Sites may not be available for acquisition on terms and conditions that are acceptable to the State or to Motorola. In such event, acquisition of alternate sites shall be undertaken pursuant to the procedures contained in this Section.

**1.35.2 Site Applications**

- A. To facilitate and expedite the Site selection process, the Parties shall utilize the Site Selection Application form (the "Site Application"), Exhibit H, for all proposed State-owned Sites and all proposed privately-owned Sites.
- B. In addition to two (2) copies of the Site Application, Motorola shall submit two (2) copies of the following additional information with respect to each Baseline Site and any proposed alternate Site:
  - 1) A Site layout diagram.
  - 2) A Site specific legal description, if available, or a legal description sufficient to identify the general location of the Site.
  - 3) A Site identification report for each Site including soil compaction tests and environmental investigations, reviews and studies, if performed.
  - 4) A Site specific checklist for each Site indicating which Tower type and Shelter category is applicable, together with all Site specific data including but not limited to Tower height and placement in relation to the Site layout diagram and existing Towers and/or structures at the Site.
  - 5) A copy of the FAA application, as required.

**1.35.3. Timing**

A. Phase 1.

- 1) Motorola shall submit Site Applications for Phase 1 Baseline Sites within fifteen (15) days of the date of execution of this Contract.

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- 2) The State shall approve the Site Applications for Phase 1 Baseline Sites, or issue a written Notice of Alternative Site Requirement, ("ASR") as provided in Section 1.35.6., below, within thirty (30) days of the receipt of the Site Applications.
- 3) Motorola, or its agent(s), shall enter into Option Agreements on behalf of the State for privately-owned Alternate Sites for Phase 1 within sixty (60) days of preliminary approval under Section 1.35.4.A., below, or receipt of an ASR, under Section 1.35.6A., below.

**B. Phases 2, 3 and 4.**

- 1) Motorola shall submit Site Applications for Phase 2, 3 and 4 Baseline Sites at least one hundred eighty (180) days prior to the scheduled Contract Release for each Phase.
- 2) The State shall approve the Site Applications for Phase 2, 3 and 4 Baseline Sites or issue an ASR as provided in Section 1.35.6, below, within sixty (60) days of the receipt of the Site Applications.
- 3) Motorola, or its agent(s) shall enter into Option Agreements on behalf of the State for privately-owned Alternate Sites for Phases 2, 3 and 4 within sixty (60) days of the preliminary approval under Section 1.35.4.A., below, or receipt of an ASR under Section 1.35.6A., below.

**1.35.4. State Approvals**

**A. Upon receiving written preliminary approval of a Site from the Project Director, Motorola shall:**

- 1) Perform a Stage 1 environmental investigation, and such further environmental investigations as the State may require, for the Site.
- 2) Perform soil compaction tests for the Site.
- 3) Obtain a boundary survey (a "Survey"), with a legal description for the State, in compliance with 1970 PA 132 as amended, MCL 54.211 and record the Survey.
- 4) With respect to privately-owned Baseline Sites, prepare Draft Option Agreement, utilizing the procedure set out in Section 1.35.7, below, and, following State approval, obtain an Option Agreement for such privately-owned Baseline Site.
- 5) Obtain from an independent fee appraiser an appraisal (the "Appraisal") that determines the fair market value of the Site based upon its highest and best use in accordance with applicable federal and State law.

**B. The above five (5) items shall be known as the "Final Approval Materials." Motorola shall submit the Final Approval Materials to the Site Representative. If a Site is acceptable to the State, the Project Director shall issue a written approval for that Site. Motorola shall not commence construction on any State-owned Site until the State issues a Contract Release based on a DDP. Motorola shall not commence construction on any privately-owned Site until the State issues a Contract Release based on a DDP and the title to the privately-owned Site passes to the State.**

**C. Transfer of title to State-owned Sites between State departments shall be a matter separate from the Site selection process and access to such Sites shall not be delayed on the grounds that title to such Sites has not been transferred between State departments.**

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**1.35.6. Identification of Alternate Sites**

- A. In the event that one or more of the State-owned Baseline Sites shall not be available on terms and conditions that are acceptable to the State or to Motorola, the State, following consultation with Motorola, shall issue a written ASR.
- B. Upon the issuance of an ASR for a State-owned Baseline Site, Motorola shall identify one or more alternate sites (an "Alternate Site"). Motorola shall first identify State-owned property as a proposed Alternate Site; if State-owned property is not available, Motorola shall then identify privately-owned property as a proposed Alternate Site.
- C. If a proposed Alternate Site or Alternate Sites identified by Motorola is/are State-owned property and is/are acceptable to the State, such Alternate Site or Alternate Sites shall be substituted for the appropriate Baseline Site.
- D. If State-owned property is not available as an Alternate Site and Motorola has identified privately-owned property as a proposed Alternate Site and such proposed Alternate Site is preliminarily acceptable to the State, the State shall so notify Motorola in writing. Following the completion of the procedure set out in Section 1.35.7, below, for obtaining an option for such a privately-owned Alternate Site, such Alternate Site shall be substituted for the appropriate Baseline Site.

**1.35.7. Option Procedure for Privately-Owned Alternate Sites**

- A. Upon receipt of notification that a proposed privately-owned Alternate Site or Alternate Sites is/are preliminarily acceptable to the State, Motorola (either directly or through its agents) shall promptly cause contact with the owner or owners of such privately-owned Alternate Site or Alternate Sites. If the owner or owners express an interest in the sale of such privately-owned Alternate Site or Alternate Sites, Motorola shall prepare a proposed option agreement for each Alternate Site utilizing the form of the option agreement agreed upon by the Parties. The Parties agree that any such options entered into by Motorola:
  - 1) shall be entered into by Motorola for the sole purpose of obtaining a transferable option to the State to purchase; and
  - 2) shall not, unless mutually agreed to in writing by the Parties to this Contract, cause, obligate or require Motorola to take title to any privately-owned Alternate Site; and
  - 3) shall, in all instances, be at least twelve (12) months in length.
  - 4) shall state that any amounts paid to the seller to secure the option shall be applied to the purchase price if the option is exercised.
- B. Motorola shall promptly transmit the proposed option agreement to the State for its review and approval. If the proposed option agreement is acceptable to the State, both as to form and as to price for the option, length of the option term and purchase price, the State shall notify Motorola of its approval in writing.
- C. The provisions of this Section shall not be interpreted as precluding the State from acquiring privately-owned Sites by eminent domain proceedings, in the exercise of the State's sole discretion.
- D. The purchase price to be paid by the State for any Site shall not exceed fair market value. Fair market value shall be determined by an Appraisal.

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- E. All Sites for Phases 2, 3, and 4 shall be purchased or optioned for purchase by Motorola within 24 months of the date of execution of this Contract.

**1.35.8. Cost Responsibility**

- A. In all instances, the State shall be responsible for the cost of acquiring the land ("Land Costs") for all Sites, whether such Sites are State-owned or privately-owned and whether such Sites are Baseline Sites or Alternate Sites.
- B. In all instances, the State shall be responsible for all costs related to Stage 1 environmental investigations, and any further environmental investigations, reviews and studies that the State may direct to be performed ("Environmental Study Costs") for all Sites, whether such Sites are State-owned or privately-owned and whether such Sites are Baseline Sites or Alternate Sites.
- C. The State shall be responsible for all costs for Surveys ("Survey Costs"). Motorola shall be responsible for all costs for soil compaction tests ("Soil Testing Costs") for all Sites, whether such Sites are State-owned or privately-owned and whether such Sites are Baseline Sites or Alternate Sites.
- D. With respect to costs associated with the option of privately-owned Alternate Sites, the following cost responsibility shall apply:
- 1) The owner of a privately-owned Alternate Site shall pay the cost of title insurance as set out in the Option Agreement.
  - 2) Motorola shall pay the cost of an Appraisal ("Appraisal Costs"), as agreed to in writing between the Parties. If the State acquires a privately-owned Alternate Site, the State shall upon exercise of the Option reimburse Motorola for the Appraisal Costs. If the State does not acquire the privately-owned Alternate Site, the Appraisal Costs shall be apportioned as an Incremental Alternate Site Cost as set out in Section 1.35.10.B.4), below.
  - 3) Motorola shall pay the consideration for the option (the "Option Consideration") as set out in the Option Agreement. If the State acquires a privately-owned Alternate Site, the State shall upon exercise of the Option reimburse Motorola for the Option Consideration. If the State does not acquire the privately-owned Alternate Site, the Option Consideration shall be apportioned as an Incremental Alternate Site Cost as set out in Section 1.35.10.B.5), below.
  - 4) Motorola shall pay any actual costs ("Actual Costs") including but not limited to brokers' fees, associated with the acquisition of a privately-owned Alternate Site, as agreed to in writing between the Parties. If the State acquires a privately-owned Alternate Site, the State shall upon exercise of the Option reimburse Motorola for such Actual Costs. If the State does not acquire the privately-owned Alternate Site, the Actual Costs shall be apportioned as an Incremental Alternate Site Cost as set out in Section 1.35.10.C.6), below.

**1.35.9. Incremental Alternate Site Costs**

- A. The Parties agree that cost reductions shall be utilized to pay for the Incremental Alternate Site Costs as apportioned in Section 1.35.10., below. Such cost reductions shall be derived as follows:
- 1) Price reductions resulting from the use of guyed Towers versus self-supporting Towers at all Sites. To the greatest extent possible, Motorola shall propose and the State shall approve the use of guyed Towers versus self-supporting Towers at all Sites where there is sufficient land to support such use.

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- 2) Price reductions from the use of "A" sized buildings at certain Sites. To the greatest extent possible, Motorola shall propose and the State shall approve "A" sized buildings at all Sites.
- 3) Purchase of Subscriber Units. The State shall not purchase additional Subscriber Units above and beyond the Baseline Subscriber Units unless mutually agreed to by the Parties.
- 4) Selection of options. The State shall not exercise any options that are not "selected options" in the Baseline Price if such options increase the price to the State unless mutually agreed to by the Parties.
- B. If the State by Contract Change Notice relieves Motorola of specifications or requirements resulting in a reduction of equipment or services, the Baseline Price shall be adjusted accordingly.
- C. Incremental Alternate Site Costs shall include Land Costs for privately-owned Alternate Sites, Environmental Study Costs for privately-owned Alternate Sites, Appraisal Costs for privately-owned Alternate Sites, Actual Costs for privately-owned Alternate Sites and additional Hardware and Software costs.

**1.35.10. Site Costs**

- A. Site Costs shall include Environmental Costs, Survey Costs, Soil Testing Costs and Incremental Alternate Site Costs.
- B. Site Costs shall be apportioned as follows:
  - 1) As provided in Section 1.35.8.A., the State shall pay one hundred percent (100%) of Land Costs for privately-owned Sites in the event that the privately-owned Sites are acquired by the State.
  - 2) As provided in Section 1.35.8.B., the State shall pay one hundred percent (100%) of the Environmental Study Costs for Sites.
  - 3) As provided in Section 1.35.8.C., Motorola shall pay one hundred percent (100%) of all Soil Testing Costs for Sites. The State shall pay one hundred percent (100%) of all Survey Costs.
  - 4) The State shall pay one hundred percent (100%) of the Appraisal Costs for privately-owned Alternate Sites if the State acquires the privately-owned Alternate Site. If the State does not acquire the privately-owned Alternate Site, the State shall pay fifty percent (50%) of the Appraisal Costs and Motorola shall pay fifty percent (50%) of the Appraisal Costs.
  - 5) The State shall pay one hundred percent (100%) of the Option Consideration for privately-owned Alternate Sites if the State acquires the privately-owned Alternate Site. If the State does not acquire the privately-owned Alternate Site, the State shall pay fifty percent (50%) of the Option Consideration and Motorola shall pay fifty percent (50%) of the Option Consideration.
  - 6) The State shall pay one hundred percent (100%) of the Actual Costs for privately-owned Alternate Sites if the State acquires the privately-owned Alternate Site. If the State does not acquire the privately-owned Alternate Site, the State shall pay fifty percent (50%) of the Actual Costs and Motorola shall pay fifty percent (50%) of the Actual Costs.
  - 7) In the event that the Baseline Number of Sites is exceeded, the State shall pay forty percent (40%) of the labor, Hardware and Software price, based upon the unit prices contained in Exhibit E, required because of

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the selection of any Alternate Site(s) above the Baseline Number of Sites. Motorola shall bear the cost of the remaining sixty percent (60%) of such labor, Hardware and Software price.

**1.35.11. Construction Permit Applications**

- A. Motorola shall submit, in the name of the State, three (3) copies of a single application for a building permit and plan examination for multiple Sites to the Michigan Department of Labor, Bureau of Construction Codes ("BOCC"), on the form prescribed by the BOCC, accompanied by copies of the applicable Site Application submitted to the Site Representative, together with such additional Site-specific information and technical data as may be required to permit BOCC to perform its review and approval functions and together with the applicable fee remitted by the State. These submittals shall be made simultaneously with the publication of the DDP for the particular phase. It shall be sufficient if Motorola submits a single set of Shelter data and designs specified in Exhibit B, or as required by the BOCC, provided that Motorola shall indicate any Site-specific variations from the standardized data and design for each Tower and Shelter. BOCC shall issue Site-specific permits.

**1.35.12. Delays**

A. Temporary Site-Related Delays

- 1) In the event of a delay of more than sixty (60) days from the Schedule contained in Exhibit D, as modified by the phase DDP, related to the acquisition by the State of a Site (a "Temporary Site-Related Delay") Motorola, with the State's consent, may do any or all of the following to meet its obligations under the Contract:
  - a) Arrange to erect, operate and maintain a temporary antenna(es) until the cause of the Temporary Site-Related Delay is eliminated. Such temporary antenna(es) may be located on other State-owned land or buildings or on land or buildings leased from private Parties, at the State's expense pursuant to a modified DDP and Contract Release, including but not limited to existing privately-owned commercial antenna towers.
  - b) If the Site involved is a microwave Tower Site, Motorola may, at the State's expense pursuant to a modified DDP and Contract Release, and on a temporary basis, use leased telephone lines instead of a microwave relay to link the Tower to the System, provided that Motorola shall cease using the leased telephone lines when the necessary microwave Tower is erected and operational, whether the Tower is erected on the Site or is relocated to another Site, either permanently or temporarily, pursuant to the preceding clause.
  - c) With respect to any Site as to which the State and Motorola agree that the Temporary Site-Related Delay will continue indefinitely, the State shall issue an ASR, as provided above, and the procedures contained in this Section with respect to acquiring Alternate Sites shall be utilized.
- 2) Neither Motorola nor the State shall be liable for liquidated damages for, and Section 1.6 shall not apply to, Temporary Site-Related Delays.

B. Site Unavailability

- 1) In the event that a Baseline Site is unavailable and no acceptable Alternate Sites are available ("Unavailable Sites"), the State may, at its option, authorize Motorola to proceed with the manufacture, construction, implementation and invoicing of all of the remaining approved Sites for the Phase.

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- 2) For Unavailable Sites, if there is a delay beyond the effective start date for the Phase, then Motorola shall be excused from construction of the Site(s). Neither Motorola nor the State shall be liable for liquidated damages for, and Section 1.6 shall not apply to, such Unavailable Site(s).
- 3) For Unavailable Sites, Motorola may propose a Workaround even though said Workaround does not meet the technical specifications of the System. In the event that the Baseline Number of Sites is exceeded and when a Workaround is accepted by the State, any incremental increase in the price to bring the Site(s) into substantial compliance with the System Description and Specifications in Exhibit A shall be borne by the State and Motorola as follows: Motorola shall incur sixty percent (60%) of the increased price and the State shall incur forty percent (40%) of the increased price.
- 4) For Unavailable Sites, if all efforts have been exhausted to obtain an acceptable Workaround, an acceptable Workaround cannot be obtained and the State determines the unavailability to be beyond the control of the Parties, then the State shall delete the Unavailable Site(s) from the phase and issue a Contract Change Notice to Motorola that modifies the requirements of the Contract for that phase for such Unavailable Site(s).

**1.35.13. Cost Limitations**

- A. All costs identified in Sections 1.35.1 through 1.35.12 are subject to the cost limitations imposed in Section 1.23.A., above.

**1.36. Changes in the Work**

**1.36.1. Requests**

- A. The State reserves the right to request from time to time any changes to the requirements and specifications of this Contract and the products to be provided and the functions and services to be performed by Motorola under this Contract.

**1.36.2. Procedures**

**1.36.2.1. Motorola's Response to a Change Request.**

- A. Within thirty (30) calendar days after receipt of a request by the State for any such change or such other period of time as the Parties may mutually agree to in writing, Motorola shall submit to the State a proposal describing any changes in products, functions, services, timing of delivery, assignment of personnel, and the like, and any associated price adjustment. Motorola's proposal shall describe in reasonable detail the basis for the proposed price adjustment, including the charges for any services, materials or products required to implement the change request.
- B. To the extent that additional cost or cost savings result from a change in required products and materials, Motorola shall obtain any additional products and materials and provide them to the State at: (A) the price set forth in Exhibit E in the case of Hardware and Software listed therein, or (B) in the case of products and materials not listed in Exhibit E, a negotiated price acceptable to both Parties. Similarly, if the change request is expected to result in a reduction in materials or products required to perform the services, Motorola's charges shall be reduced by the cost savings resulting from the materials or products eliminated by the change request, determined using the prices at which such materials or products were to have been provided to the State pursuant to Exhibit E.

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**1.36.2.2. State's Acceptance of Proposal**

- A. If the State accepts Motorola's proposal, it will issue a Contract Change Notice referencing Motorola's proposal and it shall be signed by the Purchasing Director, Department of Management and Budget. Motorola will not implement any change request until a valid Contract Change Notice has been issued by the State and accepted by an authorized representative of Motorola.

**1.36.2.3. State's Rejection of Proposal**

- A. If the State does not accept Motorola's proposal, the State may:

- 1) withdraw its change request;
- 2) modify its change request, in which case the procedures set forth above will apply to Motorola's response to the modified change request.

**1.37. Dispute Resolution**

- A. Any claim, counterclaim, or dispute between the State and Motorola arising out of or relating to this Contract shall be resolved as set forth herein. Motorola will make good faith efforts to file claims timely within the deadlines provided in this Contract, provided however, failure to timely file shall not be deemed a waiver of such claim. However, Motorola shall not be entitled to any interest payments if Motorola's claim is delayed in filing by more than thirty (30) days.
- B. A claim is a properly and timely written demand/or assertion by the State or Motorola seeking an adjustment in the amounts payable to Motorola under this Contract, an extension or shortening of the time for Motorola's performance, the adjustment or interpretation of specifications, or any other relief arising under or relating to this Contract, which can only become a dispute after a determination by the Parties that such claim cannot be resolved under the escalation provisions as outlined in this Contract.
- C. For all Motorola's claims seeking an increase in the amounts payable to Motorola under this Contract, or the time for Motorola's performance, Motorola shall submit an affidavit executed by an officer of Motorola certifying that (i) the claim is made in good faith, (ii) the amount claimed accurately reflects the adjustments in the amounts payable to Motorola or the time for Motorola's performance for which Motorola believes the State is liable and covers all costs of every type to which Motorola is entitled from the occurrence of the claimed event, and (iii) the supporting data provided with such an affidavit are current and complete to Motorola's best knowledge and belief.
- D. If Motorola's Project Director and the State Project Director are unable to resolve the claim or counterclaim and determine that the issue should be designated as a dispute, then the Parties shall meet with the State Purchasing Director, or designee, for the purpose of mediation of such dispute.
1. The representatives of Motorola and the State shall meet as often as all Parties reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter in issue which the Parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute.
  2. During the course of these dispute negotiations, all reasonable requests made by one Party to another for non privileged information reasonably related to this Contract shall be honored in order that each of the Parties may be fully advised of the other's position.

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3. The specific format for the discussions shall be left to the discretion of the designated representatives of the State and Motorola, but may include the preparation of agreed upon statements of fact or written statements of position.
4. Following the completion of this process, the State Purchasing Director, or designee, shall issue a written opinion regarding the issue(s) in dispute. The opinion regarding the dispute shall be considered the State's final action and the exhaustion of administrative remedies.

**1.37.1. Litigation**

- A. If Motorola does not accept the opinion of the State Purchasing Director, as presented in contemplated by Section 1.37.D.4, then Motorola shall have recourse in the Michigan state courts as set forth herein. In the case of an action initiated by Motorola against the State, such action shall be submitted to the Michigan Court of Claims

**1.37.2. Continued Performance**

- A. Motorola agrees to continue performing its obligations under this Contract while any dispute is being resolved unless and until such obligations are terminated by termination or expiration of this Contract.

**1.37.3. Jurisdiction**

- A. Motorola irrevocably consents with respect to any claims it has against the State, arising out of or in connection with this Contract, to the exclusive jurisdiction of the Michigan Court of Claims (except as otherwise provided by law or herein) and with respect to any claim between the Parties, to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to such jurisdiction on the grounds of lack of personal jurisdiction of such court or the laying of venue of such court or on the basis of forum non conveniens or otherwise. Motorola agrees to appoint agents in the State to receive service of process.

**1.38. System Acceptance Criteria**

- A. The System shall be tested, with the participation of State's designated representatives, to demonstrate that the System has been installed and performs in accordance with the Contract. The successful completion of the Acceptance Test Plan incorporated in this Contract as Exhibit C, and the achievement of the Milestones as listed below constitute the System Acceptance Criteria

**1.38.1. Conditions for System Acceptance Progression**

- A. Successful completion of the Factory Tests shall be a prerequisite for shipping the System equipment to the Installation Sites.
- B. The successful completion of the Installation Milestone shall be a prerequisite for initiating the tasks which lead to the achievement of the Integration Milestone.
- C. The successful completion of the Integration Milestone shall be a prerequisite for initiating the tasks which lead to the achievement of the Phase Acceptance Milestone.
- D. The successful completion of the Phase Acceptance Milestone shall be a prerequisite for initiating the tasks which lead to the achievement of the Statewide System Acceptance Milestone.

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**1.38.2. Successful Performance of the System**

- A. Successful performance of the System shall be defined as the System operating in accordance with the specifications in this Contract for a period of sixty (60) days following the achievement of the Phase Acceptance Milestone for phase 4. Subscriber additions to the System for phase 4 and the testing of the features and functions as described in Exhibit C, shall take place during this sixty (60) day period.

**1.39. Excusable Failure**

- A. Neither Party shall be liable for any default or delay in the performance of its obligations under this Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, acts of the State in either its sovereign or contractual capacity, rebellions or revolutions in any country; or any other cause beyond the reasonable control of such Party; provided the non-performing Party and its Subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, work around plans or other means, including disaster recovery plans. Neither Party shall be liable for any default or delay in the performance of its obligations under this Contract if and to the extent such default or delay is caused, directly or indirectly, by acts of the other Party, court actions, temporary or permanent injunctions, or other judicial orders or actions, whether the case, suit or proceeding is initiated by a Party or by a third party. In each such event set out in this Section 1.39, the non-performing Party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay, provided such Party promptly notifies the other Party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

**1.40. Approved Equals**

- A. Specific reference in this Contract to any articles, device, equipment, materials, fixture, form or type of construction, etc. by name, make, or catalog number, with words "or approved equal", shall be interpreted as establishing a standard of quality. Motorola in such cases may, at its option, use articles, devices, equipment, material, fixtures, forms or types of construction which, in the judgment of the State expressed in writing, is equal to that named. In cases involving the approval of substitutes, the opinion, judgment and decision of the State shall be final and bind all Parties.
- B. Motorola will submit requests to substitute System equipment in writing to the State Project Director. Requests shall be accompanied by samples, descriptive literature, and engineering information as necessary to fully identify and allow appraisal of the substitute request.
- C. Approval by the State to substitute System equipment will be in the form of a written authorization by the State's Project Director. Approved substitutions may be used at Motorola's option.
- D. Motorola shall bear the risk of any additional direct costs or delays that may be incurred as a result of its use of substitute equipment, regardless of whether the State approved the substitution requested by Motorola, unless mutually agreed to by both Parties.

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**1.41. General**

- A. The failure of a Party to insist upon strict adherence to any term of this Contract shall not be considered a waiver or deprive the Party of the right thereafter to insist upon strict adherence to that term of the Contract.
- B. This Contract may not be modified, amended, extended, or augmented, except by a Contract Change Notice issued by the State and accepted by an authorized representative of Motorola. Any breach or default by the other Party, or if one or more of the provisions of the Contract shall be declared invalid, the remaining provisions of the Contract shall remain in full force and effect.
- C. This Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan.
- D. The headings given to the paragraphs herein are inserted only for convenience and are in no way to be construed as part of this Contract or as a limitation of the scope of the particular paragraph to which the heading refers.
- E. Each Party agrees that, in its dealings with the other Party in connection with this Contract, it shall act reasonably and in good faith.

**1.42. Independent Contractor Relationship**

- A. The relationship between the State and Motorola is that of client and independent contractor. No agent, employee, or servant of Motorola shall be deemed to be an employee, agent or servant of the State. Motorola will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

**1.43. No Third Party Beneficiaries**

- A. It is expressly understood and agreed by the Parties that this Contract and the services provided hereunder are not intended to inure to the benefit or detriment of any third party.

**1.44. Severability**

- A. Whenever possible, each provision of this Contract shall be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Contract, however, is held to be prohibited or invalid under applicable law, such provision shall be deemed restated to reflect the original intentions of the Parties, as nearly as possible in accordance with applicable law, and if capable of substantial performance, the remaining provisions of this Contract shall be enforced as if this Contract was entered into without an invalid provision. If the ruling and/or controlling principle of law or equity leading to the ruling is subsequently overruled, modified or amended by legislation, judicial or administrative action, then the provision(s) in question as originally set forth in this Contract will be deemed valid and enforceable to the maximum extent permitted by the new controlling principal of law or equity.

**1.45. Survival**

- A. Any provisions of this Contract that impose continuing obligations on the Parties, including but not limited to the respective warranty, indemnity and confidentiality obligations of the Parties, shall survive the expiration or termination of this Contract for any reason.