

**Build, Own, Operate & Maintain  
Public Safety Communications System Agreement**

Motorola Solutions, Inc. ("Motorola") and the Bay Area Regional Interoperable Communications System Authority, a joint powers authority formed under California Government Code Sections 6500 et seq. (the "Authority"), enter into this "Agreement," pursuant to which Motorola will build, own, operate, and maintain the System (as described below), and the Authority and other "Eligible Users" (as defined below) will use the System and pay "User Fees" for such use, and will provide Sites, and Facilities, and Licensed Frequencies (all as defined below) to Motorola for the proper operation and use of the System. Motorola and the Authority may be referred to individually as a "Party" and collectively as the "Parties."

The Parties desire to enter into this Agreement with reference to the following factual recitals.

**Recitals**

**A.** This Agreement reflects a unique public-private collaboration, pursuant to which the Authority, other governmental bodies who are Eligible User Entities, and Motorola will contribute significant investments in terms of human, financial and other resources, as well as expertise, time and effort to this important and cutting edge project. For example, the Authority and other governmental bodies will provide Sites, Facilities, Licensed Frequencies, and technical and legal staff and expertise. Motorola will provide BTOP Grant funding and its own significant financial resources, as well as its technical, engineering, design, procurement, project management, and operational staff and expertise.

**B.** The Public Safety System project described in this Agreement will provide critical communications network infrastructure for public safety users in the San Francisco Bay Area region, representing many different counties, cities and agencies. The System will provide interoperable data communications among authorized users especially during emergencies. The Parties intend the System to provide a level of System performance and reliability which is superior to commercial broadband systems for use by the general public.

**C.** As described below, the Parties intend full ownership of and responsibility for this System to be transferred to the Authority at the end of the term of this Agreement. Therefore, it is both important and necessary for the Authority to understand the System design, functionality and performance of the System, and each of its components. Finally, the Parties intend that all Federal Communications Commission ("FCC"), FCC Emergency Response Interoperability Center ("ERIC"), Public Safety Spectrum Trust Corporation ("PSST"), National Public Safety Telecommunications Council ("NPSTC"), and other Public Safety Broadband System or frequency use requirements, including all 3rd Generation Partnership Project ("3GPP") open standard requirements, are adhered to and included in the responsibilities described in this Agreement.

**Main Agreement**

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

**SECTION 1. EXHIBITS**

The exhibits listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the language in the Agreement takes precedence over language in the exhibits; any inconsistency between the exhibits will be resolved in their listed order. The System Description (Exhibit A) and Specifications (Exhibit B) are based on the current understanding of the Parties and are subject to modification by the Parties in good faith in accordance with Section 3.3 of this Agreement.

Exhibit A	System Description dated January 5, 2012.
Exhibit B	Specifications (including List of Sites, List of Licensed Frequencies, and Facilities) dated January 5, 2012.
Exhibit C	Statement of Work (Deployment Stage (including the Description of the Phases, if any, and the Performance Schedule) dated January 5, 2012.
Exhibit D	[Intentionally omitted]
Exhibit E	Options [Exhibit E will be developed in the future and upon mutual agreement will be added to this Agreement.]
Exhibit F	[Intentionally omitted]
Exhibit G	[Intentionally omitted]
Exhibit H	System Readiness Certificate by Phase
Exhibit I	Service Levels dated January 5, 2012
Exhibit J	Customer Support Plan [Exhibit J will be developed in the future and upon mutual agreement will be added to this Agreement.]
Exhibit K	[Intentionally omitted]
Exhibit L	Motorola "Software License Agreement"
Exhibit M	Operation Stage and Maintenance Service Statement of Work, including Service Terms and Conditions, dated January 5, 2012
Exhibit N	List of Eligible User Entities dated January 5, 2012
Exhibit O	[Intentionally omitted]
Exhibit P	List of Motorola and Authority Key Personnel dated January 5, 2012
Exhibit Q	Motorola's Insurance Requirements
Exhibit R	[Intentionally omitted]
Exhibit S	The Authority's Insurance Requirements
Exhibit T	BTOP Grant Award Requirements and related documents
Exhibit U	Training
Exhibit V	Site Access and Use Agreement template

## **SECTION 2. DEFINITIONS**

Capitalized terms used in this Agreement have the following meanings:

- 2.1 "BTOP Grant" means Motorola's Award Number NT10BIX5570089 under the Broadband Technology Opportunities Program of the Department of Commerce.
- 2.2 "Central Backhaul Transport Network" means the backhaul network provided by the Authority. The backhaul network includes BayLoop Microwave and BART fiber as described in Exhibit A, and may include other networks owned by the third party providers such as CENIC fiber, VTA fiber, or other providers that provide connectivity for eNodeB sites and CEN networks to connect to the Evolved Packet Core.
- 2.3 "Confidential Information" means any information that is disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, or identified at the time of disclosure as being confidential or its equivalent; or if the information is in verbal form, it is identified as confidential at the time of disclosure and is confirmed in writing within thirty (30) days of the disclosure. Confidential Information does not include any information that: is or becomes publicly known through no wrongful act of the receiving Party; is already known to the receiving Party without restriction when it is disclosed; is or becomes, rightfully and without breach of this Agreement, in the receiving Party's possession without any obligation restricting disclosure; is independently developed by the receiving Party without breach of this Agreement; or is explicitly approved for release by written authorization of the disclosing Party.
- 2.4 "Demarcation Point" means a physical point on the System where Motorola's responsibilities for equipment and services end and the Authority's or individual Eligible User Entity's responsibilities

begin. There are several Demarcation Points within the System, including the Customer Enterprise Network interface to the System and the LTE device interface to the eNodeB. In general terms, the Demarcation Points are located in accordance with the following principles: (i) Motorola is responsible for all equipment and services necessary for wireless communication between Devices and each Site; (ii) Authority is responsible for all equipment (except for the termination equipment provided by Motorola) and services in the Central Backhaul Transport Network; and (iii) Motorola is responsible for all equipment and services to operate the LTE Core Facility and the Network Operating Center. The actual locations of the Demarcation Points are described in the System Description (Exhibit A).

- 2.5 "Deployment Stage" means the time period from the Effective Date until Final Project Readiness.
- 2.6 "Device" means a communications, computing or other fixed, portable or mobile device that conforms to National Institute of Standards and Technology ("NIST") requirements and 3GPP standards and that are used by Eligible Users on the System.
- 2.7 "Effective Date" means that date upon which the last Party executes this Agreement.
- 2.8 "Eligible User" means the Authority and its governmental members (e.g., State of California, and the counties and cities within the region that are members of the BayRICS Authority), as well as any public entities and private enterprises that perform a public safety function for a public entity (such as emergency response/ambulance services) that are not members of the BayRICS Authority but who are permitted to be users on the System as a result of the mutual agreement by the Authority and Motorola (collectively referred to as "Eligible User Entities"), and all of their public safety employees and agents they permit to use the System consistent with applicable FCC requirements and for which they pay User Fees.
- 2.9 "eNodeB" shall have the meaning as set forth in the Specifications.
- 2.10 "EPC" or "evolved packet core" shall have the meaning as set forth in the Specifications.
- 2.11 "Equipment" means the hardware for the System and portions of the backhaul system that are provided by Motorola under this Agreement.
- 2.12 "Facilities" means the following existing hardware and infrastructure that is being contributed for the System by the Authority and/or the Eligible User Entities, all as described in the Specifications attached hereto as Exhibit "B": (i) the Bay Loop system; (ii) certain microwave communication sites; (iii) the fiber and other backhaul subsystems and aggregation sites at backhaul locations (including the Central Backhaul Transport Network), whether owned or leased by the Authority, Eligible Users, or others; (iv) the LTE Core Facility; and (v) staging and warehousing space (if applicable) as described in the Specifications; and (vi) such other assets to be provided by the Authority or other Eligible User Entities for the proper deployment and operation of the System as described in the Specifications. The term "Facilities" does not include the Sites, the Licensed Frequencies and those microwave links between the BTOP Grant funded eNodeB's and the Central Backhaul Transport Network.
- 2.13 "Final Project Readiness" means when System Readiness of the last Phase occurs.
- 2.14 "Force Majeure" means an event, circumstance, or act of a third party that makes performance impracticable and is beyond the responsible Party's reasonable control (e.g., an act of God, an act of the public enemy, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, and riots).

- 2.15 “Infringement Claim” means a third party claim alleging that the Equipment or the Motorola Software directly infringes a United States patent or copyright.
- 2.16 “Licensed Frequencies” means all of the necessary FCC licensed frequencies, including those leased from the PSST, and the microwave frequencies as described in the Specifications (Exhibit B)
- 2.17 “LTE Core Facility” means the secure location for the primary LTE Network core equipment for the System, as described in the Specifications, which is anticipated by the Parties to be located at the Twin Peaks facility in San Francisco.
- 2.18 “Motorola Software” means Software that Motorola or its affiliate owns.
- 2.19 “Network Operations Center” means the Motorola facility for managing network operations which is located in Illinois, as described in Exhibit M.
- 2.20 “Non-Motorola Software” means Software Motorola does not own.
- 2.21 “Open Source Software” (also called “freeware” or “shareware”) means software that has its underlying source code freely available in the public domain and is available for evaluation, copying, and modification and use.
- 2.22 “Operation Stage” means the time period beginning on the date of Final Project Readiness and ending on the termination date of this Agreement. The Parties acknowledge that the operation and use of the early Phase(s) of the System will occur before Final Project Readiness, i.e., during the Deployment Stage and before the Operation Stage.
- 2.23 “Phase” means a distinct portion of Motorola’s activities required by this Agreement, with each Phase having its own commencement date and System Readiness event initiating the relevant Phase. Upon System Readiness of each Phase, that portion of the System will be available for use by Eligible Users.
- 2.24 “Pilot System” (also referred to as “Project Cornerstone”) means the Regional 700 MHz Wireless Broadband Network that Motorola sold and provided to East Bay Regional Communications System Authority (“Pilot System Customer”) under a separate sales contract.
- 2.25 “Proprietary Rights” means a Party’s ownership interest in tangible and intangible property, including the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to the Equipment and Software, including those created or produced by Motorola under this Agreement, and any corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by Motorola or for Motorola by a third party.
- 2.26 “Public Access System” [intentionally omitted].
- 2.27 “Regulatory Change” means a change in any federal or state law or regulation that regulates the ownership and use of the System or the Licensed Frequencies necessary for the System to operate.
- 2.28 “Service Level” means a measure of the performance of the System including availability, capacity, performance, coverage requirements of the FCC in effect for the as-built System on

April 30, 2013, or as otherwise agreed to by the Parties, and other criteria as more fully described in Service Levels (Exhibit I).

- 2.29 "Site" means a physical structure at a particular geographic location, such as a tower or building, at, on or in which Motorola will install Equipment or Software as part of the System. A complete list of the Sites to be included in the System is attached to Exhibit "B".
- 2.30 "Site Access and Use Agreement" means an agreement generally in the form of Exhibit V between Motorola and another party by which Motorola acquires the right to enter onto, access, and use one or more Sites.
- 2.31 "Site Remediation Costs" means the costs that are not reimbursable under the BTOP Grant and are reasonable and necessary to perform the Site Remediation Work as determined by Motorola in coordination with the party with whom Motorola has a Site Access and Use Agreement for it to perform the Site Remediation Work as described in the Statement of Work (Deployment Stage) (Exhibit C). Site Remediation Costs do not include government assessments, costs related to local regulatory requirements or on-going Site operating expenses but do include construction and construction-related costs.
- 2.32 "Site Remediation Work" means the work that is reasonable and necessary as determined by Motorola in coordination with the party with whom Motorola has a Site Access and Use Agreement for it to perform as described in the Statement of Work (Deployment Stage) (Exhibit C) for the Sites to be made into "installation ready" condition as defined in Section 6.
- 2.33 "Software" means the Motorola Software and Non-Motorola Software, in object code format that is furnished with the System or Equipment.
- 2.34 "Specifications" means the functionality and performance requirements for the System, Equipment, Software, Sites, Licensed Frequencies and Facilities that are described Exhibit "B".
- 2.35 "System" means an interoperable data communications system for public safety use which includes the Equipment, Software, and incidental hardware and materials that are provided by Motorola under this Agreement and combined together into an integrated system as generally described in the System Description attached as Exhibit "A". The term System excludes the Pilot System.
- 2.36 "System Readiness" has the meaning set forth in Section 8.2.
- 2.37 "System Refresh" means an update to the System Software and System hardware (such as routers, switches, servers), the scope of which is not included within the operational and maintenance obligations of Motorola under Exhibit M.
- 2.38 "User Fees" means the fees to be paid to Motorola by the Authority related to the use of the System by Eligible Users as described in Section 5.2.

### **SECTION 3. SCOPE OF AGREEMENT AND TERM**

- 3.1 **SCOPE OF WORK.** Motorola will build a stable and fully operational 4G LTE system as described in Exhibits A and B, subject to the requirements otherwise set forth in this Agreement, including the BTOP Grant (as amended), subject further to the performance by the Authority of its obligations. The Parties will provide all of the necessary personnel and other resources to perform all of their duties as agreed in this Agreement. The Parties acknowledge that the deployment of the System will be funded by Motorola, relying in large part on funds provided

through the American Recovery and Reinvestment Act, specifically a grant from the Department of Commerce (“DOC”) under its Broadband Technology Opportunities Program (“BTOP”), Award Number NT10BIX5570089 (“BTOP Grant”). The BTOP Grant is administered by the National Telecommunications and Information Administration (“NTIA”). The Parties acknowledge further that Motorola has certain obligations under the BTOP Grant and that Motorola shall be responsible for compliance with such obligations except as otherwise expressly set forth in this Agreement. Notwithstanding any provision to the contrary, the Parties agree that they will each perform their duties under this Agreement in a manner that promotes and ensures initial and continuing compliance with all applicable requirements of the BTOP Grant, including the Special Award Conditions. All BTOP Grant Award Document terms and Motorola obligations under the BTOP Grant Award which are relevant to the performance of this Agreement by the Parties are stated in Exhibit T. Motorola’s BTOP Grant obligations and requirements as disclosed to the Authority in Exhibit T shall supersede and take precedence over any conflicting terms in this Agreement. Notwithstanding any provision to the contrary, Motorola has no duty to provide the full BTOP Grant application to the Authority or any Eligible User Entity. Motorola will monitor System performance at all times from the Network Operations Center.

3.2 SINGLE POINT OF CONTACT BETWEEN THE PARTIES. During the Deployment Stage, each Party will designate a single point of contact, who will be the Party’s primary team leader for deployment of the System (“Project Manager”). Motorola’s Project Manager is Coyle Schwab. The Authority’s Project Manager is \_\_\_\_\_. On or before the commencement of the Operation Stage, Motorola will designate a system operating manager (“System Manager”), who will be Motorola’s primary point of contact and who will have oversight responsibility for operation and maintenance of the System; and the Authority will appoint a \_\_\_\_\_ [insert title], who will be the Authority’s primary point of contact during the Operation Stage.

3.3 SITE ACCESS AND USE AGREEMENTS. The Authority requested that Motorola shall use its best efforts to enter into Site Access and Use Agreements with the parties who own or control the Sites, the majority of which are Eligible User Entities who are members of the Authority. A Site Access and Use Agreement template is attached as Exhibit V. The Authority agrees to use its best efforts to assist Motorola in this regard. Once executed, Motorola is responsible for the administration of the Site Access and Use Agreements during the term of this Agreement, and for Site Remediation Work and Site Remediation Costs as described below in Section 3.4 and Section 3.5.1(i). Except for Motorola’s responsibilities for Site Remediation Costs as described below in Section 3.4 and Motorola’s responsibilities in the Site Access and Use Agreements, Motorola has not accepted the risks or other costs associated with delayed availability of Sites or unavailability of Sites, or Site substitutions, replacements or additions. If at any time it appears to the Authority that a party who contracts with Motorola in a Site Access and Use Agreement has breached that agreement in a manner that will render a Site unavailable when needed for the System, the Authority may recommend to Motorola enforcement actions that Motorola could take. Motorola is not obligated to accept those recommendations or to initiate litigation against the party, provided, however, that Motorola will not be excused from its Service Level commitments as to other Sites as a result of such failure to enforce.

3.3.1 PREPARATION OF LIST OF SITES. On January 5, 2012, Motorola and the Authority met to review the best information available on Site suitability and availability for inclusion in the System. Based upon that meeting, the Parties created a List of Sites which is included in the Specifications (Exhibit B). As additional information becomes known, the List of Sites will be updated and amended. Motorola shall be responsible for evaluating potential Sites and making the determination that Sites can be “qualified” as described in Section 6.1.2 and should be included on the List of Sites. Motorola’s performance obligations under this Agreement (including any Service Level commitments) will be based upon the effective List of Sites as amended concerning additional, deleted, and replacement or substitute Sites.

3.3.2 Once the Parties agree on the List of Sites by the date specified in paragraph 3.3.1, Motorola will provide a copy to the NTIA for its approval and a corresponding change request to the BTOP Grant contract. If the NTIA does not approve this List of Sites or the corresponding change request to the BTOP Grant contract, then Motorola may upon written notice to the Authority terminate this Agreement without cause or further obligation.

### 3.4 AMENDMENTS TO LIST OF SITES AND RESPONSIBILITY FOR SITE REMEDIATION WORK AND COSTS

3.4.1 A Site may be determined by Motorola or the Authority to be ineligible. For example, a Site might no longer be available or might no longer meet the qualification process as described in Section 6.1.2. If a Site is determined to be ineligible prior to the List of Sites being finalized pursuant to paragraph 3.3.1, the Parties will use good faith efforts to replace it with an alternative Site as a substitute and Motorola shall retain responsibility for Site Remediation Costs. In connection with any modification of the List of Sites, the Parties shall agree to make any adjustments to Exhibits A and B that are necessary as a result of the modification.

3.4.2 If Motorola in consultation with the Authority determines that a Site is ineligible after the List of Sites is finalized pursuant to paragraph 3.3.1 but before May 31, 2012, then the Parties will amend Exhibit B to delete the ineligible Site and the Authority and Motorola may jointly agree upon an alternative available Site as a substitute provided the NTIA approves the substitution and agrees the BTOP Grant funds may be used for applicable work and Equipment for the substitute Site. If so approved and agreed, the substitute Site agreement will provide that Motorola is responsible to pay for Site Remediation Costs for all substitute Sites agreed on before May 31, 2012. Motorola will be excused from any obligations to add the substitute Site and from any performance obligations under this Agreement related to the ineligible deleted Site.

3.4.3 If Motorola in consultation with the Authority determines that a Site is ineligible after May 31, 2012, then the Parties will amend this Agreement to delete the ineligible Site and the Authority and Motorola may jointly agree upon an alternative available Site as a substitute. Unless this substitute Site agreement expressly provides to the contrary, the Authority and not Motorola will pay for (i) any additional Site Remediation Costs concerning the substitute Site, and (ii) any applicable work and Equipment for the substitute Site. Notwithstanding clause (ii) of the preceding sentence, the substitute Site agreement will not obligate the Authority to pay for the applicable work and Equipment for the substitute Site if and to the extent the NTIA approves the use of BTOP Grant funds, if available, for this purpose. If the Parties do not agree on the substitution, then Motorola will be excused from any performance obligations under this Agreement related to the ineligible deleted Site.

### 3.5 ENUMERATION OF OTHER DUTIES.

3.5.1 Motorola will:

- (i) During the Deployment Stage, subject to Section 3.4 above, perform its Site Remediation Work and pay 100% of the Site Remediation Costs;
- (ii) provide, install, test, accept, own, operate and maintain the System, including the LTE Equipment and Software comprising the System;
- (iii) make the System (starting with the first Phase and continuing with successive Phases) available for use by Eligible Users in accordance with Section 3.7;

- (iv) perform its other contractual responsibilities all in accordance with this Agreement, including the exhibits;
- (v) market and promote the use of the System;
- (vi) cooperate with the Authority in the performance of all of the Authority's contractual responsibilities under this Agreement;
- (vii) cooperate with the Authority in all elements of the relationship of the Parties as anticipated by this Agreement; consistent with and subject to Section 3.9.4, and subject further to any excused non-performance by Motorola due to a Force Majeure, non-performance by any Site Owner of its duties under a Site Access and Use Agreement, or non-performance by the Authority under this Agreement, Motorola will operate the System in compliance with applicable FCC requirements that exist on April 30, 2013.
- (viii) assist in preparing the Authority's interoperability showing to the FCC as scheduled and provide to the Authority the non-confidential technical documentation as reasonably requested by the FCC; and
- (ix) cooperate with the Authority in all elements of the relationship of the Parties as anticipated by this Agreement.
- (x) Motorola will develop with the Authority a Customer Support Plan, which will include the names and contact information of the representatives designated by the Authority and Eligible User Entities who are authorized to call the Motorola System Support Center and which will provide a comprehensive description of customer support, network troubleshooting and repair and the allocation of responsibilities between Motorola and the Authority. The Parties will negotiate the Customer Support Plan in good faith.

#### 3.5.2 The Authority will:

- (i) During the Deployment Stage, not be required, subject to Section 3.4 above, to perform Site Remediation Work or pay Site Remediation Costs;
- (ii) provide, maintain, and make available (or cause to be provided, maintained, and made available) to Motorola as scheduled and during the term of the Agreement, the Facilities (whether owned or controlled by the Authority or Eligible Users or other third party entities) and continuous access to and use of those Facilities in accordance with Section 6 and the Specifications (Exhibit B), and with Motorola's assistance, enter into one or more agreement(s) with the various owners, providers or licensees/lessees of the Facilities to support the Authority's commitments;
- (iii) provide maintain in effect, and make available (or cause to be provided, maintained in effect, and made available) to Motorola as scheduled and during the term of the Agreement, the Licensed Frequencies and continuous access to and use of the Licensed Frequencies in compliance with all FCC and PSST requirements and in accordance with Section 3.5.3 and the Specifications so that Motorola may deploy the System as scheduled and consistent with the BTOP Grant requirements, and lawfully operate the System during the term of this Agreement;
- (iv) perform its contractual responsibilities in accordance with this Agreement, including the exhibits;



- (v) coordinate with Motorola and the Eligible User Entities concerning the operation of the System in accordance with this Agreement, provided that such obligation shall be to facilitate communication and not to enforce obligations of the Eligible User Entities under the Site Access and Use Agreements;
- (vi) concerning the Authority's interoperability showing to the FCC, provide to the FCC as scheduled the documentation as reasonably requested by the FCC.

3.5.3 During the entire term of this Agreement (including any extensions of the term), the Authority at its cost and expense will obtain, maintain, and provide the Licensed Frequencies, and will comply with all (i) Federal Communications Commission ("FCC") licenses and authorizations required for Motorola's deployment, installation, testing, operation, maintenance, and continuous use of the System (and each Phase of it) in accordance with the Specifications (Exhibit B) and (ii) lease or other requirements of the Public Safety Spectrum Trust Corporation, which was designated as the nationwide Public Safety Broadband Licensee ("PSBL") concerning some or all of the Licensed Frequencies. The Authority's obligations at its cost and expense to obtain, maintain, and provide the Licensed Frequencies for the System and its proper use and operation and to comply with all FCC and PSST requirements are material covenants by the Authority. Although Motorola might assist the Authority in the preparation of its FCC license applications or similar matters, neither Motorola nor any of its employees or representatives is an agent or representative of the Authority or any other Eligible User in FCC, PSST, or other matters; and neither Motorola nor any of its employees or representatives has any liability concerning FCC or PSST matters. If the Licensed Frequencies which are required for Motorola to lawfully operate the System are leased by the PSST to and in the name of a party other than the Authority, then the Authority will provide written documentation reasonably acceptable to Motorola of the Authority's right to use such Licensed Frequencies for the System during the Term.

3.6 **LOADING AND USE.** The Authority makes no commitment concerning the number of Devices to be loaded and used on the System or when such loading and use will commence. The Authority, other Eligible User Entities, and other Eligible Users may begin loading and using the System, commencing when System Readiness for the first Phase occurs and Motorola has executed the System Readiness Certificate (Exhibit H) for the first Phase. The Authority agrees to pay for the applicable User Fees (and all other charges payable to Motorola under Section 5.3 below) for all Eligible Users during the term of the Agreement.

3.6.1 The Authority will develop and maintain the List of Eligible User Entities (Exhibit N) that are eligible to have access to the System current at all times and provide that list to Motorola if and when it changes. The Authority will further provide to Motorola semi-annually a list of the total potential number of Eligible Users associated with each Eligible User Entity. Motorola and the Authority will reconcile their respective lists of actual Eligible Users at least monthly.

3.6.2 Eligible Users other than the Authority are not Parties to this Agreement and are not third party beneficiaries under it, but have the rights to use the System in accordance with this Agreement.

3.6.3 Motorola and the Authority will actively promote and encourage the use of the System among the Eligible User Entities and among other public safety governmental entities within the San Francisco Bay Area Region who might be interested in becoming an Eligible User Entity.

3.6.4 During the term of this Agreement, Motorola may expand the System only with prior approval of the Authority's Board in its sole discretion.

- 3.7 RESTRICTIONS AND LIMITATIONS ON USE. The Authority will cooperate with Motorola in imposing and enforcing the following restrictions and limitations on use which apply to all Eligible Users.
- 3.7.1 Eligible Users may use the System for any reasonable public safety purpose permitted under FCC rules for the System and which is consistent with the mission and legal authority of the Eligible User Entity. Eligible Users may not use the System in a manner that causes the Authority or Motorola to breach this Agreement; infringes upon Motorola's or another's intellectual property rights; or violates applicable law, including FCC requirements concerning the Licensed Frequencies or otherwise. Each Eligible User Entity (and not Motorola nor the Authority) shall be responsible for any claims associated with the content of data that is transmitted by such Eligible User Entity over the System, including any claims with respect to the privacy rights of a third party. Eligible Users shall cooperate with Motorola to avoid the use of the System in a manner that harms or unduly interferes with the System or related monitoring or management systems.
- 3.7.2 Eligible Users may not resell any right to use the System provided by Motorola under this Agreement to a third party, except to the extent authorized in writing by Motorola and the Authority. Nothing contained herein shall prevent the Authority from enforcing any agreements with Eligible User Entities concerning repayment, reimbursement or contribution of administrative services or User or Service Fees, other fees, and the like.
- 3.7.3 Eligible Users may not use the System in a manner that unreasonably disrupts, degrades signal quality, interferes with or harms the use by other Eligible Users. For example, Eligible Users may not use the System, unless authorized in writing by Motorola: (i) to generate excessive amounts of data traffic through the continuous, unattended streaming, downloading or uploading of videos or other files or to operate hosting services of any kind; (ii) to maintain continuous active network connections that do not involve active participation by a person; (iii) to disrupt or unreasonably interfere with the use of the System by other Eligible Users; (iv) to transmit or facilitate advertising or other commercial communications; or (v) for gaming or other recreational uses. Motorola reserves the right to take appropriate measures to protect the System from harm, compromised capacity, or degradation in System performance.
- 3.7.4 With the approval of the Authority, Motorola may institute terms of service governing the use of the System. Motorola reserves the right, consistent with the needs of public safety, without notice or limitation and without violating its Service Level commitments, to limit data throughput speeds or quantities or to suspend service if Motorola, in its reasonable discretion, determines action is necessary to protect the System from serious harm or degradation. Before suspending service of an Eligible User, Motorola shall notify the Authority of the need for suspension and will suspend the Eligible User only at the direction of the Authority; the Authority will promptly provide its direction to Motorola. Motorola shall restore service at the direction of the Authority once the issue has been resolved. Motorola may take reasonable actions to comply with applicable laws and governmental or court orders. In the event that an Eligible User violates the terms of service contained herein, but there is no imminent threat of serious harm or degradation, then Motorola shall give the Authority written notice of such violation and the Authority will determine and advise Motorola of the remedial action to take.
- 3.7.5 The term "roaming" typically refers to coverage and use on another's network. If roaming services are available to Eligible Users from a commercial carrier, those services are subject to roaming agreements between Eligible Users and the commercial carrier, and those agreements may change from time to time. Motorola is not responsible for roaming activities, including services, billing or coverage, all of which are dependent upon various factors

outside the control of Motorola. At the request of the Authority, Motorola will provide reasonable technical assistance to the Authority concerning roaming services from that commercial carrier.

- 3.8 SYSTEM INFORMATION. Motorola shall create an electronic form which will be accessible at a website and will be accompanied by instructions for submission to Motorola's Network Operations Center. The Authority will make Eligible Users aware of the form's existence and its location such that System deficiencies (performance and coverage) can be identified and tracked by both the Authority and Motorola. Motorola will periodically accumulate the reported data at intervals and in a format to be jointly determined by the Parties. The Parties will jointly analyze whether the apparent System deficiencies are the result of operational problems that are the responsibility of Motorola, such as defects in the LTE Equipment or Software, or the result of devices, inadequate backhaul or other issues with the Facilities, or the System coverage. If the problem is not the responsibility of Motorola and If requested by the Authority, Motorola will propose possible solutions to resolve these issues as Options under Section 3.14 below (other than the suggestion to enter into a roaming contract which is not covered as an Option). Examples of possible solutions are additional sites, additional or enhanced backhaul, additional equipment such as bi-directional amplification, replacement of the device, or roaming as described above.
- 3.9 CHANGES. Either Party may request changes to the work within the general scope of this Agreement. Each Party upon receipt of a change request from the other Party will promptly evaluate and negotiate in good faith the change request. However, neither Party is obligated to perform a requested change unless both Parties agree to the requested change and execute a written change order. Certain provisions below indicate under what circumstances a Party must agree to a requested change.
- 3.9.1 If a requested change during the Deployment Stage causes an increase or decrease in the time required to perform an obligation under this Agreement and the requested change can reasonably be performed within the BTOP Grant period, the change order will reflect an equitable adjustment of the Performance Schedule or other time commitment under this Agreement. If a requested change during the Operation Stage causes an increase or decrease in the time required to perform this Agreement, the change order will reflect an equitable adjustment of the Performance Schedule or other time commitment under this Agreement.
- 3.9.2 If Motorola requests a change to improve the System within the defined project scope that in its reasonable opinion is: (i) necessary for Motorola to satisfy one or more of its Service Level commitments or the BTOP Grant requirements; or (ii) appropriate to deploy, operate, manage, maintain or improve the System (e.g., coverage, capacity, stability, equipment standardization, user accessibility, functionality, security, software refresh or upgrade, and the like), then Motorola will consult with the Authority's Project Manager to reach agreement on the requested change and will make the change at no additional cost to the Authority. All changes described in this Section 3.9.2 require Authority approval, which will not be unreasonably withheld or delayed. In such cases, the Authority's Project Manager will decide whether the proposed change is major or minor. If minor, the Authority's Project Manager will decide whether to authorize the change. If major, the Authority's Project Manager will calendar the requested change for review and vote at the next scheduled Authority meeting, and will notify Motorola of the date and time of the meeting. If the Authority does not approve the change, then Motorola will be excused from any performance obligations under this Agreement which cannot be fulfilled without the requested change. The Options under Section 3.14 are not subject to this paragraph. The Authority's exercise of an Option under Section 3.14 below will not be treated as a change covered by this Section 3.9.2.

- 3.9.3 If the Authority requests a change within the defined project scope that will cause Motorola to incur additional costs, then Motorola will consult with the Authority's Project Manager to determine whether the requested change is necessary to be made for Motorola to satisfy its Service Level commitments or the BTOP Grant requirements; and if so, then Motorola must agree to the requested change. If after review, the Parties conclude the requested change is not necessary to satisfy Motorola's Service Level commitments or the BTOP Grant requirements, then Motorola (i) may agree to the requested change, (ii) may reject the requested change, or (iii) may conditionally agree to the requested change if the Authority agrees to pay a quoted price for the changed work. Concerning this last choice, the Authority will either agree to pay the quoted price, in which case the Parties will execute the change order which will include the Authority's agreement to pay the quoted price, or the Authority will reject the quoted price, in which case the change request from the Authority is deemed withdrawn. In such cases the Authority's Project Manager will calendar any proposed major decision for review and vote at the next scheduled Authority meeting, and will notify Motorola of the date and time of the meeting. With respect to a requested change that has been accepted by the Authority, unless the change order provides to the contrary, payment of the quoted price will be due within thirty (30) days of the Authority's receipt of an accurate and complete invoice which will be sent promptly after the execution of the change order. Depending on the nature and scope of the requested change, the Parties may agree to payment milestones rather than a single invoice.
- 3.9.4 In addition to the more general language of Section 10.2 concerning Regulatory Changes, if the Authority requests a change within the defined project scope that is due to a Regulatory Change that becomes effective after April 30, 2013, then Motorola will consult with the Authority (through its Project Manager) to determine what specific changes must be made to comply with the Regulatory Changes. Once those specific changes are determined, Motorola will provide to the Authority a binding proposal that describes the equipment, software or statement of work that will be needed as a result of the changes; the performance schedule to perform the work; the Contract Price (as defined in Section 5.1); the payment and other terms of sale for the proposed equipment, software or statement of work; and any other factors that are relevant to the proposal. If necessary, the Authority's Project Manager will calendar the proposal for review and vote at the next scheduled Authority meeting, and will notify Motorola of the date and time of the meeting. If the Authority agrees to the proposal, then Motorola must agree to the requested changes and this Agreement will be formally amended to reflect the Authority's agreement to the proposal. If the Authority does not agree to the proposal, then the more general provisions of Section 10.2 will apply.
- 3.9.5 On January 5, 2012, the Authority provided to Motorola a preliminary plan and status report on the Central Backhaul Transport System(s) to be included in Exhibits A and B. This information will be the basis for the System design. Subject to the change order process in Section 3.9, the Authority may also provide additional backhaul to the Facilities to enhance the capabilities of the System. If agreed, any change or enhancement to the backhaul after equipment orders have been placed, including any System redesign (including engineering) or reconfiguration (including equipment changes), will be at no cost to Motorola and any cost will be paid by the Authority.
- 3.10 SOFTWARE. While Motorola is the owner of the System, it is not necessary for Motorola and the Authority (or other Eligible Users) to enter into a Software License Agreement concerning the System. However, if at any time and for any reason the Authority acquires ownership or operation of the System, Motorola promises to license use of its Software to the Authority in accordance with the following provisions.
- 3.10.1 In the event of a transfer of the System to the Authority, any Motorola Software, including subsequent releases, shall be licensed in accordance with a Software License Agreement

which is substantially in the form attached hereto as Exhibit L, with such modifications as may be necessary to conform the Agreement to the actual terms of the transfer or that are existing at the time,. There shall be no license fees payable for the use of the existing version of the Software at the time of transfer, it being understood that the value of the Software is included in the consideration for this Agreement. The Authority shall abide by all of the terms and restrictions of the Software License Agreement, as modified in accordance with this section.

3.10.2 Any Non-Motorola Software is licensed in accordance with the standard license, terms, and restrictions of the copyright owner on the effective date that the Authority acquires ownership or operation of the System unless the copyright owner has granted to Motorola the right to sublicense the Non-Motorola Software pursuant to the Software License Agreement, in which case it applies and the copyright owner will have all of Licensor's rights and protections under the Software License Agreement concerning its Non-Motorola Software. Motorola makes no representations or warranties of any kind regarding Non-Motorola Software but agrees to use reasonable efforts to obtain for the Authority the applicable license agreement for Non-Motorola Software. Non-Motorola Software may include Open Source Software. All Open Source Software is licensed in accordance with the provisions of the standard license of the copyright owner and not the Software License Agreement. The Authority hereby accepts and agrees to abide by all of the terms and restrictions of the software license agreement applicable to Non-Motorola Software. There shall be no license fee payable for the use of the existing version of any Non-Motorola Software in connection with the operation of the System following a transfer.

3.11 TERM. Unless terminated by mutual agreement of the Parties or in accordance with other provisions of this Agreement, or extended by mutual agreement of the Parties, the term of this Agreement begins on the Effective Date and continues until, the date which is ten (10) full calendar years after the System Readiness date. The Parties by mutual agreement may extend the term.

3.12 OPERATION AND MAINTENANCE SERVICE. During the term of this Agreement, Motorola will provide at its expense the mandatory operation, maintenance and support services for the System in accordance with the Operation Stage and Maintenance Services Statement of Work (Exhibit M). Unless otherwise agreed by the Parties in writing, the terms and conditions applicable to all maintenance and support services will be Motorola's standard Service Terms and Conditions included as part of Exhibit M, subject to Motorola's duty to satisfy its Service Level commitments while it is the owner and operator of the System. Motorola shall further be responsible for all costs associated with its Network Operations Center. So long as Motorola is the owner and operator of the System, it will maintain at its expense an inventory of spare parts and spare equipment that in Motorola's reasonable judgment is sufficient for it to satisfy its Service Level commitments. Motorola has no duty to provide a System Refresh. If a minimum of 35,000 Subscriber Devices use the System, the Parties will discuss the need, appropriateness, effects, FCC compliance issues, price and timing of a possible System Refresh.

3.12.1 Unless the Operation Stage and Maintenance Services Statement of Work (Exhibit M) explicitly states to the contrary or there has been a change in the scope of work pursuant to Section 3.9.3, Motorola's operation, maintenance and support duties extend only to the System that Motorola delivers and installs under this Agreement and does not extend to: (i) any other equipment, software, subsystem, or system (including other equipment, software, subsystems, or systems installed at a shared Site, or (ii) maintenance and support of the Sites or Facilities (whether or not Motorola provides or finances Site or Facility improvements such as the Site Remediation Work or pays for the Site Remediation Costs), provided, however, that Motorola shall be responsible for repairs to any improvements to the Sites or the Facilities that are the result of defective workmanship or materials by Motorola or its sub-contractors if a claim is presented to Motorola within ninety (90) days from the date of the

improvement or if the defect is latent, then within ninety (90) days from the date of discovery or within one (1) year from the date of the improvement, whichever first occurs. If the Authority purchases from Motorola additional equipment to be installed at additional sites, the Authority must maintain those assets on the same platform and software version level as the System. Maintenance and support of those assets are not covered by this Agreement unless there has been a change in scope pursuant to Section 3.9.3.

3.12.2 The Authority may request a quote for and purchase from Motorola spare parts; spare or additional equipment or software; or installation, maintenance and support, or other services for equipment or software that is not part of the System, by means of a separate agreement that is mutually executed by Motorola and the Eligible User Entity. Any separate agreement under this paragraph may not contain a credit or other discount on the User Fees payable by the Authority to Motorola.

3.13 **SUBSTITUTIONS.** At no additional cost to the Authority, Motorola may substitute any Equipment, Software, or services to be provided by Motorola under this Agreement, if the substitute meets or exceeds the Specifications, is of equivalent or better quality to what is being substituted, and does not degrade the Service Levels in any material respect. Motorola will document and give advance notice of any such substitution to the Authority.

3.14 **OPTIONS.**

3.14.1 Motorola has identified in Exhibit E, Options, the products and pricing that applies if the Authority wishes to purchase at its cost additional LTE equipment to be installed by Motorola at additional sites in order to enlarge the System. Further, the Authority may request and Motorola may propose from time to time additional equipment and software or services to be added later to this Agreement which are or become foreseeable changes to the System but are not presently under contract. (All of these identified or future added options are referred to as "Options".) If the Authority wishes to purchase any Option, the Parties will amend this Agreement to reflect the specific details of the purchase and sale.

If the Parties so desire, they can mutually develop and agree upon an Equipment List, Statement of Work, performance schedule, payment milestone schedule and invoicing procedures, or other related documents that more specifically describe the equipment, work and deliverables covered by an Option.

Because of the BTOP Grant requirement that the System must be completed within three (3) years of the August 1, 2010 BTOP Grant date, Final Project Readiness may not be delayed due to exercised Options.

Because the equipment, work and deliverables to be provided by Motorola under an exercised Option are to be owned by the Authority and paid for by the Authority with its own funds rather than with BTOP Grant funds, these items will be treated as outside the purview of the BTOP Grant even though they may relate to the System. Further, if this equipment, work and deliverables are to be integrated into and operated as part of the System that is owned, operated, and maintained by Motorola, the Authority will enter into a separate contract with Motorola to maintain this equipment on the same platform and software version level and in the same manner as the similar System equipment is maintained; Motorola's standard pricing and terms of service will apply.

3.14.2 If the Authority wishes to purchase from Motorola optional services that do not become part of the System, like user training, consulting or advisory services, it will request Motorola to provide a quote. In response, Motorola will develop and provide to the Authority a quote that includes a preliminary statement of work for these requested services, pricing and payment

terms, a performance schedule, and other pertinent information. Motorola and the Authority will negotiate in good faith these optional services. The Authority may use this Agreement to purchase optional services and payment will be in accordance with Section 5.1 below. If other Eligible User Entities wish to purchase optional services, the purchase and sale agreement for these optional services will be by means of a separate agreement that is mutually executed by Motorola and the purchasing Eligible User Entity.

- 3.15 **KEY PERSONNEL.** From the Effective Date until the date of Final Project Readiness, a Party will not re-assign any of its Key Personnel enumerated in the Deployment Stage portion of the List of Motorola and Authority Key Personnel (Exhibit P) without the prior written consent of the other Party, which will not be unreasonably withheld or delayed. On and after the date of Final Project Readiness and so long as Motorola is the owner and operator of the System, a Party will not re-assign any of its Key Personnel enumerated in the Operation Stage portion of the List of Motorola and Authority Key Personnel (Exhibit P) without the prior written consent of the other Party, which will not be unreasonably withheld or delayed. The Parties acknowledge that Key Personnel changes are likely to occur during the term of this Agreement. If any of its Key Personnel become unable or unavailable to perform his or her assigned duties (e.g., job change, retirement, or relocation), the applicable Party will assign a replacement Key Person having similar qualifications and skills as the replaced Key Person, and such assignment is subject to the other Party's prior review and approval of the replacement Key Person's resume (and interview if so desired). The preceding sentence does not apply to a Key Person who temporarily is unavailable to perform his or her duties because of vacation, holidays, training, illness, short term leave, etc.
- 3.16 **DEVICES.** This Agreement does not cover the purchase of any Devices. Motorola's pricing for Devices will be independent from its pricing of User Fees.
- 3.17 **PILOT SYSTEM.** The Parties acknowledge that Motorola sold and provided to Pilot System Customer under a different contract the Pilot System, comprised of LTE RAN equipment (Motorola manufactured) at four (4) sites and a Motorola manufactured LTE core that was loaned to Pilot System Customer. The Pilot System equipment will not be used in connection with this System, but the sites at which the Pilot System LTE RAN equipment was installed are intended to be Sites for this System once the Pilot System equipment is removed. The Pilot System is not a Phase under this Agreement.

#### **SECTION 4. PERFORMANCE SCHEDULE**

The Parties will perform their respective responsibilities in accordance with the dates set forth herein and the Performance Schedule that is included in the Statement of Work, with time being of the essence. The Performance Schedule will show the target date for System Readiness of each Phase and of Final Project Readiness. By executing this Agreement, the Authority authorizes Motorola to proceed with contract performance beginning on the Effective Date. Each Party will take all reasonable actions that are consistent with its duties under this Agreement to deploy the System and each Phase of it on schedule, and neither Party may unilaterally suspend deployment of the System. Delays are covered under Section 10 below.

#### **SECTION 5. CONTRACT PRICE, USER FEES, PAYMENT AND INVOICING**

- 5.1 **CONTRACT PRICE.** The compensation to be paid by the Authority to Motorola for the Equipment, Software and services to be provided pursuant to this Agreement consists of User Fees described in Section 5.2 below. However, this Agreement provides for or may be amended to provide for Options under Section 3.14 and Exhibit E which the Authority may elect to purchase or for other goods and services (including changes under Section 3.9). In these situations, the Authority will pay to Motorola the applicable contract price ("Contract Price"), and the invoicing

and payment terms will be set forth in or with the description of the goods and services being purchased if they are different from those set forth in Section 5.3 below.

5.2 FEES. The User Fees are fixed at \$38 per month for each Device that is being used on the System until July 1, 2014 or the date which is one (1) year from Final Project Readiness, whichever occurs later. On and after the later of July 1, 2014 or the date which is one (1) year from Final Project Readiness, Motorola may change the amount of the User Fees and such changes shall be driven by changes in the commercial competitive market. Any price change will be valid for the remainder of the period ending June 30<sup>th</sup>. The Parties intend for changes in the User Fees amount to be effective on a July 1 through June 30 cycle, with Motorola providing at least ninety (90) days prior written notice to the Authority before the effective date of any change in the User Fees amount so that the Authority and Eligible User Entities may coordinate the change with their normal budgeting cycle. Commencing with January or February 2014 and January or February of each year thereafter, the Authority may request one or more meetings with Motorola so that the Parties may discuss the possible change to the User Fees amount, which might include reinstatement charges for Eligible Users who were suspended and seek reinstatement. From time to time, Motorola may offer enhanced System features for public safety which offering may include fees in addition to the User Fees ("Additional Fees"). Motorola will provide these enhanced features, only if the Authority approves and this Agreement will be amended accordingly. In addition to the Contract Price (if any) described in Section 5.1 above, the Authority will pay to Motorola all of the User Fees and Additional Fees due from all Eligible Users. User Fees for a Device type will be the same to all Eligible Users. All discounts and enhanced services will be offered on a non-discriminatory basis to all Eligible Users. Motorola is not precluded from setting User Fees on a usage basis or from setting User Fees for certain Device types differently than for other Device types. Motorola may not tie User Fees to User Device pricing.

5.3 INVOICING AND PAYMENT. Motorola will submit invoices for User Fees and, if applicable, Additional Fees, to the Authority in accordance with this Agreement, and payment is due within sixty (60) days for invoices submitted before the date which is twelve (12) months after Final Project Readiness, within forty-five (45) days of the invoice date thereafter for the next twelve (12) months, and thereafter within thirty (30) days of the invoice date. If pursuant to Section 5.2 Motorola changes the User Fees so that they are calculated on a usage, extra services, or other basis that is significantly more complicated than a fixed monthly fee, and if the Authority reasonably needs additional time to process invoices as a result of that more complicated User Fees methodology, then the Parties will negotiate in good faith an additional number of days not to exceed fifteen (15). Motorola shall cooperate with Authority to pursue collection of the overdue User Fees and other charges. With respect to Eligible Users who have not paid User Fees or any other fees and charges when due to the Authority, upon receipt of written notice of account suspension, Motorola shall suspend the access of such Eligible User to the System as of the date set forth in the notice. Motorola shall further reinstate the access of such Eligible User upon written notice of account reinstatement from the Authority. Motorola and the Authority shall agree on a standard format for all invoices which provides sufficient detail to confirm the proper calculation of all User Fees and other charges.

5.3.1 The Authority will make payments to Motorola when due in the form of a wire transfer, check, or cashier's check from a U.S. financial institution. Overdue invoices will bear simple interest at the maximum allowable rate.

5.3.2 For reference, the Federal Tax Identification Number for Motorola Solutions, Inc. is 36-1115800.



- 5.3.3 Invoices for User Fees, will be sent to the Authority at the following address: 4985 Broder Rd., Dublin CA, 94568. The Authority may change this invoice address upon thirty (30) days prior written notice to Motorola.
- 5.3.4 For sales or use tax purposes, the Authority and Motorola will jointly develop an accurate list of cities which are the ultimate destinations where the Equipment will be delivered to the Sites, their applicable sales or use tax rates, and the allocation of Equipment to each city.
- 5.3.5 The Authority acknowledges that sales or use tax, federal excise tax, federal universal service tax, and other governmental taxes, charges, assessments or fees may apply to the Contract Price, User Fees, Additional Fees, and any other charges paid to Motorola, and the Authority will collect and remit taxes applicable to such charges. The Authority will identify, claim, and provide to Motorola proper documentation for any applicable tax exemption that the Authority believes may apply. (See Section 16.1 regarding taxes.)

#### 5.4 FREIGHT, TITLE, AND RISK OF LOSS.

- 5.4.1 Motorola will pay for all freight charges to ship Equipment to Sites.
- 5.4.2 Until the transfer described in Section 5.5 occurs, as between Motorola and the Authority, Motorola owns and retains title to the System and any improvements to Sites or Facilities that are funded with BTOP Grant funds or that result from Site Remediation Work which is paid by Motorola. Except as provided in the preceding sentence, as between Motorola and the Authority, the Authority will retain ownership of the Facilities and any improvements to those Facilities funded by the Authority or an Eligible User.
- 5.4.3 Motorola will retain risk of loss concerning the Equipment comprising the System unless such loss is caused by an Authority default under this Agreement, or by the negligence or intentional misconduct of the Authority, its employees or agents; in these latter instances, the Authority has risk of loss concerning the Equipment. If loss of Equipment is caused by a Site Owner, or their employees or agents, the Authority will cooperate with Motorola in holding the Site Owner responsible. The Authority has risk of loss concerning improvements to Sites or Facilities, regardless of whether those improvements are funded as a Site Remediation Cost. Concerning any Options, title and risk of loss to equipment sold by Motorola to the Authority will pass on delivery.

- 5.5 TRANSFER OF TITLE. Ten full calendar years after the System Readiness date, or at such earlier time as agreed to by the Parties, Motorola will transfer without warranty by Motorola to the Authority, or an entity designated by the Authority, all right, title and interest in the System and all System Equipment which Motorola owns, including any improvements to Sites (subject to any rights of Site Owners or their lessors under a Site Access and Use Agreement, which rights will be superior to those of the Authority under this Section 5.5) or Facilities, whether or not funded with BTOP Grant funds. Software will be licensed to the transferee. The transfer shall occur, at no charge to transferee (other than the transferee will pay any applicable taxes on the transfer of the transferred assets). The transfer is subject to the following conditions: (i) the BTOP Grant period has expired; (ii) Motorola receives the full benefit of depreciation of all System assets; (iii) the transferee expressly agrees to fulfill the terms and conditions of the BTOP Grant relating to the System which are still applicable at the time of transfer and which are fully disclosed to the transferee; (iv) the NTIA gives its written approval of and contemporaneously with the transfer; (v) the transferee and the Authority expressly agree to assume all of Motorola's obligations concerning the transferred assets and agrees to indemnify, defend and hold harmless Motorola, its subcontractors, and their employees, agents, and officers from any and all liability, expense, judgment, suit, cause of action, or demand concerning or related to the transferred assets, the

Sites or Facilities, or the operation and maintenance of the System which arises following the transfer (Motorola shall remain liable for all pre-transfer liabilities); and (vi) Motorola and the Authority must each in good faith make representations and warranties to the other that there are no material and adverse liabilities, known defects related to the Systems, or any material financial, tax, risk, or operational effects that would be caused by the transfer. The Parties agree to negotiate the specific details of the transfer agreement to fully comply with any applicable terms and conditions of the BTOP Grant.

## **SECTION 6. SITES, FACILITIES, AND SITE CONDITIONS**

6.1 ACCESS TO AND USE OF SITES AND FACILITIES. The Specifications (Exhibit B) identify the Sites and Facilities that Motorola intends to access and use in the Deployment Stage and continuously throughout the term of this Agreement. Sections 3.3, 3.4, and 3.5 above describes the Parties' respective responsibilities for obtaining access to Sites and for Site Remediation Work and Site Remediation Costs necessary to make Sites in "installation ready" condition. In addition, the Authority at its cost and expense will provide or procure during the term of this Agreement, and will maintain and support or cause to be maintained and supported in "installation ready" condition the Facilities specified in Exhibit B. All Facilities will be available for Motorola's continuous, uninterrupted use at no cost in connection with the System, including all proper and necessary operation, management, use and maintenance.

6.1.1 The term "installation ready" means (i) the Site is accessible, available, ready and suitable for Motorola to install the intended Equipment or Software at the Site consistent with Motorola's design requirements, and (ii) the Facilities are accessible, available, ready and suitable for Motorola to use as part of or in connection with the System consistent with the System's design requirements.

For Sites, such design requirements are addressed in the Specifications and include but are not limited to: (i) Site access by authorized personnel of Motorola and its subcontractors; (ii) the Site is accessible by vehicle; (iii) the Site has available tower or other space to install the Equipment or Software, and for Motorola to perform its related installation, operation, maintenance and other services; (iv) the Site has available, adequate and accessible electrical power (including electrical outlets, distribution, equipment and connections); (v) if applicable, the Site has adequate telephone or other communication lines (including modem access and adequate interfacing and networking capabilities); (vi) the Site has, if applicable, adequate wind and ice loading capabilities; (vii) the Site has adequate air conditioning if the Site is inside a building requiring air conditioning for the proper operation, use and maintenance of the Equipment or Software; (viii) the Site is in full compliance with all necessary construction and building permits, zoning requirements or variances, licenses, and any other governmental (including FCC and FAA) approvals, and with all environmental laws and regulations; (ix) the Site has structural integrity and is in full compliance with all applicable and reasonable safety and security requirements, including grounding and applicable industry and OSHA standards; and (x) the Site has other physical characteristics as may be reasonably requested by Motorola, including compliant with R-56 standards.

In interpreting clause (viii) above, the Parties acknowledge Special Award Condition number 12 of the BTOP Grant Award Documents (Exhibit T), which in pertinent part requires demonstrated compliance with the National Historic Preservation Act of 1966 and with all other applicable federal, state, and local environmental laws and regulations, and agree that a Site must be in demonstrable compliance with Special Award Condition number 12 to be installation ready. Further, Special Award Condition number 12 requires Motorola to complete any required consultations with the State Historic Preservation Office ("SHPO") and the appropriate federally recognized Native American tribes and to comply with all conditions placed on the project as the result of the consultation processes. Further, Special Award

Condition number 12 requires Motorola to notify the NTIA within 24 hours of receipt of any notices of foreclosure; notices for continuing consultation received from the SHPO, Tribal Historic Preservation Officer, USFWS, or other consulting party; or notices of noncompliance received from consulting authorities or regulatory agencies. The Authority agrees to provide promptly to Motorola any such notices that it receives.

For Facilities, such design requirements are addressed in the Specifications.

- 6.1.2 Sites for which Motorola has or intends to enter into a Site Access and Use Agreement and Facilities designated for use by Motorola under this Agreement will be “qualified” by the process described as follows. Throughout the term of this Agreement, the Authority, with respect to Facilities, or the owner or controller of the Site (“Site Owner”) with respect to a particular Site(s), will provide to Motorola all available records, structural, environmental or other analytical reports (including R56 compliance reports), photographs, drawings, certifications, and other information in the Site Owner’s or the Authority’s possession concerning each Site or Facility, and concerning the issue of whether the Site or Facility is in installation ready condition. If the Site or Facility is not owned or leased by the Authority but is being provided by some other third party with whom the Authority has a relationship, then the Authority will provide such information to Motorola if it is available to the Authority.

Before installing the Equipment or Software at a Site, Motorola will inspect the Site and conduct analysis, testing, and other due diligence activities concerning the Site as Motorola deems necessary or proper, and will provide a written report that advises the Site Owner and Authority of any apparent deficiencies or non-conformities with the requirements of this Section. Before using with or connecting the System to any Facility, Motorola will conduct analysis and other due diligence activities concerning the Facility as Motorola deems necessary or proper, and will provide a written report that advises the Authority of any apparent deficiencies or non-conformities with the requirements of this Section. Because the Authority is responsible for Facilities and access to them, the reports and advice given by Motorola to the Authority concerning the Sites and Facilities will be without any warranty from Motorola or any liability except as otherwise provided in Section 3.5.1(i) on the part of Motorola. The Authority may at its expense employ other consultants, contractors or experts to advise it on any Site or Facility.

- 6.1.3 A Site or Facility that has no uncorrected deficiencies or non-conformances is “qualified” for Motorola’s use in connection with the System. After a Site or Facility is qualified, the Authority will not modify and will not authorize another party to modify that Site or Facility (including adding to or changing equipment installed at or connected to the Site or Facility) that would negatively affect the System without first receiving Motorola’s prior written consent which will not be unreasonably withheld or delayed.

- 6.2 Motorola reserves the right, but has no duty, to provide at its own cost, Sites or Facilities or substitute Sites or Facilities, if in its reasonable judgment such action: (i) will enable it to satisfy one or more of its Service Level commitments, or (ii) is appropriate to deploy, operate, manage, maintain or improve the System (e.g. coverage, capacity, stability, user accessibility, functionality, security, and the like).

- 6.3 ACCESS TO AND INSPECTION OF SITES. To the extent permitted by the Site Owners, the Authority shall have access to Sites as may be reasonable or necessary (i) for the performance of its duties under this Agreement and the PSST Lease, or (ii) for it to observe and inspect Motorola’s operation, management and maintenance of the System. The Authority’s access rights will be subject to Motorola’s or the Site Owner’s reasonable rights, restrictions or rules concerning Site security and access, including the provisions of the applicable Site Access and Use Agreement. Motorola shall cooperate with the Authority to provide regulatory authorities and

parties with contractual rights (such as the PSST) access and inspection rights to Sites on the same terms as the Authority.

## **SECTION 7. TRAINING**

No training to be provided by Motorola has been identified or offered at this time other than as described in Training (Exhibit U). If the Authority desires other training, then it will be addressed as an Option under Section 3.14.2.

## **SECTION 8. SYSTEM READINESS**

8.1 **COMMENCEMENT OF TESTING.** Motorola, in consultation with the Authority, will determine what tests are appropriate for the System (by Phase) and when those tests are to be performed. Motorola agrees the System testing will conform to industry standards or standards then defined by the FCC and the results of the testing must confirm the System operates in compliance with the Specifications, including in compliance with applicable FCC requirements that exist as of April 30, 2013. The Authority may observe all testing and have access to all testing results pertaining to then applicable FCC requirements, subject to the protections of Section 15. The Parties will consult upon a test plan which will be followed by Motorola to demonstrate to the Authority (and its Technical Advisory Committee) that the applicable Phase of the System is ready for use. Motorola will provide the Authority with its test plan at least sixty (60) days prior to any testing date. The Authority will provide Motorola any comments on the proposed test plan not more than thirty (30) days after receipt. If Motorola and the Authority do not concur that the test plan conforms to the standards described in this paragraph, the Authority reserves its rights to dispute the test results and does not waive any claim to the contrary. Motorola will provide to the Authority prior notice before the demonstration of readiness is to occur. The prior notice will be at least ten (10) days for the first Phase and at least five (5) days for subsequent Phases.

8.2 **SYSTEM READINESS.** System Readiness will occur on a Phase-by-Phase basis when Motorola, in concurrence with the Authority, demonstrates to the Authority's reasonable satisfaction that the applicable Phase of the System is ready for use in compliance with the terms of this Agreement. Although FCC licensing matters and compliance with FCC requirements are the responsibility of the Authority, System Readiness will include evidence that the System complies with FCC requirements as they exist when testing described in Section 8.1 commences. Upon that demonstration, Motorola will memorialize this event by promptly executing a System Readiness Certificate by Phase (Exhibit H) and delivering a copy to the Authority. Minor omissions or variances in the Phase of the System that do not materially impair the operation of the Phase of the System will not postpone System Readiness for that particular Phase, but will be corrected according to a punch list schedule developed by Motorola which is mutually agreed upon by the Authority and Motorola. The concurrence by the Authority on a System Readiness Certificate (as evidenced by execution) will not be unreasonably delayed or withheld. In the event that the Authority does not concur that System Readiness has occurred, the Authority shall provide a notice of deficiency in writing to Motorola setting forth the deficiency in reasonable detail. The Parties will negotiate in good faith regarding the steps necessary and timelines for the correction of a deficiency or any dispute as to whether a deficiency exists. In the event that the Parties cannot agree, then either Party may exercise the Dispute resolution process described in Section 11 below.

8.3 **FINAL PROJECT READINESS.** When Final Project Readiness occurs, Motorola will promptly memorialize this final Deployment Stage event by so indicating on the appropriate Readiness certificate. Final Project Readiness for the Deployment Phase shall include the correction of all minor omissions or variances from prior Phases and shall not be subject to a punch list schedule. Any dispute regarding the Final Project Readiness shall be handled in the same manner as Section 8.2.

## **SECTION 9. REPRESENTATIONS AND WARRANTIES**

- 9.1 **RELATION TO SERVICE LEVELS.** During the term of this Agreement, Motorola promises to meet or exceed the Service Levels as defined in Section 2.28 and as set forth in Exhibit I, subject to: (i) Motorola's excused non-performance due to Force Majeure events; (ii) Motorola's excused non-performance due to the Authority's failure to perform its contractual duties, including the failure to provide the Facilities and Licensed Frequencies, if that failure causes or materially contributes to Motorola's non-performance; or (iii) Motorola's excused non-performance at any individual Site due to the failure by a Site Owner to provide a Site, or to perform its contractual duties under any Site Access and Use Agreement if its failure causes or materially contributes to Motorola's non-performance, provided, however, that Motorola will not be excused from its Service Level commitments as to other Sites. Because Motorola is the owner of the System and has made Service Level commitments as set forth in Exhibit I, Motorola makes no representation or warranty concerning the System, Equipment or Software except as expressly set forth below.
- 9.2 **SYSTEM FUNCTIONALITY.** Motorola represents that, when System Readiness for a Phase occurs, that Phase of the System will comply with the Specifications applicable to Motorola's obligations in all material respects other than punch list items, which punch list items will be remedied in accordance with the schedule (If punch list items exist). Upon the date which is thirty (30) days after System Readiness of the Phase, this System functionality representation is fulfilled. Motorola is not responsible for System performance deficiencies that are caused by ancillary equipment (other than the Equipment) or Devices which are not furnished by Motorola.
- 9.3 **DISCLAIMER OF WARRANTIES.** THE SYSTEM SHALL COMPLY IN ALL RESPECTS TO THE SERVICE LEVEL COMMITMENTS MADE BY MOTOROLA AS PROVIDED IN SECTION 9.1. OTHER THAN THE SERVICE LEVEL COMMITMENTS MADE BY MOTOROLA IN SECTION 9.1 AND THE COMPLETION OF THE SYSTEM IN ACCORDANCE WITH SECTION 9.2, MOTOROLA MAKES NO WARRANTY CONCERNING THE SYSTEM OR ITS PERFORMANCE AND MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **SECTION 10. DELAYS AND REGULATORY CHANGES**

- 10.1 **FORCE MAJEURE.** Except as otherwise expressed in this Agreement, neither Party will be liable for its non-performance or delayed performance if caused by a Force Majeure. During the Deployment Stage, a Party that becomes aware of a Force Majeure that will significantly delay performance will notify the other Party promptly (but in no event later than ten (10) days) after it discovers the Force Majeure. If a Force Majeure occurs, the Parties will act in good faith to mitigate the effects of the Force Majeure. If a Force Majeure occurs that prevents or delays either Party's performance for more than ninety (90) days during the Deployment Stage, then the Parties shall meet and confer to find an appropriate work-around. In addition, if Motorola becomes aware that a Force Majeure will cause it to fail to satisfy its Service Level commitments as set forth in Exhibit I, then it will notify the Authority promptly after it discovers the Force Majeure and Motorola will be excused from any penalties or liabilities otherwise owed to the Authority for failing to meet or exceed its Service Level commitments for as long as the Force Majeure remains in effect. Notwithstanding the foregoing, Motorola acknowledges that one of the primary functions of the System is to be available for public safety purposes during crisis events and Motorola shall take all reasonable steps, in consultation with the Authority, to restore full operation of the System.
- 10.2 **REGULATORY CHANGES.** This Agreement and the operation of the System are subject to the possibility of Regulatory Changes. Upon the occurrence of a Regulatory Change that would result in a material change in the operation of the System as currently contemplated, the Authority

and Motorola, at the request of either Party, shall meet and confer to discuss available options or changes necessary for the continued operation of the System upon such Regulatory Change becoming effective. If the operation of the System can be reasonably modified to comply with the Regulatory Change, then the Authority and Motorola shall agree upon an equitable adjustment in the obligations of the Parties to take into account any increase in capital expenditures or operating cost as a result of such Regulatory Change. Such equitable adjustment may take the form of (i) an allocation of cost for new or upgraded equipment, software or Site infrastructure, (ii) an increase in the User Fees, (iii) an extension of the Term (to the extent permitted by the NTIA under the BTOP Grant requirements) or time to perform, or (iv) the Parties may agree mutually to terminate the Agreement.

## **SECTION 11. DISPUTES**

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

- 11.1 **GOVERNING LAW.** This Agreement will be governed by and construed in accordance with the laws of the State of California.
- 11.2 **NEGOTIATION AND ESCALATION.** Either Party may initiate the Dispute resolution procedures by sending a notice of Dispute ("Notice of Dispute") to the other Party. The Parties will attempt to resolve the Dispute promptly through good faith negotiations initially by the Parties' respective project managers. If the Dispute has not been resolved within fifteen (15) days from the Notice of Dispute, the Parties will escalate the Dispute to the senior managers identified in Section 16.8. If the Dispute has not been resolved within thirty (30) days from the Notice of Dispute, either Party may escalate the dispute to executive officers of the Parties. If the Dispute has not been resolved within forty-five (45) days from the Notice of Dispute, then either Party may give written notice to commence mediation pursuant to Section 11.3 ("Notice of Mediation").
- 11.3 **MEDIATION.** Within thirty (30) days of receiving a Notice of Mediation, the Parties will choose an independent mediator through Judicial Arbitration and Mediation Services ("JAMS"). Neither Party may unreasonably withhold consent to the selection of a mediator. If the Parties are unable to agree upon a mediator, either Party may request that JAMS select the mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Each Party will participate in the mediation in good faith and will be represented at the mediation by a business executive with authority to settle the Dispute.
- 11.4 **LITIGATION, VENUE AND JURISDICTION.** If a Dispute remains unresolved for sixty (60) days after receipt of the Notice of Mediation, either Party may then submit the Dispute to a court of competent jurisdiction in the State of California. Each Party irrevocably agrees to submit to the exclusive jurisdiction of the courts in such state over any claim or matter arising under or in connection with this Agreement.
- 11.5 **CONFIDENTIALITY.** All communications whether written or verbal pursuant to subsections 11.2 and 11.3 will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality protections provided by applicable law, and are not admissible in any litigation. The use of these Dispute resolution procedures will not be construed under the doctrines of laches, waiver or estoppel to affect adversely the rights of either Party.

## **SECTION 12. DEFAULT AND TERMINATION**

- 12.1 **DEFAULT BY A PARTY.** If either Party fails to perform a material obligation under this Agreement, the other Party may consider the non-performing Party to be in default unless the

default is excused by an event of Force Majeure. The non-defaulting Party may assert a default claim by giving the defaulting Party a written and detailed notice of default (“Notice of Default”). In the event that the Authority fails to pay any amount when due, such as the Contract Price for any change in the scope of work under the Agreement or any Option or User Fees due and payable to Motorola, and such action is not in connection with a good faith dispute, then the Authority shall cure such non-payment within ten (10) business days of the Notice of Default, provided, however, that the Authority shall only have the benefit of such cure period twice in any given twelve month period. Concerning all other defaults, the defaulting Party will have thirty (30) days after receipt of the Notice of Default to either cure the default or, if the default is not curable within thirty (30) days, provide a written cure plan that is acceptable to the non-defaulting Party. The non-defaulting Party must act reasonably in determining whether a cure plan is acceptable and must make good faith and collaborative efforts to agree upon a mutually acceptable cure plan. The defaulting Party will begin implementing the cure plan immediately after receipt of notice by the other Party that it approves the cure plan.

- 12.2 REMEDIES FOR FAILURE TO CURE. If a defaulting Party fails to cure the default as provided above in Section 12.1, unless otherwise provided in this Agreement or unless otherwise agreed in writing, the non-defaulting Party may resort to any available legal or equitable remedy, to enforce the terms of this Agreement, including termination of any unfulfilled portion of this Agreement and recover from the defaulting Party damages recoverable under applicable law but subject to Section 14 below. Notwithstanding the preceding sentence, the Authority acknowledges that termination of the Agreement would result in undue financial hardship to Motorola because Motorola has incurred substantial costs before this Agreement was formed (including paying its Site Remediation Costs) as well as during the early part of the contract performance and Motorola will need the User Fees to be paid for the full term of the Agreement to achieve its financial objectives concerning this Agreement. Furthermore, during the Operation Stage, Motorola acknowledges that termination of the Agreement would result in financial hardship to both the Authority and the Eligible Users because of the substantial resources in terms of Sites and Facilities that have been committed to the System and would potentially create a danger to public safety as a result of the loss of the System. Based on the foregoing acknowledgements, the Parties agree that Motorola during the Operation Stage and the Authority at any time may not terminate this Agreement for an uncured default if monetary damages are an adequate remedy, provided, however, that the failure of a Party to pay a final monetary judgment for damages that has been obtained by the other Party within sixty (60) days shall be grounds for termination. The Parties further agree that even if monetary damages are not an adequate remedy, Motorola during the Operation Stage and the Authority at any time will not terminate this Agreement for the other Party’s uncured default without completing a “meet and confer” process with senior managers of both Parties for an additional time period to be mutually agreed but not less than thirty (30) days. The purpose of this meet and confer process is for the Parties to try in good faith to resolve the claimed default without terminating the Agreement so as to avoid the undue financial hardship and loss of the System described above. In the event of termination for default, the defaulting Party will promptly return to the non-defaulting Party any of its Confidential Information and the non-defaulting Party will mitigate damages.
- 12.3 POST TERMINATION COVENANT. Following a termination of this Agreement by either Party pursuant to this Section 12, the Parties shall cooperate on a plan to provide for the orderly transition of the various components of the System to their respective owners, including the Equipment, the Sites and the Facilities. The Parties will invite the Site Owners to participate in the transition planning.
- 12.4 TERMINATION. Except as expressly provided in this Agreement, by mutual agreement executed by an authorized senior officer of both Parties, or by operation of law, this Agreement may not be terminated before the expiration of the term of this Agreement. Notwithstanding the preceding sentence, the performance obligations of Motorola under this Agreement during the Deployment

Stage are contingent upon the continuing approval of the NTIA. If, during the Deployment Stage, the BTOP Grant is terminated for any reason, either Party shall have the right to terminate this Agreement by giving written notice of termination to the Authority within forty five (45) days from BTOP Grant termination. Before exercising this right, the Parties will meet and confer to discuss the Grant termination and whether there are any reasonable financing alternatives.

## **SECTION 13. INDEMNIFICATION AND INSURANCE**

- 13.1 **GENERAL INDEMNITY BY MOTOROLA.** Motorola will indemnify, defend, and hold harmless the Authority, its members who are acting in their capacity as a member of the Authority and not in their capacity as a Site Owner or in any other capacity, and their respective elected officials, directors, officers, employees, and agents from any and all Damages (as defined in Section 13.3) which may accrue against an Indemnified Party (as defined in Section 13.4) to the extent it is caused by the default, negligence or intentional misconduct of Motorola, its subcontractors, or their employees or agents, while performing their duties under this Agreement. This section sets forth the full extent of Motorola's general indemnification of the Authority from liabilities that are in any way related to Motorola's performance under this Agreement. The indemnification obligations in this section shall survive the termination or expiration of this Agreement.
- 13.2 **GENERAL INDEMNITY BY THE AUTHORITY.** The Authority will indemnify, defend, and hold harmless Motorola, its subcontractors, and their respective shareholders, directors, officers, employees, and agents from any and all Damages (as defined in Section 13.3) which may accrue against an Indemnified Party (as defined in Section 13.4) to the extent it is caused by the default, negligence or intentional misconduct of the Authority, its members who are acting in their capacity as a member of the Authority and not in their capacity as a Site Owner or in any other capacity its other contractors, or their employees or agents, while performing their duties under this Agreement. This section sets forth the full extent of the Authority's general indemnification of Motorola from liabilities that are in any way related to the Authority's performance under this Agreement. The indemnification obligations in this section shall survive the termination or expiration of this Agreement.
- 13.3 **DEFINITION OF DAMAGES.** As used herein, "Damages" shall mean all liabilities, demands, claims, actions or causes of action, judicial proceedings, assessments, levies, losses, damages, costs and expenses, in each case as awarded by a court or arbitrator, including without limitation, reasonable attorneys', accountants', investigators', and experts' fees and expenses sustained or incurred in connection with the defense of any such liability.
- 13.4 **DEFENSE OF THIRD PARTY CLAIMS.** Promptly following receipt of any written claim or legal proceeding asserted by a person or entity which is not a party to this Agreement (a "Third Party Claim"), the Party which is indemnified pursuant to this Section 13 ("Indemnified Party") shall promptly notify the Party who has an obligation to indemnify pursuant to this Section 13 ("Indemnifying Party") of such claim in writing. The Indemnifying Party shall have a period of 30 days (or such lesser period as may be required to timely respond to a Third Party Claim) following the receipt of such notice to assume the defense thereof and the Indemnifying Party shall thereafter undertake and diligently pursue the defense of the Third Party Claim. The Indemnifying Party shall reimburse the Indemnified Party for any legal expense reasonably incurred by the Indemnified Party to timely respond to a Third Party Claim prior to the Indemnifying Party assuming the defense thereof. The Indemnifying Party shall not consent to entry of judgment or enter into any settlement agreement, without the consent of the Indemnified Party, which does not include a complete and unconditional release of the Indemnified Party or which imposes injunctive or other equitable relief against the Indemnified Party. The Indemnified Party shall be entitled to participate in, but not control, the defense thereof, with counsel of their choice and at their own expense. If the Indemnifying Party fails to assume and diligently pursue the defense of such Third Party Claim, the Indemnified Party may defend against such Third Party Claim in such



manner as they may deem appropriate, including without limitation settlement thereof on such terms as the Indemnified Party may deem appropriate, and to pursue such remedies as may be available to the Indemnified Party against the Indemnifying Party.

### 13.5 PATENT AND COPYRIGHT INFRINGEMENT.

13.5.1 Motorola will defend at its expense any suit brought against the Authority to the extent it is based on a third-party claim alleging that (i) the Equipment that is manufactured by Motorola or (ii) the Motorola Software (collectively referred to in this Section 13.5. as "Product") directly infringes a United States patent or copyright ("Infringement Claim"). Motorola's duties to defend and indemnify are conditioned upon: the Authority promptly notifying Motorola in writing of the Infringement Claim; Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and the Authority providing to Motorola cooperation and, if requested by Motorola, reasonable assistance in the defense of the Infringement Claim. In addition to Motorola's obligation to defend, and subject to the same conditions, Motorola will pay all damages finally awarded against the Authority by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Motorola in settlement of an Infringement Claim.

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

13.5.3 Motorola will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the combination of the Product with any software, apparatus or device not furnished by Motorola; (b) the use of ancillary equipment or software not furnished by Motorola and that is attached to or used in connection with the Product; (c) the Product is designed or manufactured in accordance with the Authority's designs, specifications, guidelines or instructions, if the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions, if applicable; (d) a modification of the Product by a party other than Motorola; (e) use of the Product in a manner for which the Product was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by the Authority to install an enhancement release to the Motorola Software that Motorola recommends and is intended to correct the claimed infringement. In no event will Motorola's liability resulting from its indemnity obligation to the Authority extend in any way to the Authority's revenues, and any surcharge the Authority charges Eligible Users to recover the Authority's operating costs shall not be treated as revenue.

13.5.4 This Section 13.5 provides the Authority's sole and exclusive remedies and Motorola's entire liability in the event of an Infringement Claim. The Authority has no right to recover and Motorola has no obligation to provide any other or further remedies, whether under another provision of this Agreement or any other legal theory or principle, in connection with an Infringement Claim. In addition, the rights and remedies provided in this Section 13 are subject to and limited by the restrictions set forth in Section 14. However, the rights and remedies provided under this Section 13.5 do not affect the rights and duties of the Parties under other provisions of this Agreement, such as Service Level or System Loading commitments.

13.6 MOTOROLA'S INSURANCE REQUIREMENTS. During the term of this Agreement, Motorola will obtain and maintain at its expense such insurance as it (through its Insurance Department

or insurance brokers or advisors) deems to be reasonable and appropriate, subject to the minimum requirements contained in this Section 13.6. During the Deployment Stage, Motorola will obtain and maintain at its expense the insurance as provided in Motorola's Insurance Requirements attached hereto as Exhibit Q. During the Operation Stage, Motorola will maintain at its expense the insurance as provided in Motorola's Insurance Requirements attached hereto as Exhibit R. Promptly after the execution of this Agreement, Motorola will provide to the Authority a Certificate of Insurance (standard Accord form) evidencing this insurance and the renewal of such insurance on an annual basis. The Commercial General Liability policy will include as additional insureds, "The BayRICS Authority and each State and local government within the State of California that provides Sites for the BayWEB project." Insurance afforded by the additional insured blanket endorsement shall apply as primary insurance to any other insurance available to the Additional Insureds with respect to any claims arising out of this Agreement, and such insurance shall apply separately to each insured against whom claim is made or suit is brought. The insurance provided by Motorola under this Agreement is not intended to and does not limit or qualify Motorola's other obligations under this Agreement. All coverages shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the Authority's Insurance Manager. Motorola will cause its subcontractor(s) to comply with similar insurance requirements as reasonably determined by Motorola's Insurance Department in coordination with its insurance brokers and advisors.

- 13.7 THE AUTHORITY'S INSURANCE REQUIREMENTS. During the term of this Agreement and primarily to protect the Sites and Facilities from damage and lost use, the Authority will obtain and maintain at its expense insurance as provided in the Authority's Insurance Requirements (Exhibit S). Promptly after the execution of this Agreement, the Authority will provide to Motorola a Certificate of Insurance (standard Accord form) evidencing this insurance. The Commercial General Liability policy will include Motorola as an additional insured. Insurance afforded by the additional insured (blanket) endorsement shall apply as primary insurance to any other insurance available to the Additional Insureds with respect to any claims arising out of this Agreement, and such insurance shall apply separately to each insured against whom claim is made or suit is brought. The insurance provided by the Authority under this Agreement is not intended to and does not limit or qualify the Authority's other obligations under this Agreement. All coverages shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the Motorola's Insurance Manager. Notwithstanding the foregoing, the Authority may participate in a public agency risk pool, in which case the insurance coverage shall be issued by such entity. The Authority will cause its subcontractor(s) to comply with similar insurance requirements as reasonably determined by its insurance brokers and advisors.

#### **SECTION 14. LIMITATION OF LIABILITY**

- 14.1 Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise will be limited to the direct damages recoverable under law, but not to exceed the "Cap Amount." Until Final Project Readiness occurs, the "Cap Amount" means \$10,000,000, except for any damages for personal injury, death, damage to tangible property, or liability caused by Motorola's intentional torts or gross negligence, which are exclusive of the Cap Amount. After Final Project Readiness occurs the term "Cap Amount" means the sum of the User Fees plus the Additional Fees, if any, that the Authority actually paid to Motorola during the entire calendar year that precedes the year in which the claim arose, or \$10,000,000, whichever is greater, except for any damages for personal injury, death, damage to tangible property, or liability caused by Motorola's intentional torts or gross negligence, which are exclusive of the Cap Amount. Motorola will not be liable for any loss or damage to the extent caused by a Device or

software application not provided by Motorola. With respect to any damages in connection with Section 13.5, the Cap Amount shall be increased by \$5,000,000.

- 14.2 The Authority's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise will be limited to the damages recoverable under law, but not to exceed the "Cap Amount." Until Final Project Readiness occurs, the "Cap Amount" means \$10,000,000, except for any damages for personal injury, death, damage to tangible property, or liability caused by the Authority's intentional torts or gross negligence, which are exclusive of the Cap Amount. After Final Project Readiness occurs the term "Cap Amount" means the sum of the User Fees plus the Additional Fees, if any, that the Authority actually paid to Motorola during the entire calendar year that precedes the year in which the claim arose, or \$10,000,000, whichever is greater, except for any damages for personal injury, death, damage to tangible property, or liability caused by the Authority's intentional torts or gross negligence, which are exclusive of the Cap Amount.
- 14.3 ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT. This limitation of liability provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision, but it is not intended to diminish any insurance protection or benefits obtained by Motorola pursuant to Section 13.6 above or by the Authority pursuant to Section 13.7 above.

## **SECTION 15. CONFIDENTIALITY, REPORTING AND PROPRIETARY RIGHTS**

- 15.1 **CONFIDENTIAL INFORMATION.** The Parties will use reasonable efforts to avoid sharing Confidential Information with each other. However, during the term of this Agreement, the Parties may provide each other with Confidential Information. Each Party will: (i) maintain the confidentiality of the other Party's Confidential Information and not disclose it to any third party, except as authorized by the disclosing Party in writing or as required by a court of competent jurisdiction; (ii) restrict disclosure of the Confidential Information to its employees who have a "need to know" and not copy or reproduce the Confidential Information; (iii) take necessary and appropriate precautions to guard the confidentiality of the Confidential Information, including informing its employees who handle the Confidential Information that it is confidential and is not to be disclosed to others, but these precautions will be at least the same degree of care that the receiving Party applies to its own confidential information and will not be less than reasonable care; and (iv) use the Confidential Information only in furtherance of the performance of this Agreement. Confidential Information is and will at all times remain the property of the disclosing Party, and no grant of any proprietary rights in the Confidential Information is given or intended, including any express or implied license, other than the limited right of the recipient to use the Confidential Information in the manner and to the extent permitted by this Agreement. Motorola acknowledges that Authority is a public agency that is subject to document requests pursuant to the California Public Records Act and Freedom of Information Act, if applicable ("Acts"). Authority shall notify Motorola within five (5) business days of receiving a request under the Acts for any records which would constitute Motorola's Confidential Information and to the extent allowed by law, Authority shall apply exceptions to disclosure of the Motorola's Confidential Information that are applicable under the Acts. If a suit is filed with respect to any such request, Authority will cooperate in any action to intervene filed by Motorola. Notwithstanding any provision in this Agreement to the contrary, Motorola will indemnify and hold harmless Authority for any and all costs and attorney fees awarded to a prevailing plaintiff arising out of a suit brought by the prevailing plaintiff which result from Authority's actions, taken at Motorola's request, in

compliance with this provision in protecting Motorola's Confidential Information from public disclosure.

- 15.1.1 The Authority acknowledges that the BTOP Grant requires Motorola to report on various matters concerning the System and the grant funded project, and agrees that any disclosures that Motorola reasonably makes in support of its reporting or other BTOP Grant compliance responsibilities shall not be a breach of this Agreement. The Authority further acknowledges that the BTOP Grant application contains Motorola's confidential and trade secret information. Notwithstanding any provision suggesting the contrary, Motorola has no duty to provide the full BTOP Grant application to the Authority or any Eligible User Entity.
- 15.1.2 After the project kickoff but before System Readiness of the first Phase occurs, Motorola will develop the formats of reports that are intended to verify whether Motorola is satisfying its Service Level commitments (if applicable). Motorola will provide a draft of these report formats to the Authority, and the Authority will have at least three (3) weeks to provide to Motorola comments about and suggested revisions to the report formats. Motorola and the Authority will mutually agree on the final formats of the reports. After System Readiness of the first Phase and during the remainder of the term of this Agreement, Motorola will prepare and provide to the Authority actual reports using the applicable final format. Motorola will prepare and provide these reports on a quarterly basis. The Parties may, from time to time, add to or amend the report formats or the frequency with which they are provided. All of these reports and their report formats will be treated as Motorola's Confidential Information, but the Authority may use them in a manner that is consistent with the provisions of Section 15.1 and to enforce the terms of this Agreement in any mediation or court of law.
- 15.1.3 At any time(s) prior to Final Project Readiness, Motorola will notify the Authority of any known significant issues of its non-compliance with the Specifications, the reasons for the non-compliance, and the intended remediation efforts to establish or restore compliance with the Specifications. At any time(s) prior to Final Project Readiness, the Authority will notify Motorola of any known significant issues of its non-compliance with the Specifications (e.g., the Sites, Licensed Frequencies, or Facilities) or its duties concerning the Sites, Licensed Frequencies, or Facilities, the reasons for the non-compliance, and the intended remediation efforts to establish or restore compliance with the Specifications. In all cases, such notifications provided under this Section 15.1.3 are to be given within ten (10) days of discovery and are intended solely to identify System-related issues as early as possible so that they may be resolved effectively and with minimal disruption to the System, its operations, or its users; and such notifications are to be treated as the Confidential Information of the disclosing Party subject to disclosure to enforce the terms of this Agreement in any mediation or court of law. Written notifications and discussions shall be treated as settlement discussions and are not subject to admission for evidentiary purposes, provided, however, that this exclusion does not apply to underlying technical data or reports that would otherwise be discoverable.
- 15.1.4 The Authority at its expense may conduct criminal and driver history background checks of Motorola's officers, employees or agents, or those of its subcontractors, who would directly supervise or physically perform Motorola's contractual duties under this Agreement at the Authority's facilities or who would be given access to unencrypted data that is transmitted over the System or Confidential Information belonging to the Authority or another Eligible User Entity. If the Authority reasonably concludes that any such officer, employee or agent is unsuitable for working on this project as a result of the background check, it will so notify Motorola and Motorola will re-assign and remove that person from working on this project and will replace him or her promptly with another qualified person. Notwithstanding any such investigation conducted (or not conducted) by the Authority, Motorola and its subcontractors shall remain responsible for the actions of their respective agents and employees.

- 15.2 MUTUAL DEVELOPMENT OF NON-CONFIDENTIAL INFORMATION. The Parties will mutually develop, and each Party may disclose to third parties a general description of the System, the Deployment Phases, and other non-Confidential Information.
- 15.3 PRESERVATION OF MOTOROLA'S PROPRIETARY RIGHTS. Motorola, the third party manufacturer of any Equipment or Device, and the copyright owner of any Non-Motorola Software own and retain all of their respective Proprietary Rights in the Equipment, Device and Software, and nothing in this Agreement is intended to restrict their Proprietary Rights. All intellectual property developed, originated, or prepared by Motorola in connection with providing to the Authority or any other Eligible User the Equipment, Device, Software; use of those products; or related services remain vested exclusively in Motorola, and this Agreement does not grant to the Authority or any other Eligible User any shared development rights of intellectual property. Except as explicitly provided in the Software License Agreement, Motorola does not grant to the Authority or any other Eligible User, either directly or by implication, estoppel, or otherwise, any right, title or interest in Motorola's Proprietary Rights. The Authority and any other Eligible User will not modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, distribute, sublicense, sell or export the Software, or permit or encourage any third party to do so. The preceding sentence does not apply to Open Source Software which is governed by the standard license of the copyright owner.
- 15.4 PRESERVATION OF AUTHORITY'S AND ELIGIBLE USER'S PROPRIETARY RIGHTS. The Authority and other Eligible Users own and retain all of their respective intellectual property rights including in and to any data that is transmitted over the System, but Motorola may reasonably access and use such data to perform its responsibilities under this Agreement.

## **SECTION 16. GENERAL**

- 16.1 TAXES. The Contract Price (and any transfer of ownership consideration under Section 5.5), User Fees, Additional Fees, and other fees to be paid to Motorola does not include any excise, sales, lease, use, property, or other governmental taxes, charges, assessments, fees or duties (collectively as used in this Section 16.1, "tax"), all of which will be paid by the Authority except as exempt by law. If Motorola is required to remit any of these taxes (including any taxes as a result of a tax audit), Motorola will send an invoice to the Authority. The Authority will pay to Motorola the amount of the taxes (including any interest and penalties) within sixty (60) days after the date of the invoice, or if the taxes are payable in connection with the User Fees, the applicable due date of the invoice. Each Party, to the extent of their respective ownership, will be solely responsible for reporting the Equipment, Software and (and Devices) for sales tax or personal property tax purposes, and Motorola will be solely responsible for reporting taxes on its income or net worth. Notwithstanding the preceding sentence, Motorola may seek to recover from parties other than the Authority (e.g., the U.S. federal government) the amount of corporate income taxes on the sale or transfer of ownership of the System or part thereof. Notwithstanding anything contained herein, to the extent Motorola is the owner of Equipment, software, devices or improvements at the Sites, Motorola shall be responsible for the payment of all taxes involved therewith.
- 16.2 ASSIGNABILITY AND SUBCONTRACTING. Except as otherwise provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld or delayed. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of the Authority. In addition, in the event Motorola separates one or more of its businesses (each a "Separated Business"), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"),

Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Motorola and its affiliates, to the extent applicable) following the Separation Event. If there is a Separation Event, the obligations of Motorola under this Agreement will not be divided among multiple affiliates. Motorola may subcontract any of the work, but the use of any subcontractors shall not relieve Motorola of its obligations under this Agreement and Motorola shall notify the Authority of the identity of any subcontractors in advance and consult with the Authority if the Authority has concerns with respect to a particular subcontractor.

- 16.3 **WAIVER.** Failure or delay by either Party to exercise a right or power under this Agreement will not be a waiver of the right or power. For a waiver of a right or power to be effective, it must be in a writing signed by the waiving Party. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.
- 16.4 **SEVERABILITY.** If a court of competent jurisdiction renders any part of this Agreement invalid or unenforceable, that part will be severed and the remainder of this Agreement will continue in full force and effect.
- 16.5 **INDEPENDENT CONTRACTORS.** Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership or formal business organization of any kind and does not create a formal cooperative or partnership legal entity.
- 16.6 **HEADINGS AND SECTION REFERENCES.** The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.
- 16.7 **ENTIRE AGREEMENT.** This Agreement, including all Exhibits, constitutes the entire agreement of the Parties regarding the subject matter of the Agreement and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement and its Exhibits may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each Party signs that document.
- 16.8 **NOTICES.** Notices required under this Agreement to be given by one Party to the other must be in writing and either personally delivered or sent to the address shown below by a recognized courier service, such as Federal Express, UPS, or DHL and will be effective upon receipt:

<p><b>Motorola Solutions, Inc.</b>          Attention: <u>Coyle Schwab</u>          1001 Bayhill Drive, #200          San Bruno CA 94066          Cell: <u>(630) 797-0666</u>  <a href="mailto:Coyle.Schwab@motorolasolutions.com">Coyle.Schwab@motorolasolutions.com</a></p>	<p><b>The Authority</b>          Attention: _____          _____          _____          Fax: _____</p>
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In addition to the above, any Notice of Dispute that is unresolved by the respective project managers of the Parties and any Notice of Default must be provided by both hard copy and email to senior management of a Party as follows:

<p><b>Motorola Solutions, Inc.</b>          Attention: _____          _____          _____          Fax: _____</p>	<p><b>The Authority</b>          Attention: _____          _____          _____          Fax: _____</p>
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A Party may change its notice contact person or address by giving the other Party notice of the change.

16.9 COMPLIANCE WITH APPLICABLE LAWS. Each Party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement or use of the System.

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

16.11 SURVIVAL OF TERMS. The following provisions will survive the expiration or termination of this Agreement for any reason: Section 3.10 (concerning Software); if any payment obligations exist, Sections 5.1, 5.2 and 5.3 (Contract Price and Invoicing and Payment); Section 5.5 (concerning any unperformed or continuing obligations relating to the transfer); concerning any continuing obligations, Section 10.1 (Force Majeure) Section 11 (concerning Disputes); Sections 13.1, 13.2, 13.3, 13.4, and 13.5 (Indemnification); Section 14 (Limitation of Liability); and Section 15.1, 15.3, and 15.4 (concerning Confidentiality and Proprietary Rights); and all of the General provisions in Section 16.

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

<p>Motorola Solutions, Inc.</p> <p>By: _____          Name: _____          Title: _____          Date: _____</p>	<p>Bay Area Regional Interoperable          Communications System Authority</p> <p>By: _____          Name: _____          Title: _____          Date: _____</p> <p>Approved as to form:</p> <p>By: _____          General Counsel</p>
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