

APPENDIX E
TO DIR CONTRACT NUMBER DIR-SDD-2203
COMMUNICATIONS PRODUCTS AGREEMENT

This Appendix E to DIR Contract No. DIR-SDD-2203 is between Motorola Solutions, Inc. (“Motorola”), and _____ (“DIR Customer”) and both enter into this “Agreement” intending that DIR Customer will purchase and Motorola will sell the Products, as described below. Motorola and DIR Customer may be referred to individually as a “Party” and collectively as the “Parties.” For good and valuable consideration, the Parties agree as follows:

Section 1 DEFINITIONS

Capitalized terms used in this Agreement have the following meanings:

- 1.1. “Confidential Information” means, to the extent allowable under the Texas Public Information Act, 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.
- 1.2. “Contract Price” means the price for the Products in accordance with Appendix C, Pricing Index of DIR Contract number DIR-SDD-2203, excluding applicable sales or similar taxes and freight charges.
- 1.3. “Effective Date” means that date upon which the last Party executes this Agreement.
- 1.4. “Equipment” means the equipment listed in Appendix C, Pricing Index of DIR Contract number DIR-SDD-2203 that DIR Customer purchases from Motorola under this Agreement.
- 1.5. “Force Majeure” is defined in Appendix A, Section 10.C of DIR Contract number DIR-SDD-2203.
- 1.6. “Motorola Software” means Software that Motorola or its affiliated company owns.
- 1.7. “Non-Motorola Software” means Software that another party owns.
- 1.8. “Open Source Software” (also called “freeware” or “shareware”) software with either freely obtainable source code, license for modification, or permission for free distribution.
- 1.9. “Products” mean the Equipment and Software provided by Motorola under this Agreement.
- 1.10. “Proprietary Rights” means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to the Equipment and Software, including those created or produced by Motorola under this Agreement and any corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by Motorola or another party.
- 1.11. “Software” means the Motorola Software and Non-Motorola Software in object code format that is furnished with the Products.
- 1.12. “Warranty Period” means one (1) year from the date of shipment of the Products.

Section 2 SCOPE OF AGREEMENT AND TERM

2.1. **SCOPE OF WORK.** Motorola will provide and install (if applicable) the Products, and perform its other contractual responsibilities, all in accordance with DIR Contract number DIR-SDD-2203 and this Agreement. DIR Customer will perform its contractual responsibilities in accordance with DIR Contract number DIR-SDD-2203 and this Agreement.

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

2.3. **TERM.** Unless terminated in accordance with other provisions of DIR Contract number DIR-SDD-2203 or this Agreement or extended by mutual agreement of the Parties, the term of this Agreement begins on the Effective Date and continues until the expiration of the Warranty Period or three (3) years from the Effective Date, whichever occurs last.

2.4. **ADDITIONAL EQUIPMENT OR SOFTWARE.** During the Term of this Agreement, DIR Customer may order additional Equipment or Software if it is then available. Each order must refer to DIR Contract number DIR-SDD-2203 and must specify the pricing and delivery terms in accordance with Appendix C, Pricing Index of DIR Contract number DIR-SDD-2203. Notwithstanding any additional or contrary terms in the order, DIR Contract number DIR-SDD-2203 and the applicable provisions of this Agreement will govern the purchase and sale of the additional Equipment or Software. Invoicing and Payment shall be handled in accordance with Appendix A, Section 7.B and Section 7.C of DIR Contract number DIR-SDD-2203. Alternatively, DIR Customer may register with and place orders through Motorola Online ("MOL"), and DIR Contract No. DIR-SDD-2203 and this Agreement will be the "Underlying Agreements" for those MOL transactions rather than the MOL On-Line Terms and Conditions of Sale. MOL registration and other information may be found at <http://www.motorola.com/businessandgovernment/> and the MOL telephone number is (800) 814-0601.

2.5. **MAINTENANCE SERVICE.** This Agreement does not cover maintenance or support of the Products except as provided under the warranty. If DIR Customer wishes to purchase maintenance or support it shall be in accordance with Appendix C, Product Index of DIR Contract number DIR-SDD-2203 and Appendix F, Technical and Maintenance Service Terms and Conditions of DIR Contract number DIR-SDD-2203.

2.6. **MOTOROLA SOFTWARE.** Any Motorola Software, including subsequent releases, is licensed to DIR Customer solely in accordance with DIR Contract number DIR-SDD-2203 and Appendix D, Software License Agreement to DIR Contract number DIR-SDD-2203. DIR Customer hereby accepts and agrees to abide by all of the terms and restrictions of the Software License Agreement.

2.7. **NON-MOTOROLA SOFTWARE.** Any Non-Motorola Software is licensed to DIR Customer in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to Motorola the right to sublicense the Non-Motorola Software pursuant to the Software License Agreement, in which case it applies and the copyright owner will have all of Licensor's rights and protections under the Software License Agreement. Motorola makes no representations or warranties of any kind regarding Non-Motorola Software. Non-Motorola Software may include Open Source Software. All Open Source Software is licensed to DIR Customer in accordance with, and DIR Customer agrees to abide by, the provisions of the standard license of the copyright owner and not the Software License Agreement. Motorola will use commercially reasonable efforts to determine whether any Open Source Software will be provided under this Agreement; and if so, identify the Open Source Software and provide to DIR Customer a copy of the applicable standard license (or specify where that license may be found); and provide to DIR Customer a copy of the Open Source Software source code if it is publicly available without charge (although a distribution fee or a charge for related services may be applicable).

2.8. OPTIONAL EQUIPMENT OR SOFTWARE. Only Software or Services that are listed in Appendix C, Pricing Index of DIR Contract number DIR-SDD-2203 are available under the contract. DIR Contract number DIR-SDD-2203 does not include Optional Equipment or Software.

Section 3 PERFORMANCE SCHEDULE

If this Agreement includes the performance of services, the Statement of Work will describe the performance schedule.

Section 4 CONTRACT PRICE, PAYMENT, AND INVOICING

4.1. CONTRACT PRICE. The Contract Price shall be in US dollars is \$_____ and in accordance with discounts in Appendix C, Pricing Index of DIR Contract number DIR-SDD-2203.

4.2. INVOICING AND PAYMENT. Invoicing and Payment shall be handled in accordance with Section 7.B and Section 7.C. of DIR Contract number DIR-SDD-2203.

4.3 FREIGHT, TITLE, AND RISK OF LOSS. Freight, Title and Risk of Loss shall be handled in accordance with Paragraph 4.E, Shipping and Handling Fees, of DIR Contract number DIR-SDD-2203.

4.4. INVOICING AND SHIPPING ADDRESSES. Invoices will be sent to the DIR Customer at the following address:

The address which is the ultimate destination where the Equipment will be delivered to DIR Customer is:

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

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

Section 5 SITES AND SITE CONDITIONS

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

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

Section 6 ACCEPTANCE

Acceptance of the Products will occur upon successful completion of acceptance verification or if provided for in a Statement of Work, testing. Notwithstanding the preceding sentence, DIR Customer's use of the Products for their operational purposes will constitute acceptance.

Section 7 REPRESENTATIONS AND WARRANTIES

7.1. **EQUIPMENT WARRANTY.** During the Warranty Period, Motorola warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship.

7.2. **MOTOROLA SOFTWARE WARRANTY.** Unless otherwise stated in the Software License Agreement, during the Warranty Period, Motorola warrants the Motorola Software in accordance with the terms of the Software License Agreement and the provisions of this Section that are applicable to the Motorola Software. TO THE EXTENT, IF ANY, THAT THERE IS A SEPARATE LICENSE AGREEMENT PACKAGED WITH, OR PROVIDED ELECTRONICALLY WITH, A PARTICULAR PRODUCT THAT BECOMES EFFECTIVE ON AN ACT OF ACCEPTANCE BY THE END USER, THEN THAT AGREEMENT SUPERCEDES THIS SOFTWARE LICENSE AGREEMENT AS TO THE END USER OF EACH SUCH PRODUCT.

7.3. **EXCLUSIONS TO EQUIPMENT AND MOTOROLA SOFTWARE WARRANTIES.** These warranties do not apply to: (i) defects or damage resulting from: use of the Equipment or Motorola Software in other than its normal, customary, and authorized manner; accident, liquids, neglect, or acts of God; testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Motorola; DIR Customer's failure to comply with all applicable industry and OSHA standards; (ii) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (iii) Equipment that has had the serial number removed or made illegible; (iv) batteries (because they carry their own separate limited warranty) or consumables; (v) freight costs to ship Equipment to the repair depot; (vi) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (vii) normal or customary wear and tear.

7.4. **WARRANTY CLAIMS.** To assert a warranty claim, DIR Customer must notify Motorola in writing of the claim before the expiration of the Warranty Period. Upon receipt of this notice, Motorola will investigate the warranty claim. If this investigation confirms a valid warranty claim, Motorola will (at its option and at no additional charge to DIR Customer) repair the defective Equipment or Motorola Software, replace it with the same or equivalent product, or refund the price of the defective Equipment or Motorola Software. That action will be the full extent of Motorola's liability for the warranty claim. If this investigation indicates the warranty claim is not valid, then Motorola may invoice DIR Customer for responding to the claim on a time and materials basis using Motorola's then current labor rates in accordance with Appendix C of the DIR Contract DIR-SDD-2203. Repaired or replaced product is warranted for the balance of the original applicable Warranty Period. All replaced products or parts will become the property of Motorola.

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

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

Section 8 DELAYS

Neither Party will be liable for its non-performance or delayed performance if caused by a Force Majeure, as defined in Appendix A, Section 10.C of DIR Contract number DIR-SDD-2203.

Section 9 DISPUTES

Disputes shall be handled in accordance with Appendix A, Section 10.A of DIR Contract number DIR-SDD-2203.

Section 10 DEFAULT AND TERMINATION

Default and Termination shall be handled in accordance with Appendix A, Section 10.B of DIR Contract DIR-SDD-2203.

Section 11 PATENT AND COPYRIGHT INFRINGEMENT INDEMNIFICATION

Patent and Copyright Infringement shall be handled in accordance with Section 9.A.3 of DIR Contract number DIR-SDD-2203.

Section 12 LIMITATION OF LIABILITY

Limitation of Liability shall be handled in accordance with Appendix A, Section 9.K of DIR Contract number DIR-SDD-2203.

Section 13 CONFIDENTIALITY AND PROPRIETARY RIGHTS

13.1. CONFIDENTIAL INFORMATION.

To the extent allowed under the Texas Public Information Act during the term of DIR Contract number DIR-SDD-2203 and this Agreement, the Parties may provide each other with Confidential Information. To the extent allowable by the Texas Public Information Act, each Party will: 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; restrict disclosure of the Confidential Information to its employees who have a "need to know" and not copy or reproduce the Confidential Information; 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 use the such 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 allowed under the Texas Public Information Act permitted by DIR Contract number DIR-SDD-2203 and this Agreement.

13.2. PRESERVATION OF MOTOROLA'S PROPRIETARY RIGHTS.

Motorola, the third party manufacturer of any Equipment, and the copyright owner of any Non-Motorola Software own and retain all of their respective Proprietary Rights in the Equipment and Software, and nothing in this Agreement is intended to restrict their Proprietary Rights. All intellectual property developed, originated, or prepared by Motorola in connection with providing to DIR Customer the Equipment, Software, or related services remain vested exclusively in Motorola, and this Agreement does not grant to DIR Customer any shared development rights of intellectual property. Except as explicitly provided in the Software License Agreement, Motorola does not grant to DIR Customer, either directly or by implication, estoppel, or otherwise, any right, title or interest in Motorola's Proprietary Rights. DIR Customer 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, or export the Software, or permit or encourage any third party to do so. The preceding sentence does not apply to Open Source Software which is governed by the standard license of the copyright owner.

Section 14 GENERAL

14.1. **TAXES.** Taxes will be handled in accordance with Appendix A, Section 4.F of DIR Contract number DIR-SDD-2203.

14.2. **ASSIGNABILITY AND SUBCONTRACTING.** Assignment will be handled in accordance with Appendix A, Section 4.D of DIR Contract number DIR-SDD-2203.

14.3. **WAIVER.** Failure or delay by either Party to exercise any right or power under DIR Contract number DIR-SDD-2203 or 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 writing signed by both DIR and Motorola. 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.

14.4. **SEVERABILITY.** If a court of competent jurisdiction renders any part of DIR Contract number DIR-SDD-2203 or this Agreement invalid or unenforceable, that part will be severed and the remainder of DIR Contract number DIR-SDD-2203 and this Agreement will continue in full force and effect.

14.5. **INDEPENDENT CONTRACTORS.** Each Party will perform its duties under DIR Contract number DIR-SDD-2203 and 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.

14.6. **HEADINGS AND SECTION REFERENCES; CONSTRUCTION.** The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. DIR Contract number DIR-SDD-2203 and this Agreement will be fairly interpreted in accordance with their terms and conditions and not for or against either Party.

14.7. **ENTIRE AGREEMENT.** DIR Contract number DIR-SDD-2203 and this Agreement, including any Exhibits to this Agreement, constitutes the entire agreement of the Parties regarding the subject matter of the Agreement and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of DIR and Motorola. The preprinted terms and conditions found on any DIR Customer purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each Party signs that document.

14.8. **NOTICES.** Notices will be handled in accordance with Appendix A, Section 11 of DIR Contract number DIR-SDD-2203.

14.9. **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. DIR Customer will obtain and comply with all Federal Communications Commission ("FCC") licenses and authorizations required for the installation, operation and use of the System before the scheduled installation of the Equipment. Although Motorola might assist DIR Customer in the preparation of its FCC license applications, neither Motorola nor any of its employees is an agent or representative of DIR Customer in FCC or other matters.

14.10. **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.

14.11. SURVIVAL OF TERMS. Survival shall be handled in accordance with Appendix A, Section 4.E of DIR Contract number. DIR-SDD-2203.

In the event of a conflict in Terms between this Agreement and DIR Contract No. DIR-SDD-2203, the Terms of DIR Contract No. DIR-SDD-2203 shall take precedence.

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

Motorola Solutions, Inc.

DIR Customer

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

END OF APPENDIX E TO DIR CONTRACT NUMBER DIR-SDD-2203