

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20031476

1. REQUESTED MOTION:

ACTION REQUESTED: Approve Waiver #W-040145 to waive formal quotation procedure, due to the sole source, for Public Works (Utilities), for the installation, repair and services of Motorola Scada (Telemetry) equipment from DCR Engineering Services on an ongoing basis. Estimated annual expenditures for installations of equipment and programming would be approximately \$650,000 and for repairs of existing equipment and service would be approximately \$100,000. Funding will come from the individual sections' account strings, or individual CIP projects' budgets on an as needed basis.

WHY ACTION IS NECESSARY: All purchases over \$50,000 require board approval.

WHAT ACTION ACCOMPLISHES: Allows the Public Works (Utilities) to continue to acquire new installations and repair existing equipment.

2. DEPARTMENTAL CATEGORY:

COMMISSION DISTRICT # *CU*

A10A

3. MEETING DATE:

01-13-2004

4. AGENDA:

CONSENT
 ADMINISTRATIVE
 APPEALS

 PUBLIC
 WALK ON
 TIME REQUIRED:

5. REQUIREMENT/PURPOSE:
(Specify)

STATUTE
 ORDINANCE
 ADMIN. AC-4-1
 CODE
 OTHER

6. REQUESTOR OF INFORMATION:

A. COMMISSIONER
 B. DEPARTMENT *Public Works*
 C. DIVISION *Utilities*

BY: *Rick Diaz*

[Signature]
12/16/03

BACKGROUND: On October 23, 2003 the current waiver bluesheet (W-030005) expired and Utilities has requested a new bid waiver for DCR Engineering Services. Purchasing has verified sole source status of DCR Engineering Services.

Funding Account #s

OD5360148700 5360548700 5361548700 5362048700 5362548700 5362848700 5365248700
 5360248700 5360848700 5361848700 5362348700 5362648700 5362948700
 5360448700 5361448700 5361948700 5362448700 5362748700 5365148700

(Continued on page 2)

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager								
<i>[Signature]</i> <i>12-22-03</i>	<i>Joint Resolution</i> <i>12-12-03</i> <i>[Signature]</i> <i>12-12-03</i>	<i>N/A</i>	<i>N/A</i>	<i>[Signature]</i> <i>12/22/03</i>	<i>APR 12/23/03</i> <table border="1"> <tr> <td>OA</td> <td>OM</td> <td>Risk</td> <td>GC</td> </tr> <tr> <td><i>[Signature]</i> <i>12/22/03</i></td> <td><i>[Signature]</i> <i>12/22/03</i></td> <td><i>[Signature]</i> <i>12/23/03</i></td> <td><i>[Signature]</i> <i>12/23/03</i></td> </tr> </table>				OA	OM	Risk	GC	<i>[Signature]</i> <i>12/22/03</i>	<i>[Signature]</i> <i>12/22/03</i>	<i>[Signature]</i> <i>12/23/03</i>	<i>[Signature]</i> <i>12/23/03</i>	<i>[Signature]</i> <i>12-22-03</i>
OA	OM	Risk	GC														
<i>[Signature]</i> <i>12/22/03</i>	<i>[Signature]</i> <i>12/22/03</i>	<i>[Signature]</i> <i>12/23/03</i>	<i>[Signature]</i> <i>12/23/03</i>														

10. COMMISSION ACTION:

APPROVED
 DENIED
 DEFERRED
 OTHER

Rec. by CoAtty
 Date: *12/22/03*
 Time: *1:45 PM*
 Forwarded To:
City Admin
12-22-03

RECEIVED BY
 COUNTY ADMIN:
12/22/03
7:30 am
 COUNTY ADMIN
 FORWARDED TO:
12/23/03

(Prepared by Purchasing)

Please see attachments:

- (1) Departmental Justification from Rick Diaz
- (2) Sole Source Verification Letter from Motorola
- (3) Motorola Certification Letter to DCR Engineering
- (4) Motorola/DCR Engineering Licensing Agreement



Lee County
SOUTHWEST FLORIDA

**INTEROFFICE MEMORANDUM
FROM
PUBLIC WORKS
UTILITIES**

Date: November 12, 2003

To: Janet Sheehan
Purchasing Director

From: Rick Diaz, P.E.
Director

**SUBJECT: DCR ENGINEERING SERVICES WAIVER #W-030005
SOLE SOURCE PROVIDER
MOTOROLA SCADA EQUIPMENT**

Janet, Waiver #W-030005, (Bluesheet 20020824), for DCR Engineering Services as the sole source provider for the installation, repair, and services of Motorola SCADA Equipment expired 10/22/03. Lee County Utilities requests that a Bluesheet be prepared for a new Waiver with DCR. We would like this to be an ongoing waiver as long as both parties agree. The reasons for the waiver are as follows:

- Lee County Utilities' Telemetry System is hooked up on the County's trunking system, which requires that the components be Motorola Equipment.
- DCR Engineering is the sole provider for Motorola SCADA equipment in the State of Florida.
- DCR Engineering has provided LCU with services and installations since 1995.
- DCR Engineering is currently LCU's provider for any new installation of SCADA equipment on new lift stations, and on various other projects provided by contractors.
- DCR Engineering is available 24 hours a day for any emergency that should arise in our system.
- DCR Engineering has also provided LCU's Central SCADA Monitoring and Control Centers at four sites throughout our system. They developed and maintain them with trained personnel.
- LCU currently has over 320 Motorola Telemetry Units in our system, for which we receive direct support and service from DCR Engineering.

This waiver will need to include:

- Services performed by DCR Engineering on existing equipment,
- new installations at various existing Utilities sites, and
- brand new projects.

Costs that may occur throughout the year are projected to be as follows:

- New installations of equipment and programming at approximately \$650,000.
- Repairs of existing equipment and service at approximately \$100,000.

Janet Sheehan, Director
November 12, 2003
Page 2

Attached is the sole source justification letter for DCR Engineering from Motorola. The funding account strings will be made available at an ongoing basis as needed by individual Treatment Plants and Sections within Lee County Utilities. Those areas are as follows:

Wastewater Collection Section, Water Distribution Section, Instrumentation/Electrical Maintenance Section, Bartow WTP, College Parkway WTP, Corkscrew WTP, Fiesta Village WWTP, Fort Myers Beach WWTP, Gateway WWTP, Green Meadows WTP, Highpoint WWTP, Olga WTP, Pine Island WWTP, Pinewoods RO WTP, San Carlos WWTP, Three Oaks WWTP, Waterway Estates WTP, Waterway Estates WWTP, as well as various CIP projects.

We appreciate your help with this. If you have any questions, please give me a call.

Thank you.

RD/kam
Attachment


Xc: Orlando Figueroa, Fiscal Manager
Doug Meyer, Electrical Systems Manager
Kris Miller, Fiscal Officer
Cheryl Carbone, Fiscal Officer



**INTEROFFICE MEMORANDUM
FROM
PUBLIC WORKS
UTILITIES**

Date: December 15, 2003

To: Rick Diaz, P.E.
Director

From: Doug Meyer 
Electrical Systems Mgr.

**SUBJECT: DCR ENGINEERING SERVICES WAIVER #W-030005
SOLE SOURCE PROVIDER
MOTOROLA SCADA EQUIPMENT**

DCR is the sole provider in Florida set up by Motorola for telemetry systems such as LCU's system. Lee County's trunking system is Motorola, therefore, Motorola equipment must be used. There are other systems that can be used separate from the County trunking system, but at a high expense to install and maintain. The security issue of the trunking system is very important to Lee County as a whole. We would not want to compromise the health of our residents to a security breach with less secured systems.

I have been involved personally with our telemetry system since 1990 and when DCR began. DCR's track record has been at the top of their field. They have always been very honest and fair with their pricing and service to LCU. I can always count on them for any emergency that may arise 24 hours a day, seven days a week.

I have researched many different types of systems and we, as a Utility, have several systems. The Motorola system is far more superior to other systems and an added bonus is that we don't have ugly antenna's in our neighborhoods. As we slowly replace existing systems that we have purchased in the past, these towers will be removed. Futhermore, as our area continues to grow, we will need a company that can fit our needs.

I feel that the relationship that has developed between LCU and DCR is a long lasting relationship, and this will help us grow in the right direction.

/dm

JUSTIFICATION FOR SOLE SOURCE AND/OR WAIVER PURCHASE

REQUISITION NUMBER _____ DATE _____

DEPARTMENT _____ BUSINESS UNIT _____

SUGGESTED VENDOR

DCR Engineering Services

ITEM DESCRIPTION AND REASON FOR SOLE SOURCE AND/OR WAIVER:

(MAY ALSO BE ATTACHED AS A MEMO)

Attached as memo (Attachment #1)

TECHNICAL CHARACTERISTICS:

The County's trunking system is Motorola therefore the utilities telemetry components must be Motorola.

REASON FOR REQUESTING SOLE SOURCE:

ITEM MUST MATCH EXISTING EQUIPMENT, WHICH IS:

Motorola telemetry system must match County's trunking

ITEM IS A REPAIR PART FOR EXISTING EQUIPMENT, WHICH IS:

Motorola parts for Motorola telemetry system

ITEM IS TO BE ATTACHED TO EXISTING ITEM, WHICH IS:

Motorola system has been in place for years

() TECHNICAL CHARACTERISTICS OF REQUESTED ITEM ARE ESSENTIAL TO OUR NEEDS
BECAUSE:

NO OTHER MANUFACTURER OF THIS TYPE OF PRODUCT EXISTS

() OTHER MANUFACTURERS OF THIS TYPE OF PRODUCT DO NOT MEET OUR MINIMUM
REQUIREMENTS:

MANUFACTURER'S NAME: _____

REASON: _____

MANUFACTURER'S NAME: _____

REASON: _____

MANUFACTURER'S NAME: _____

REASON: _____

() OTHER _____

MUST PERFORM PRICE OR COST ANALYSIS OR ATTACH NEGOTIATED PRICE QUOTE
FROM VENDOR, LETTER FROM MANUFACTURER STATING SOLE SOURCE.

Sole Source Letter Attached.

A) PRICE ANALYSIS PERFORMED

BASED ON:

B) COST ANALYSIS PERFORMED:

BASED ON:

SIGNATURE AND TITLE OF REQUESTER

I, Chris Jeffcoat, AUTHORIZED BUYER,
CONCLUDE THE FOLLOWING:

SOLE SOURCE JUSTIFICATION IS ADEQUATE AND PURCHASE IS AUTHORIZED WITHOUT COMPETITIVE BIDDING.

SOLE SOURCE JUSTIFICATION IS INADEQUATE AND REQUISITION IS RETURNED TO DEPARTMENT.

DUE TO TIME RESTRAINTS PURCHASE IS AUTHORIZED WITHOUT COMPETITIVE BIDDING.

COMPETITIVE/NON-COMPETITIVE BID WAIVER APPROVED.

Chris Jeffcoat
BUYER

Janet Sheehan
PURCHASING DIRECTOR

ATTACHMENT 2

intelligence  everywhere



November 10, 2003

Doug Meyer
Lee County Utilities
7401 College Parkway
Ft. Myers, FL 33907

Dear Doug:

During the last decade, Motorola has been heavily involved in building a new enhanced Value Added Reseller distribution channel to better serve the water and waste water end users. During this journey, many of the advancements could not have been achieved without the dedication and support of DCR Engineering Services, Inc.. DCR Engineering Services, Inc. has been the only licensed Motorola Value Added Reseller of MOSCAD and INTRAC products in the state of Florida since 1992. During this time, DCR Engineering Services has been one of our highest performing VAR in the United States and is the top rated VAR not only in Florida, but the entire Southeast.

The relationship with DCR Engineering Services and Motorola has been mutually beneficial from both a technological and economic standpoint. DCR Engineering Services operates under a professional business ethic and very high standard of quality, backed by a resolute commitment to customer service. Because of these qualities, Motorola favors doing business with DCR Engineering Services. On behalf of Motorola, I would like to submit that DCR Engineering Services is highly capable in designing, deploying, and servicing installations of Motorola MOSCAD equipment. I am convinced that they are uniquely qualified to turn in a great MOSCAD-based system for the Lee County Utilities water project.

Respectfully submitted,



Kreg Christoff
Manager, Indirect Distribution
Motorola Fixed Data Systems

cc: DCR Engineering Services, Inc.

MOTOROLA
Fixed Data Systems

To: Lee County Utilities

December 9, 2003

Attn: Chris Jeffcoat
Purchasing Agent
Lee County Utilities
7401 College Parkway
Ft. Myers, FL 33907

Re: DCR Engineering

Dear Chris:

DCR Engineering Services, Inc. has been the only licensed Motorola Value Added Reseller of MOSCAD and INTRAC products in the state of Florida since 1992. They have been and will continue to be the only MOSCAD vendor in Florida to service the Motorola Scada equipment.

Respectfully submitted,

Kreg Christoff
Manager, Indirect Distribution
Motorola Fixed Data Systems



MOTOROLA

ATTACHMENT 3

July 25, 2001

Mr. Todd Bredbenner, P.E.
Vice President
DCR Engineering Services, Inc.
502 County Road 640 East
Mulberry, Florida 33860

Dear Todd,

Congratulations! DCR Engineering Services, Inc. has been designated a **Certified MOSCAD Solution Provider** by Motorola. DCR Engineering Services, Inc. earned this as a result of its successful sale, installation and support of systems utilizing Motorola's MOSCAD products. A certificate documenting this achievement is enclosed with this letter.

Motorola sincerely appreciates the efforts of DCR Engineering Services, Inc. on its behalf in the State of Florida and other Southeastern states. We look forward to our continued relationship and many new successful projects.

Sincerely Yours,
MOTOROLA, INC.


Dave Fagersten
Manager Indirect Solutions
Fixed Data Products



MOTOROLA

Certified MOSCAD Solution Provider

is hereby granted to:

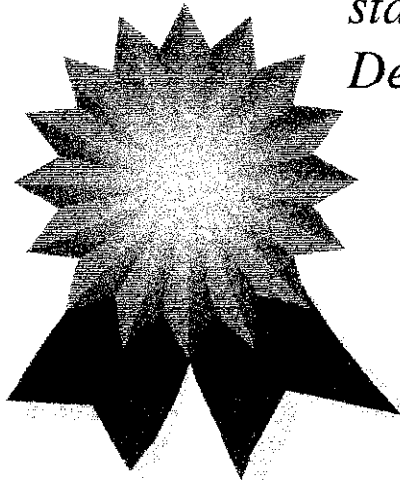
DCR Engineering Services, Inc.

*for demonstrating competency in the design, installation, operation, and support of Motorola's MOSCAD systems; certification is granted to **DCR Engineering Services, Inc.** contingent upon continued compliance with the standards and criteria established for certification. Expires December 31, 2003.*

Granted: July 25, 2001

A handwritten signature in black ink, appearing to read 'David Fagersten'.

*David Fagersten, Manager Indirect Distribution
Fixed Data Products
Motorola Inc.*





ATTACHMENT

4

DCR Engineering Services, Inc.

502 County Road 640 East
Mulberry, Florida 33860
Telephone 941.428.9500
Fax 941.428.8036

DCR Name Change to
motorola.doc

January 12, 1998

Motorola, Inc.
1000 Mittel Drive
Wood Dale, IL 60191
Attn: Mr. Kreg Christoff, Sr. Account Manager - VAR and Indirect Sales
Ref: Corporate Name Change

Dear Kreg;

Please be advised that on January 19, 1998 the telemetry division of Dale C. Rossman, Inc. will begin operation under the name of DCR Engineering Services, Inc.. DCR Engineering is a fully owned subsidiary of Dale C. Rossman, Inc. owned by Mr. Dale C. Rossman, President, who signed the original contract for Dale C Rossman, Inc.. Mr. Rossman is also the owner and president of DCR Engineering Services, Inc.. DCR Engineering will abide by all terms and conditions of the original contract. Please address all correspondence, invoicing, warranty issues, and service issues to the following address:

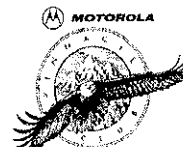
DCR Engineering Services, Inc.
P.O. Box 935
Mulberry, FL 33860

This change was made to better identify our company as a telemetry services company from our parent company who is an electrical contractor. As per our conversation, it will not be necessary to modify our contract, as DCR Engineering Services Inc. is owned by Mr. Dale C. Rossman who signed the original contract. If it is determined that a name change is required please advise me at the above address. In addition, I anticipate that we will continue on the VAR Council with the same tenure as Dale C. Rossman, Inc.

Truly Yours:

[Handwritten signature of Todd Bredbenner]
Todd Bredbenner, P.E.
Vice President, Engineering

Motorola's Number 1 VAR in 1994 and 1998





MOTOROLA

**Communications and Electronics Inc.
North Central/Canadian Division
North America Group**

Address Reply to:
1000 Mittel Drive
Wood Dale, IL 60191
(708) 616-4600

May 17, 1993

Mr. Dale C. Rossman
Dale C. Rossman, Inc.
P.O. Box 1021
2160 State Road 37 South
Mulberry, FL 33860

Dear Mr. Rossman:

Congratulations! Welcome to the newly formed Motorola VAR Program!

Attached you will find your copy of the executed contract and its attachments. I will be contacting you to discuss a training session for your people.

Thank you for your commitment and I look forward to our future success.

Sincerely,

A handwritten signature in cursive script that reads "Thomas J. Cahill".

Thomas J. Cahill
National Manager - VARs

enclosure

BRM/mc

DALE C. ROSSMAN, INC./

MOTOROLA

VALUE ADDED RESELLER AGREEMENT

MOTOROLA, INC.
VALUE ADDED RESELLER AGREEMENT
WITH
DALE C. ROSSMAN, INC.
"VAR"

Table of Contents

Paragraph	Page
1. TERM	1
2. PRODUCTS, PRICES AND CONDITIONS	1
3. SUPPLEMENTARY TERMS AND CONDITIONS, PASS THROUGH PROVISIONS	2
4. SUPPORT TO VAR	3
5. VALUE ADDED RESELLER A NON-EXCLUSIVE RESELLER	3
6. CONFIDENTIALITY	3
7. AREA OF PRIMARY MARKETING RESPONSIBILITY FOR PRODUCTS	4
8. SALES PERFORMANCE	4
9. USE OF VAR'S NAME	5
10. ETHICAL PRACTICES	5
11. PRODUCT PURCHASES DO NOT INCLUDE COMMUNICATIONS SERVICES	5
12. PARTY RELATIONSHIP	5
13. PATENT INDEMNITY	6
14. TERMINATION	6
15. EFFECT OF TERMINATION OR EXPIRATION	7
16. OPTION TO REPURCHASE PRODUCTS	8
17. WAIVER	8
18. LIMITATION OF LIABILITY	8
19. GENERAL	9
20. ATTACHMENTS	10

MOTOROLA COMMUNICATIONS PRODUCTS VALUE ADDED RESELLER AGREEMENT

This Motorola Communications Products Value Added Reseller Agreement including its attachments ("Agreement") is made and entered into as of _____, 19__ ("Agreement Date") at Schaumburg, Illinois, by and between MOTOROLA, INC., a Delaware Corporation having its principal place of business at 1301 E. Algonquin Road, Schaumburg, Illinois 60196 ("Motorola" or "Seller") and Dale C. Rossman, Inc. Corporation/~~Partnership/Sole Proprietorship~~ (cross out two) of the State of Florida having its principal place of business at 2160 State Road 37 South, Mulberry, FL 33860 ("Value Added Reseller" or "VAR").

WHEREAS, for many years Motorola has sold certain communications products through a direct sales force of Motorola employees, and more recently, for certain products, through a dealer system, all of which it has developed and supported at great expense; and

WHEREAS, Motorola intends to continue direct sales to buyers of its communications products and services as well as sales to its dealer system; and

WHEREAS, Motorola desires to expand its distribution system to include VAR and other value added resellers who incorporate certain of Motorola's products into their product, while reserving certain existing customers and markets for its direct sales force, dealers, resellers or other distributors.

THEREFORE, it is hereby agreed as follows:

1. TERM

- (a) The initial term of this Agreement shall commence as of the Agreement Date and shall continue for a term expiring on _____, unless sooner terminated as provided in this Agreement. Thereafter, this Agreement shall renew automatically for successive one-year additional terms unless a written notice of non-renewal is sent by either party no less than thirty (30) days prior to the expiration date of the initial or successive term or unless otherwise terminated pursuant to the terms of this Agreement.
- (b) Nothing contained in this Agreement shall be deemed to create any express or implied obligation on either party to renew or extend this Agreement or to create any right to continue this Agreement on the same terms and conditions contained herein. VAR understands that Motorola intends to review its distribution strategy and the terms and conditions of this Agreement on an ongoing basis.

2. PRODUCTS, PRICES AND CONDITIONS

- (a) Product Purchases: During the term of this Agreement, VAR agrees to purchase and Seller agrees to lease or sell, in accordance with the terms and conditions of this Agreement, selected Motorola branded communications products as listed on Attachment A, ("Products and Pricing Schedule"). The defined term Product refers to all the Motorola products and accessories listed on Attachment A. VAR hereby certifies that it will incorporate any Product purchased under this Agreement with other products (hardware and/or products software) of VAR's design, assembly or manufacture which VAR will then market as a value added system under VAR's name for sale, lease or rent to unaffiliated end user third parties in the regular course of VAR's business. VAR represents that Products shall only be sold, leased or rented as incorporated components of VAR's product in the manner set forth in Attachment B ("Value Added Configuration Description"). Sale, lease, rental or distribution of Products in any other manner is a cause for immediate termination of this Agreement by Motorola, as a breach of Paragraph 14, Termination (b)(6) hereof. VAR is responsible for the selection of Products, their ability to achieve the results intended, their use with VAR's products, and the performance VAR and VAR's customers obtain or expect to obtain from using them. VAR also acknowledges that any technical support for VAR's hardware, software peripherals and the integrated systems which VAR sells shall be entirely VAR's responsibility.
- (b) As further consideration for Motorola entering into this Agreement, VAR shall promptly refer all inquiries and leads concerning other Motorola products and services not listed in Attachment A to such Motorola offices as may be designated by Motorola.
- (c) Products and Prices: Attachment A will be published by Motorola from time to time to keep VAR informed about products and services available, current prices of those products and services to VAR, available discounts, delivery schedules and other terms and conditions of sale and doing business with Motorola. VAR agrees that the entire contents of Attachment A are confidential and subject to change or withdrawal at any time at the sole discretion of Motorola and, when said changes or withdrawals have been sent to VAR by Motorola (either by mail or in person), all earlier inconsistent or withdrawn contents shall be automatically superseded from and after the effective date stated in such notices. Motorola may withdraw or change Attachment A in any way, including, without limitation, revisions to the list of selected Products and Services, compensation, terms, conditions, discontinuation of the production or sale of any Products or Services, or modifications of the design or material specifications of any Products or Services or parts of any Products, without any liability or obligations to VAR or its customers. Notwithstanding the above, written quotes from Motorola for specific orders, will be honored for ninety (90) days from issuance by Motorola.
- (d) Excluded Products: VAR specifically acknowledges the existence of other products, product lines and services of Motorola and agrees and consents to the limitation of this Agreement solely to selected Motorola branded Products as listed on Attachment A in the manner set forth in Attachment B. Motorola does not represent that it will continue to manufacture any

particular item of Products indefinitely or for any specific period. VAR also specifically acknowledges that Motorola distributes various products and services by other contractual relationships, and VAR agrees that nothing contained in this Agreement shall be deemed to create any express or implied obligation on Motorola to establish any such other contractual relationship with VAR. In fact, Motorola specifically reserves the right to modify any of the specifications or characteristics of its products, to remove any product from the market, and/or cease manufacturing or supporting it. VAR agrees that the entire contents of Attachments and this Agreement are confidential.

- (e) Limitations: VAR agrees to limit its distribution of the Products (which are a part of VAR's normal services) purchased under this Agreement to leasing or sale for end use as limited by Paragraph 7. Area of Primary Marketing Responsibility for Products, and other terms and conditions of this Agreement. VAR shall not appoint any sales agent or representative (other than its employees) in connection with the performance of this Agreement; provided, however, Motorola, in its sole discretion upon a duly executed amendment to this Agreement, may allow VAR to appoint specific agents to seek sales of Products within VAR's area of Marketing Responsibility.
- (f) Use of Product: VAR agrees to follow and pass on to its end users all technical advice and instructions Seller may provide VAR relating to the inspection, use, care, and disposal of the Products. VAR's ability to perform after-sales support and service to VAR's customers is considered material to this contract, and if in Seller's sole judgment, VAR is unable to meet those responsibilities, then Seller may elect to terminate this Agreement without being liable to VAR for doing so.

3. SUPPLEMENTARY TERMS AND CONDITIONS, PASS THROUGH PROVISIONS

VAR agrees that the Supplementary Terms and Conditions contained in Attachment C are incorporated into this Agreement by this reference. VAR acknowledges that certain of the provisions contained in Attachment C are, by their sense and context, intended for the end user customer who will acquire one or more of the Products from VAR. For each such provision in Attachment C, VAR agrees that both prior to and as part of each transaction between it and its customer, VAR will notify its customer of the specific requirements, rights, duties and limitations in the Warranty/Warranty Disclaimer, Software License and Software Warranty/Warranty Disclaimer, Patent, Copyright and Trademarks, FCC and Other Governmental Matters provisions in Attachment C, and any other provisions Motorola may, from time to time, notify VAR are required.

4. SUPPORT TO VAR

- (a) Sales Training: Motorola shall provide, at VAR's request and expense, a trainer and training materials to train VAR's sales people relating to the Products. Motorola shall provide a total of up to ____ hours of sales training at a location chosen by Motorola (If blanks are not filled in, no sales training hours are included under the contract).
- (b) Technical Training and Support: Motorola shall provide a total of up to ____ hours of training for up to ten (10) of VAR's technicians/engineers

and ____ hours of technical support at a location chosen by Motorola (If blanks are not filled in, no technical training hours are included under the contract). If additional training or technical support is requested by VAR, Motorola shall, subject to availability of personnel, provide such training or support at the hourly rate Motorola charges for the applicable personnel plus all related fees, training expenses and travel expenses.

- (c) Installation: Motorola shall, at VAR's request, quote installation work pursuant to the terms and conditions set forth in Attachment F. In order to have the installation quoted or scheduled, VAR shall contact the service manager of the Motorola service shop where the work is to be completed.
- (d) Maintenance Agreement: Motorola shall provide, at VAR's request, maintenance agreements for Products sold to VAR pursuant to the terms and conditions set forth in Attachment G.
- (e) Spare Parts: Motorola will sell VAR spare parts for Products and sell or license VAR documentation which Motorola generally makes available to Motorola's customers and at Motorola's prevailing prices at the time of VAR's order for such items. Their availability and prices may be changed at any time without notice to VAR. Such items do not qualify for any discount under this Agreement. Modules and components quoted separately on Attachment A shall be sold pursuant to the terms thereof and shall not be governed by this section.
- (f) Literature: Motorola shall provide, at VAR's request, Product literature in quantities Motorola deems appropriate without charge. Quantities above this amount will be made available at Motorola's then current rate.
- (g) Other Support: VAR and a Motorola officer may, by separate written agreement, provide for other marketing support.

5. VALUE ADDED RESELLER A NON-EXCLUSIVE RESELLER

VAR is a non-exclusive Value Added Reseller. VAR specifically acknowledges the right of Motorola in Motorola's sole and unrestricted discretion, without any liability or obligation to VAR, to appoint additional value added reseller or resellers and/or make direct or indirect sale or distribution of these or other Motorola products or services, similar or dissimilar, or any non-Motorola products or services in any geographic area and to any customers as Motorola may, from time to time, determine to be in the best interest of Motorola.

6. CONFIDENTIALITY

During and for three years after the termination or expiration of this Agreement, VAR shall maintain in strict confidence all information disclosed to VAR by Motorola or others, including, but not limited to, the contents of Attachment A and all revisions thereof, all price and marketing information, customer lists, drawings, technical information and data, and other information of a like or similar nature relating to all Motorola Products and related services or the sale or distribution thereof. All information disclosed by Motorola hereunder and information VAR obtains in connection with this Agreement shall be used solely in furtherance of the distribution of Motorola Products and services.

7. AREA OF PRIMARY MARKETING RESPONSIBILITY FOR PRODUCTS

VAR acknowledges that the scope of its appointment has been defined to be consistent with Motorola's overall distribution strategy. VAR further acknowledges that its defined role in Motorola's distribution system is necessary in order to encourage Motorola, VAR and Motorola's other resellers and distributors to make the distribution efforts necessary to expand Motorola's distribution of Products and related services and to provide the highest levels of customer satisfaction.

- (a) VAR's Product Market Responsibility: Motorola designates as VAR's Area of Primary Marketing Responsibility the geographic area and market segment(s) described on Attachment H ("Area of Primary Marketing Responsibility"). VAR shall directly offer the Products for sale or lease or rental in that Area for end use by such customers only as authorized in Attachment B. Motorola may from time to time without liability or obligation to VAR revise VAR's geographic area and market segment(s) as set out in Attachment H.
- (b) Sales Outside of the United States Prohibited: Unless otherwise agreed to in writing by Motorola, any direct or indirect distribution, transshipment and/or sale, lease or rental of Products by VAR outside of the 48 contiguous United States and the District of Columbia is prohibited and shall constitute a breach of this Agreement.
- (c) In the event that VAR sells Products or services to the U.S. Government, or to a prime contractor selling to the U.S. Government, VAR does so at its own option and risk. VAR remains solely and exclusively responsible for compliance with all statutes and regulations governing sales to the U.S. Government. Motorola makes no representations, certifications or warranties whatsoever with respect to the ability of its goods, services or prices to satisfy any such statutes and regulations. Failure of VAR to conduct any sales to the U.S. Government, or to the U.S. Government prime contractors, in strict accordance with U.S. law shall constitute a material breach of this Agreement.

8. SALES PERFORMANCE

- (a) Best Efforts: VAR agrees to use and devote its efforts during any term of this Agreement to actively promote, sell and service the Products to maximize the sale at retail to end users in VAR's Area in accordance with this Agreement. VAR represents that it has high-quality service capability and will provide high-quality service to customers buying VAR's products.
- (b) Performance Standards: Motorola will evaluate VAR's sales performance with respect to the Products primarily on the basis of VAR's purchase volume and promotional efforts in the Area of Primary Marketing Responsibility for the Products. Motorola may, in its sole discretion, establish reasonable minimum purchase requirements for VAR for each contract term and may consider those requirements, among other factors, in evaluating VAR's performance. VAR shall achieve the performance standards set forth on Attachment H, (Marketing Responsibility and Performance Standards) for all time periods set forth in said attachment. No

later than sixty (60) days prior to the expiration of the initial and any subsequent term of this Agreement, Motorola shall provide performance standards for any subsequent twelve (12) month term or other time period of this Agreement. If Motorola does not provide new performance standards within the time provided in the preceding sentence, the previous year's standards shall apply on a prorated basis until such time as the new performance standards are provided to VAR. Notwithstanding such revisions of performance standards, the remaining provisions of this Agreement shall remain in full force and effect. VAR agrees that the provisions of this Paragraph are essential, fair and reasonable and that VAR's failure to meet a performance standard shall be grounds for termination of this Agreement.

- (c) Reseller Marketing Reports: VAR shall provide to Motorola by the first Wednesday of each month during any term of this Agreement, a sales report ("Reseller Marketing Report") setting forth the number of units of each Product leased or sold by VAR during the preceding month, the dollar volume of the sale, the customer name, ultimate destination zip code, customer Standard Industrial Code ("SIC") or other categories or industry groupings requested by Motorola. VAR shall provide said information by completing and sending to Motorola the form report attached hereto as Attachment I.
- (d) If VAR fails to supply Reseller Marketing Reports for any month as called for by this Paragraph, Motorola may notify VAR that it is in default of this Paragraph. If VAR fails to cure such default by delivering to Motorola the appropriate Reseller Marketing Reports within fifteen (15) days of the date of the notice of default, that failure shall be deemed a failure to meet the performance standards for the contract term during which the failure occurred, and Motorola shall be permitted to terminate this Agreement as to any or all Motorola Products, as listed on Attachment A, and related services.
- (e) Forecast: During the term of this Agreement, VAR shall provide Motorola a quarterly usage forecast in the form attached as Attachment E, to assist Motorola in maintaining an orderly production flow for the purpose of meeting VAR's delivery requirements. VAR's failure to provide such information may be considered cause by Motorola for excusable delivery delay.
- (f) Inspection of VAR's Facilities: Motorola may inspect VAR's facilities and operations as related to VAR's performance under this Agreement during normal business hours and without prior notice.

9. USE OF VAR'S NAME

During the term of this Agreement, VAR may indicate to the trade and to the public that VAR is an authorized value-added reseller of the Product. With Motorola's prior written approval, VAR may also use the Motorola trademarks and trade names to promote and solicit sales of the Product if VAR does so in strict accordance with the terms of Attachment I to this Agreement. But VAR will not adopt or use such trademarks or trade names, or any confusingly similar word or symbol, as part of your company name nor (to the extent you may have any power to prevent such use) allow such marks or names to be used by others.

At the expiration or termination of this Agreement, VAR shall immediately discontinue any use of the Motorola name or trademark or any other combination of words, designs, trademarks or trade names that would indicate that you are or were a value added reseller of the Product.

10. ETHICAL PRACTICES

Motorola has historically depended on product quality and superiority, combined with outstanding support capability to market its products throughout the world. Motorola believes it can continue to grow and to prosper without succumbing to legally questionable or unethical demands or practices. VAR agrees to conduct its business in an ethical manner.

11. PRODUCT PURCHASES DO NOT INCLUDE COMMUNICATIONS SERVICES

VAR agrees that its purchase of Products under this Agreement does not include communications services such as Specialized Mobile Radio (SMR), community repeater or other communications services. VAR, or the end user, must enter into separate agreements with the service provider(s) to obtain such services. **MOTOROLA DISCLAIMS LIABILITY FOR RANGE, COVERAGE, AVAILABILITY OR OPERATION OF ANY COMMUNICATIONS SYSTEM.**

12. PARTY RELATIONSHIP

This Agreement does not create an agency, joint venture or partnership between VAR and Seller. Neither party shall impose or create any obligation or responsibility, express or implied, or make any promises, representations or warranties on behalf of the other party, other than as expressly provided herein. Nothing in this Agreement shall be construed so as to make VAR, its employees or agents an employee of Motorola, and VAR shall not be entitled to participate in any of Motorola's employee benefit programs. Motorola shall not be liable to pay wages, withhold any taxes, provide any insurance, or otherwise be obligated as an employer. Motorola shall not be responsible to any of the various governmental agencies for Worker's Compensation Insurance or any other type of employee insurance, withholding taxes, or social security taxes for VAR, its employees or other agents of the VAR.

The relationship created by this Agreement is not intended by the parties to constitute the granting of a franchise to VAR by Motorola, and no federal, state or local franchise statute, law, regulation or rule is intended by the parties to apply to such relationship; nor shall any such franchise statute, law, regulation or rule be deemed or construed to apply to the formation, operation, administration, termination or expiration of this Agreement. VAR expressly acknowledges and confirms that it has not paid and will not pay any fee to Motorola in connection with this Agreement or any prior agreement, understanding or arrangement between the parties, and that none of the terms, conditions or amounts provided for in this Agreement can be characterized to constitute such a fee.

13. PATENT INDEMNITY

VAR will indemnify and hold Motorola harmless against any expense or loss if any patent, copyright, trademark, or other proprietary right is infringed as a result of

Motorola's compliance with VAR's designs, hardware, software, specifications or instructions. VAR will also indemnify and hold Motorola harmless against any claims that VAR's software (or the software procured from a third party) infringes any copyright, trademark or other proprietary rights of another.

14. TERMINATION

This Agreement will begin on the Agreement Date and is effective for the term indicated in Paragraph 1, unless terminated sooner according to this Paragraph.

This Agreement may be terminated:

- (a) By either party, without cause and for its convenience, upon thirty (30) days prior written notice to the other party at any time after the expiration of the first one hundred and twenty (120) days of the initial term; or
- (b) By Motorola at any time immediately upon the occurrence of any of the following events:
 - (1) VAR's failure to meet the sales performance standards set forth in Paragraph 8 (Sales Performance) after a thirty (30) day cure period;
 - (2) a breach of any term or provision of Paragraph 7, Area of Primary Marketing Responsibility for Products;
 - (3) a change in the ownership, control or management of VAR which is unacceptable to Motorola;
 - (4) VAR's ceasing to function as a going concern, declaring bankruptcy, having a receiver appointed for it, or otherwise taking advantage of any insolvency law;
 - (5) VAR's failure to cure a breach of this Agreement, other than a breach of aforementioned Paragraph 7, within fifteen (15) days after Motorola's written notification to VAR of such breach;
 - (6) any untrue statement of a material fact or omission to state a material fact in any communication provided by VAR to anyone in connection with this Agreement, its terms, conditions or amounts, the performance of this Agreement or any Motorola products or services referred to by this Agreement;
 - (7) VAR's engaging in any act or failure to act related to the subject matter of this Agreement which is determined to be an illegal or unfair or deceptive trade practice in violation of any applicable federal, state or local law, or which in the opinion of counsel to Motorola constitutes such an illegal, unfair or deceptive act or practice;
 - (8) Any unauthorized use by VAR of any sales agent or representative (other than its employees) in connection with the performance of this Agreement;

- (9) VAR's failure to conduct its business in an ethical manner as required by Paragraph 10 - Ethical Practices;

15. EFFECT OF TERMINATION OR EXPIRATION

- (a) NEITHER MOTOROLA NOR VAR SHALL BE LIABLE TO THE OTHER, OR TO ANY OTHER PARTY, BY VIRTUE OF THE TERMINATION OR EXPIRATION OF THIS AGREEMENT FOR ANY REASON WHATSOEVER, OR BY VIRTUE OF THE CANCELLATION OF ANY ORDERS FOR THE PRODUCTS THAT ARE UNDELIVERED ON THE EFFECTIVE DATE OF ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY CLAIM FOR LOSS OF PROFITS OR PROSPECTIVE PROFITS, IN ANY WAY RELATED TO THE SALE OF PRODUCTS OR SERVICES UNDER THIS AGREEMENT.
- (b) All sums owed by either party to the other shall become due and payable immediately upon termination or expiration of this Agreement.
- (c) Upon termination or expiration of this Agreement, VAR shall, within five (5) working days of such termination or expiration, deliver to such address as Motorola shall specify all Motorola property, including, but not limited to, all equipment, customer data, software items, catalogs, drawings, designs, engineering photographs, samples, literature, sales aids and other confidential business information and trade secrets of Motorola in VAR's possession, along with all copies.
- (d) Upon termination or expiration of this Agreement, Motorola shall be relieved of any obligation to make any further shipments under this Agreement and, with respect to termination, may cancel all of VAR's unshipped orders for the Products, irrespective of previous acceptance by Motorola. Motorola shall have no obligation or liability to VAR or its prospective customers or any other party in connection with any such cancellations.
- (e) Motorola's acceptance of any order by VAR for Products or Services after the termination or expiration of this Agreement shall not be construed as a renewal or extension of this Agreement, nor as a waiver of termination or expiration of this Agreement.
- (f) The terms, provisions, representations and warranties contained in this Agreement that by their sense and context are intended to survive the performance thereof by either or both parties shall so survive the completion of performances and termination or expiration of this Agreement, including without limitation the making of any and all payments due under this Agreement.
- (g) Any of VAR's orders which are canceled and any of VAR's orders which are deemed to be canceled under Paragraph 11 of this Agreement will be subject to the cancellation charges shown below. VAR's order cancellations shall be effective upon Seller's receipt of them. VAR shall pay cancellation charges upon its receipt of the invoice reflecting those charges.

Number of Days Cancellation Notice Received by Motorola Prior to Scheduled Ship Date	Cancellation Charge (% Of Product List Price at Time of Order)
Greater than 90 days	No Charge
61 to 90 days (inclusive)	5%
31 to 60 days (inclusive)	10%
0 to 30 days (inclusive)	15%

- (h) Upon termination or expiration of this Agreement, the Master Radio Service Software License Agreement ("RSSLA") including any software licenses it provides for entered into between Motorola and VAR in connection with this Agreement shall immediately terminate. Any notice to VAR by Motorola of termination or non-renewal of this Agreement shall also constitute the termination notice for the RSSLA. All software items provided VAR under the RSSLA shall be returned to Motorola under subparagraph 15 (c) above.

16. OPTION TO REPURCHASE PRODUCTS

- (a) Upon any termination or expiration of this Agreement, VAR shall notify Motorola in writing of its currently existing inventory of Products and Motorola shall have the option, but not the obligation, to repurchase on the basis of last purchased by VAR being the first repurchased by Motorola, all or any part of VAR's remaining inventory of Products at the net price paid to Motorola for such inventory or Motorola's price for such Products to its other resellers at the time of such repurchase, whichever is lower. Said option may be exercised upon written notice to VAR mailed within fourteen (14) days following the receipt by Motorola of VAR's written inventory report. Upon exercise of said option to repurchase, Motorola and VAR shall take an inventory of all Products in control of VAR.
- (b) Upon any termination or expiration of this Agreement, prior to selling the Products in its control to any third party, VAR shall first have offered in writing to sell such Products to Motorola for the lower of VAR's net purchase price or the price offered by such third party, and Motorola shall have refused to accept such offer within ten (10) days after receipt thereof.
- (c) In the event Motorola exercises its option to repurchase all or any part of VAR's inventory of Products, VAR hereby agrees to sell such inventory to Motorola as of the date of termination or expiration of this Agreement, and to deliver the same immediately upon such termination, at Motorola's sole cost and expense, to such place(s) as Motorola shall designate, free and clear of any liens or encumbrances thereon, undamaged and in the original and unopened packaging thereof.
- (d) Motorola shall pay VAR for the inventory of Motorola Products repurchased within thirty (30) days after receipt of said Motorola Products by Motorola. Motorola shall have the right to offset against any monies payable hereunder for repurchased Products any monies that are due and owing from VAR to Motorola as of the date any such payment is due.

17. WAIVER

The failure of either party to insist in any one or more instances upon the performance of any of the terms, covenants, or conditions in this Agreement, or to exercise any right under this Agreement, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition or the future exercise of any such right, but the obligation of each party with respect to such future performance or future exercise of any such right shall continue in full force and effect.

18. LIMITATIONS OF LIABILITY

- (1) **LIMITATIONS OF LIABILITY.** EXCEPT FOR PERSONAL INJURY AND EXCEPT AS PROVIDED FOR IN ATTACHMENT C IN THE SECTION "PATENT, COPYRIGHT AND TRADEMARKS", MOTOROLA'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER FOR BREACH OF CONTRACT, WARRANTY, MOTOROLA'S NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, IS LIMITED TO THE PRICE OF THE PARTICULAR PRODUCTS SOLD HEREUNDER WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED. VAR'S SOLE REMEDY IS TO REQUEST MOTOROLA AT MOTOROLA'S OPTION TO EITHER REFUND THE PURCHASE PRICE, OR REPAIR OR REPLACE PRODUCTS THAT ARE NOT AS WARRANTED. IN NO EVENT WHETHER FOR BREACH OF CONTRACT, WARRANTY, MOTOROLA'S NEGLIGENCE, STRICT LIABILITY IN TORT, OR OTHERWISE, WILL MOTOROLA BE LIABLE FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, FRUSTRATION OF ECONOMIC OR BUSINESS EXPECTATIONS, LOSS OF PROFITS, LOSS OF DATA, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCT(S), FACILITIES OR SERVICES, DOWNTIME COST OR ANY CLAIM AGAINST VAR BY ANY OTHER PARTY.
- (2) **INSURANCE.** IT IS FURTHER UNDERSTOOD THAT MOTOROLA IS NOT AN INSURER AND THAT VAR SHALL OBTAIN ALL INSURANCE, REQUIRED BY THIS AGREEMENT AND THAT MOTOROLA DOES NOT REPRESENT OR WARRANT THAT MOTOROLA PRODUCTS WILL AVERT OR PREVENT OCCURRENCES, OR THE CONSEQUENCES THEREFROM, WHICH ARE MONITORED, DETECTED OR CONTROLLED WITH USE OF THE PRODUCTS.
- (3) **TIME TO SUE.** EXCEPT FOR MONEY DUE UPON AN OPEN ACCOUNT, NO ACTION SHALL BE BROUGHT FOR ANY BREACH OF THIS AGREEMENT MORE THAN TWO (2) YEARS AFTER THE ACCRUAL OF SUCH CAUSE OF ACTION EXCEPT WHERE A SHORTER LIMITATION PERIOD IS PROVIDED BY APPLICABLE LAW.
- (4) **NO REPRESENTATIONS.** THE ISSUANCE OF INFORMATION, ADVICE, APPROVALS, INSTRUCTIONS OR COST PROJECTIONS BY MOTOROLA'S SALES PERSONNEL OR OTHER REPRESENTATIVES SHALL BE DEEMED EXPRESSIONS OF

PERSONAL OPINION ONLY AND SHALL NOT AFFECT MOTOROLA'S AND VAR'S RIGHTS AND OBLIGATIONS HEREUNDER UNLESS THE SAME IS IN WRITING AND SIGNED BY AN AUTHORIZED MOTOROLA DIVISION GENERAL MANAGER WITH THE EXPLICIT STATEMENT THAT IT CONSTITUTES AN AMENDMENT TO THIS AGREEMENT.

19. GENERAL

- (a) Attachments A, B, C, D, E, F, G, H, I, J, K and L and any and all deletions, additions and revisions thereto, are incorporated into this Agreement and made a part hereof.
- (b) This Agreement can be amended as follows:
 - (i) Any additions, deletions, amendments or changes ("modification") to any Attachments (other than Attachment C - Supplemental Terms and Conditions) can be unilaterally made by Motorola; VAR's failure to terminate this Agreement when it is sent notice of the modification shall be deemed VAR's consent to the modification, and this Agreement shall be deemed amended accordingly; or,
 - (ii) Except for changes by Motorola in the various Attachments hereto or in the price, design, terms of sale, or specifications of the Products, any other additions, deletions, amendments or changes to this Agreement must be in writing and signed by respective representatives of Motorola and VAR.
- (c) VAR acknowledges that it has read and understands these terms and conditions and agrees to be bound by them, and that this Agreement, including the Attachments, is the complete and exclusive statement of the agreement between the parties and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter hereof.
- (d) This Agreement is binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, executors, legal representatives, successors and assigns. VAR may not assign or subcontract this Agreement or any interest herein, including, without limitation, rights and duties of performance, without the express prior written consent of Motorola.
- (e) If any provision of this Agreement is contrary to, prohibited by or held invalid by any law, rule, order or regulation of any government or by the final determination of any state or federal court, such invalidity shall not affect the enforceability of any other provisions not contrary to, prohibited by or held to be invalid.
- (f) Section and paragraph headings used in this Agreement are for convenience only and are not to be deemed or construed to be part of this Agreement.
- (g) **THIS AGREEMENT IS DEEMED BY THE PARTIES TO HAVE BEEN ENTERED INTO IN ILLINOIS, AND THIS AGREEMENT'S INTERPRETATION, CONSTRUCTION AND THE RIGHTS AND**

DUTIES AND REMEDIES FOR ITS ENFORCEMENT OR BREACH ARE TO BE DECIDED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS.

Motorola and VAR will attempt to settle any claim or controversy arising out of this Agreement through consultation and negotiation in good faith and a spirit of mutual cooperation. If those attempts fail, then the dispute will be mediated by a mutually-acceptable mediator to be chosen by Motorola and VAR within 30 days after written notice by one of us demanding mediation. Neither of us may unreasonably withhold consent to the selection of a mediator, and Motorola and VAR will share the costs of the mediation equally. By mutual agreement, however, Motorola and VAR may postpone mediation until we have each completed some specified but limited discovery about the dispute. The parties may also agree to replace mediation with some other form of non-binding alternative dispute resolution (ADR).

Any dispute which we cannot resolve between us through negotiation, mediation or other form of ADR within two months of the date of the initial demand for it by one of us may then be submitted to the courts within Illinois for resolution. Both Motorola and VAR consent to jurisdiction over it by such a court. The use of any ADR procedures will not be construed under the doctrines of laches, waiver or estoppel to affect adversely the rights of either party. Nothing will prevent either of us from resorting to judicial proceedings mentioned in this paragraph if (a) good faith efforts to attempt resolution of the dispute under these procedures have been unsuccessful or (b) interim relief from a court is necessary to prevent serious and irreparable injury to one party or to others.

- (h) If VAR is a corporation, the Attestation should be completed, the corporate seal affixed and a witness is not necessary. If VAR is an individual or a partnership, the Attestation should not be completed, but a witness should sign.
- (i) Notices: Any notice required or permitted herein shall be in writing and shall be hand-delivered or mailed, postage fully prepaid, properly addressed to the party to be notified at the address shown below or the last known address given by such party to the other. Any such notice shall be considered to have been given when hand-delivered or on the second business day after it has been deposited in the mail in the manner herein provided.

20. ATTACHMENTS

The following attachments are attached and made a part hereof:

- A. Products, Pricing Schedule and Engineering Services
- B. Value Added Configuration Description
- C. Supplementary Terms and Conditions
- D. Sub-License of Software
- E. Usage Forecast
- F. Installation Agreement
- G. Maintenance Agreement
- H. Marketing Responsibility and Performance Standards
- I. Reseller Marketing Report Form
- J. Uniform Commercial Code UCC-1
- K. Product Order Form
- L. Master Radio Service Software License Agreement

The parties deem this Agreement to be executed by their duly authorized representatives on the Agreement Date.

SELLER:

MOTOROLA, INC.

By: [Signature]
(Authorized Signature)

Print Name: _____

Title: _____

VAR:

Dale C. Rossman, Inc.

By: [Signature]
(Authorized Signature)

Print Name: Dale C. Rossman

Title: President

Attest or Witness: [Signature]

Print Motorola Address For Notices:

Print VAR Address For Notices:

Dale C. Rossman, Inc.
P.O. Box 1021
2160 State Road 37 South
Mulberry, FL 33860

ATTACHMENT "A"

To VAR Agreement between Motorola, Inc. and Dale C. Rossman, Inc.,
effective _____, 1992

A. FIXED DATA PRODUCT DISCOUNT SCHEDULE

	Annual Shipments \$	Discount %
Level I	0 - 150,000	13%
Level II	151,000 - 300,000	18%
Level III	301,000 - 1,000,000	23%
Level IV	1,001,000 - 1,300,000	26%
Level V	1,301,000 - 1,500,000	30%
Level VI	1,501,000 +	33%

- a) Earned discount is retroactive to first unit sold. Retroactive dollars are paid out as credits on future orders processed.
- b) Annually, discount reverts back to the Level I plus 50% of difference between Level I and attainment discount level from previous 12 months. Beginning discount can never exceed Level VI.
- c) First year of Contract, VAR will be given a new member start-up discount of 25%.

B. FIXED DATA PRODUCTS AND PRICING

C. SHIPMENT, DELIVERY, PAYMENT, TITLE

- a) Products are sold "F.O.B. Place of Shipment". Motorola shall select the carrier and prepay all shipping charges and add such charges to the VAR Partner's invoice. Title to Products sold and risk of loss shall pass to VAR Partners at the shipping point.

- b) Products will be invoiced upon shipment. All invoiced amounts shall be paid by you within thirty (30) days of your receipt of our invoice, without deduction or offset, by delivering to Motorola, at the address stated on the invoice, a company check, certified check or bank draft in the appropriate amount. Any amount which has not been paid within thirty (30) days of the date of our invoice, will be considered delinquent. VAR Partner will owe Motorola a late payment charge on the delinquent balance equal to 1% per month compounded monthly (being equivalent to a rate of 12.68% per annum) or the legal maximum, whichever is less. You also agree that on any delinquent amounts we may invoice and collect all cost (including reasonable attorney's fees) which we may incur to collect the delinquent amount.

VAR NAME: Dale C. Rossman Inc
AGREEMENT DATE: _____
REVISION DATE: _____

ATTACHMENT "B"

VALUE ADDED DESCRIPTION

Value Added Description

Provide a brief description of your Value Added System Solution offering including the system name and end user application.

Use MOSCAD & INTRC TO CONTROL INDUSTRIAL PLANTS & MINING OPERATIONS. MOTOROLA EQUIPMENT IS INTEGRATED INTO SYSTEMS USING OTHER PLC'S AND LEVEL 2 COMPUTERS. DCR SUPPLIES SOFTWARE, CONFIGURATION AND INSTALLATION.

System Configuration Diagram:

Provide an overview diagram depicting how the Motorola Products are integrated into your Value Added System Solution including a listing of all Motorola and VAR product codes.

See Attached
Exhibit A

VAR NAME: _____
AGREEMENT DATE: _____
REVISION DATE: _____

**MOTOROLA COMMUNICATIONS PRODUCTS VALUE
ADDED RESELLER AGREEMENT**

ATTACHMENT "C"

SUPPLEMENTARY TERMS AND CONDITIONS

A. ORDERS, ACCEPTANCE, CREDIT APPROVAL

Purchase and sale shall occur only by Motorola's acceptance of orders submitted by VAR. An order may be submitted on the Product Order Form attached as Attachment K. Facsimile, telegraph and verbal orders may also be submitted. Acceptance shall be documented by a Motorola invoice sent to VAR. Acceptance of an individual order shall only occur when a Motorola invoice is sent to VAR. VAR acknowledges and agrees that the invoice is accurate and final unless objected to in writing within ten (10) days of receipt by VAR.

Acceptance shall be only upon the terms and conditions of the Agreement and the listed Attachments. The only effect of any terms and conditions in VAR's purchase orders or elsewhere shall be to request the time and place of delivery and number of Products to be delivered, but they shall not change, alter or add to these terms and conditions in any way. One of the conditions of acceptance is VAR's obtaining and maintaining credit approval from Motorola. VAR shall provide Motorola with financial information and statements as requested by Motorola to obtain and maintain VAR's credit approval.

B. CANCELLATION

VAR may cancel an individual order by giving Motorola notice of such cancellation, which notice must be received by Motorola at least six (6) days prior to the scheduled shipping date of such order.

C. SHIPPING, DELIVERY, PAYMENT, TITLE AND SECURITY

- (1) Shipping and handling charges shall be as set forth in the Attachment A. Such shipping and handling charges are subject to change upon thirty (30) days written notice to VAR.
- (2) Each delivery shall be separately invoiced without regard to other deliveries. Payment for each invoice shall be according to the payment terms set forth in Attachment A.
- (3) Shipping or delivery dates are best estimates only; Motorola reserves the right to make deliveries in installments and this Agreement shall be severable as to such installments. Delivery delay or default of any installment shall not relieve VAR of its obligation to accept and pay for remaining deliveries. **IN NO EVENT SHALL MOTOROLA BE LIABLE FOR INCREASED COSTS, LOSS OF PROFITS OR GOODWILL OR**

ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES DUE TO LATE DELIVERY OR NONDELIVERY OF PRODUCTS.

- (4) Title to Products sold and risk of loss shall pass to VAR at the shipping point. VAR grants Motorola a purchase money security interest in each item of Products to secure the payment of the unpaid balance of the purchase price outstanding for such item of Products, plus any other applicable charges, and all reasonable attorney's fees and court costs incurred by Motorola in enforcing this Agreement. This purchase money security interest permits Motorola to take back the Products if VAR fails to pay for it in accordance with the terms of this Agreement. Pursuant to this lien, VAR grants to Motorola a security interest in and lien upon all of VAR's now existing or hereinafter acquired inventory of the Products and all of VAR's accounts, chattel paper, instruments, contract rights, general intangibles, accounts receivable and the proceeds thereof now existing or hereinafter arising out of VAR's sale or other disposition of the Products. VAR agrees to cooperate in whatever manner necessary to assist Motorola in perfecting and recording such security interest and lien by completing the UCC-1 form attached to the Agreement as Attachment J (or any similar form as may be applicable) and such other security as Motorola may from time to time request, all such security interests and liens to become part of the Agreement.

D. EQUIPMENT WARRANTY/WARRANTY DISCLAIMER

- (1) Motorola warrants Motorola, Inc. Manufactured Products against defects in material and workmanship under normal use and service for a period of fourteen (14) months from the date of shipment. Parts and labor to repair or replace defective parts within the original shipped Products plus travel costs for work on non-movable installed Products will be provided during the warranty period. This express warranty is extended by Motorola, Inc. 1301 E. Algonquin Road, Schaumburg, Illinois 60196 to you and shall begin to run upon your shipment, within one year's time, to your customer.
- (2) THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED WHICH ARE SPECIFICALLY EXCLUDED INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL MOTOROLA BE LIABLE FOR DAMAGES IN EXCESS OF THE PRICE STATED ON THE ORDER FOR THE WARRANTED PRODUCT OR FOR ANY LOSS OF USE, LOSS OF TIME, INCONVENIENCE, COMMERCIAL LOSS, LOST PROFITS OR SAVINGS, OR OTHER INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES TO THE FULL EXTENT SUCH MAY BE DISCLAIMED BY LAW EVEN IF MOTOROLA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR, EXCEPT AS PROVIDED IN THE SECTION OF THIS AGREEMENT ENTITLED "PATENT INDEMNITY", FOR ANY CLAIM AGAINST CUSTOMER BY ANY OTHER PARTY.
- (3) Except for batteries, in the event of a defect or failure to conform to specifications established by Motorola for the Product, or if appropriate to specifications accepted by Motorola in writing, during the applicable periods stated above, Motorola, at its option, will either repair or replace the Product

or refund the purchase price thereof, and such action on our part shall be the full extent of Motorola's liability hereunder, and your exclusive remedy. In the event of a defect in a nickel-cadmium rechargeable battery Motorola's liability shall be limited only to the replacement of such batteries which fall below eighty percent (80%) of their rated capacity or which develop leaks during the warranty period. Replacement batteries are warranted only for the remaining unexpired warranty period of the original battery. You shall be responsible for all charges incurred in returning batteries to Motorola. Motorola will be responsible for all charges incurred in shipping replacement batteries to you.

- (4) Motorola's warranty does not cover defects or damages to the Product resulting from:
 - (a) use of the Product in other than its normal and customary manner;
 - (b) misuse, accident or neglect;
 - (c) improper disassembly, testing, operation, maintenance, installation, modification, adjustment, alteration or repair;
 - (d) in the case of batteries, in addition to (a) - (c), charging of the battery by other than the Motorola approved battery charger specified for the charging of the battery;
 - (e) the battery being used in equipment or service other than the radio equipment for which it is specified. The battery warranty becomes void if any of the seals or the battery enclosure or cells are broken or show evidence of tampering.
- (5) Motorola's warranty extends only to individual Products; frequency sensitive components, towers, vidicon tubes and test equipment, and batteries sold for use on Citizen Band or Marine products are excluded but carry their own separate warranty. **BECAUSE EACH PRODUCT IS UNIQUE, MOTOROLA DISCLAIMS LIABILITY FOR RANGE, COVERAGE, OR OPERATION OF ANY SYSTEM AS A WHOLE UNDER THIS EQUIPMENT WARRANTY EXCEPT BY A SEPARATE WRITTEN AGREEMENT SIGNED BY AN OFFICER OF MOTOROLA.**
- (6) A non-Motorola, Inc. manufactured Product is excluded from our warranty unless bearing a Motorola, Inc. Part Number in the form of an "alphanumeric number", (i.e., TDE6030B) but such equipment may be subject to a warranty provided by its manufacturer(s), a copy (ies) of which will be supplied to you on specific written request.
- (7) Any claim for breach of this warranty shall be waived unless VAR notifies Motorola's marketing representative or Motorola at the above address, Attention: Quality Assurance Department, within the applicable warranty period. This warranty applies only within the Forty-Eight (48) United States and the District of Columbia.

E. SOFTWARE LICENSE AND SOFTWARE WARRANTY/WARRANTY DISCLAIMER

A separate Motorola Software License and Software Warranty may apply to certain Products and individual items of software. When VAR is advised by Motorola that a Motorola Software License and Software Warranty apply to Products containing Motorola Software that are purchased from Motorola for resale, or re-licensing, as

the case may be, Motorola will advise VAR of the procedures that must be taken in connection with the sale and/or licensing of such Products and/or Motorola Software such as a requirement that VAR and VAR's customers sign an applicable Motorola Software License prior to delivery of the Products and Motorola Software. **MOTOROLA DOES NOT EXTEND ANY SOFTWARE WARRANTY TO VAR, AND ALL WARRANTIES EXPRESS OR IMPLIED ARE SPECIFICALLY EXCLUDED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

VAR agrees that if Motorola notifies VAR that a separate sub-license is needed for End-Users, VAR will enter into a Sub-License Agreement as set forth in Attachment D, subject to the following:

- (1) VAR agrees that the rights granted by Motorola pursuant to this Agreement constitute a license only. VAR has no title to, or ownership rights in Motorola software or any associated documentation. VAR's right to sub-license shall cease upon termination of this Agreement. VAR agrees that Motorola software will be sold as:
 - (a) it is used with VAR software, products or software systems; or
 - (b) with added value of services, product or other considerations provided by or through VAR.
- (2) VAR may use Motorola software on marketing demonstrations or to perform project development on various systems at VAR's own sites. Any deviation or additionally use shall require prior approval, in writing, from Motorola.
- (3) Except as provided herein, VAR shall not reproduce for resale any Motorola software program code or documentation unless (i) it shall be strictly for use within VAR's facilities or (ii) authorized in writing by Motorola.
- (4) VAR has the option to temporarily install Motorola software for demonstration purposes only at sites other than VAR's facilities. VAR agrees to not leave such software unsecured and will remove such software following demonstration. If VAR wishes to leave Motorola software unattended, a proper sub-license agreement must be executed with the End-User.
- (5) VAR agrees that End-Users shall agree to and be sub-licensed by the terms and conditions as stated herein and further outlined in Attachment D.
- (6) VAR accepts the license agreement on the terms set forth herein. VAR agrees that it shall not disclose Motorola software to any third party except as set forth in this Agreement, and VAR shall protect Motorola software from unauthorized disclosure using the same reasonable care and procedures used to protect VAR's own confidential information.
- (7) Motorola software and documentation licensed by way of this Agreement is proprietary to Motorola. VAR shall not disclose any programs or documentation to any third party other than a sub-licensee without said party entering into a non-disclosure agreement either with VAR or Motorola.

F. PATENT, COPYRIGHT AND TRADEMARKS

- (1) **INDEMNIFICATION.** Motorola agrees to defend, at its expense, any suits against VAR or its customer based upon a claim that any Motorola-manufactured Products furnished hereunder directly infringe a U.S. patent or copyright and to pay costs and damages finally awarded in any such suit, provided that Motorola is notified promptly in writing of the suit and, at Motorola's request and at its expense, is given control of said suit and all requested assistance for defense of same. If the use or sale of any such Product(s) furnished hereunder is enjoined as a result of such suit, Motorola, at its option and at no expense to VAR, shall obtain for VAR and its customer the right to use or sell such Product(s), or shall substitute an equivalent Product reasonably acceptable to VAR and shall extend this indemnity thereto, or shall accept the return of such Product(s) and reimburse VAR the purchase price therefor less a reasonable charge for reasonable wear and tear. This indemnity does not extend to any suit based upon any infringement or alleged infringement of any patent or copyright by the combination of any such Product(s) furnished hereunder with other elements nor does it extend to any such Product(s) of VAR's or its customer's design or formula. The foregoing states the entire liability of Motorola for patent or copyright infringement. **IN NO EVENT SHALL MOTOROLA BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF PATENTS OR COPYRIGHTS.**
- (2) **COPYRIGHTS AND MASK WORKS.** Laws in the United States and other countries preserve for Motorola certain exclusive rights in the Motorola Software, mask works and other works of authorship furnished hereunder, including, without limitation, the exclusive right to prepare works derived from same, reproduce same in copies and distribute copies of same. Such Motorola Software, mask works and other works of authorship may be used in and redistributed only with the Products associated with same. No other use, including, without limitation, reproduction, modification or disassembly of such Motorola Software, mask works or other works of authorship or exercise of exclusive rights in same, is permitted.
- (3) **REVERSE ENGINEERING.** VAR acknowledges Motorola's claim that the Motorola Software and Products furnished hereunder contain valuable trade secrets of Motorola and therefore agrees that it will not translate, reverse engineer, de-compile or disassemble or make any other unauthorized use of such Motorola Software and Products. Since unauthorized use of such Motorola Software and Products will greatly diminish the value of such trade secrets and cause irreparable harm to Motorola, VAR agrees that Motorola, in addition to any other remedies it may have, shall be entitled to equitable relief to protect such trade secrets, including, without limitation, temporary and permanent injunctive relief without the proving of damage by Motorola.
- (4) **TRADEMARK AND PROPRIETARY MARKS.**
 - (a) The Products shipped under the terms and conditions of this Agreement will carry Motorola's trademark and proprietary marks

or such other logo or proprietary marks as Motorola may expressly agree to in writing prior to any use of such other logo or mark.

- (b) VAR hereby acknowledges the validity of the trademark "MOTOROLA" as well as of all other proprietary marks which are affixed to the Products and agrees that the aforesaid trademark and proprietary marks are and shall remain the property of Motorola.
 - (c) VAR shall not do anything to infringe upon, harm, or contest the validity of the aforesaid trademark or other proprietary marks of Motorola.
 - (d) VAR may use the trademark "MOTOROLA" in connection with the promotion or sale of such Motorola Products and state that such Products are manufactured by Motorola. Except as Motorola may otherwise specifically provide, such promotion shall be at VAR's sole cost and expense.
 - (e) VAR agrees that it shall not use the trademark "MOTOROLA" or any other Motorola trademark or trade name as part of the name under which it conducts business.
 - (f) Permission to display the word "MOTOROLA", or any other proprietary word or symbol owned by Motorola or its affiliates, is only as stated above and it is expressly understood that nothing herein shall grant to VAR any right, title or interest in the word "MOTOROLA" (either alone or in association with other words, names or symbols), or in the corporate name of Motorola, or any part thereof or in any other trademark or trade name adopted by Motorola, or its affiliates.
 - (g) In order that Motorola may protect its trademarks, trade names, corporate slogans, goodwill and product designations, VAR shall not use any such marks, names, slogans, or designations in any advertising copy, promotional material, signs or other written or printed material except in a form specifically approved in advance in writing by Motorola.
 - (h) If, as set forth in this subparagraph F.(4), any such mark is used in signs, advertising or in any other manner by VAR, VAR will, upon termination or expiration of this Agreement, immediately discontinue all such use or display.
- (5) **LICENSE DISCLAIMER.** Except for the right to use the Motorola Software and Products for the purposes provided herein which arises by operation of law, and except as expressly provided in the Agreement, nothing contained in the Agreement shall be deemed to grant to VAR or its customers either directly or by implication, estoppel or otherwise, any license or right under any patents, copyrights, trademarks or trade secrets of Motorola or any third party.

G. TAXES AND INSURANCE

- (1) VAR shall pay all license fees, sales, use, service use, occupation, retailer's occupation, service occupation, personal property and excise taxes and any other fees, assessments or taxes which may be assessed or levied by any national, state or local government and any departments and subdivision thereof, as a result of the performance of the Agreement or against any of the Products ordered by the VAR.
- (2) VAR shall provide and maintain at its own expense the following insurance against liability arising in any way out of the Agreement and any other insurance coverages which may be deemed necessary by Motorola; (a) General Public Liability insurance with a combined single limit of \$1,000,000; (b) Worker's Compensation and Employers Liability insurance sufficient and proper under the laws of the state wherein the responsibilities are to be performed to protect Motorola against claims under the compensation laws of said state; (c) Automobile Public Liability Insurance covering all vehicles used in connection with the Agreement with a combined single limit of \$1,000,000; (d) fire, theft and extended coverage with respect to the Products in an amount no less than the replacement value of such Products. All insurance policies shall be in companies satisfactory to Motorola, name Motorola as an additional named insured, and contain a waiver of subrogation clause whereby the insurer waives all rights of subrogation it may have under such policies as related to Motorola. Each insurance policy will contain a clause requiring the insurer to give Motorola at least thirty (30) days prior written notice of any alteration in the terms of such policy or the cancellation thereof. VAR will promptly provide Motorola with written notice thereof and make available to Motorola all information and documentation relating thereto.
- (3) Except for the amount, if any, of federal, state, or local taxes stated in any of the Attachments or otherwise set forth in the Agreement, the prices set forth in the Agreement are exclusive of any amount for federal, state, or local excise, sales, use, property, retailers' occupation or similar taxes. If any such excluded taxes are determined to be applicable to any transaction related to the Agreement, or if Motorola is required to pay or bear the burden of such taxes, the prices set forth herein shall be increased by the amount of such taxes and any interest or penalty thereon, and VAR shall pay to Motorola the full amount of any such increase no later than ten (10) days after receipt of an invoice for such taxes, or VAR may provide Motorola an executed resale exemption certificate as required by state tax authorities to establish VAR's tax-exempt status as a reseller under the Agreement.

H. EXCUSABLE DELAYS

Motorola shall not be liable for any delay or failure to perform due to any cause beyond its reasonable control. Causes include but are not limited to strikes, acts of God, acts of the VAR, interruptions of transportation or inability to obtain necessary labor, materials or facilities, or default of any supplier or because Motorola's volume of orders at any time renders deliveries impractical in the ordinary course of business. The delivery schedule shall be considered extended by a period of time equal to the time lost because of an excusable delay. In the event Motorola is unable to wholly or partially perform because of any cause

beyond its reasonable control, Motorola may terminate any order without liability to VAR or its customers.

I. FCC AND OTHER GOVERNMENT MATTERS

The end user of a Product is solely responsible for obtaining any licenses or other authorizations required by the Federal Communications Commission ("FCC") or any other federal, state or local governmental agency. The end user is solely responsible for complying with applicable FCC rules and regulations and the applicable rules and regulations of any other federal, state or local governmental agency. Neither Motorola nor any of its employees is an agent of VAR or the end user in FCC or other governmental matters. Motorola, however, may assist in preparation of an FCC license application at no charge to the end user. Motorola shall establish VAR's obligations in connection with any such FCC or other governmental licensing assistance required for end users.

J. COMPLIANCE WITH LAW

VAR shall at all times conduct its efforts under the Agreement in strict accordance with all applicable federal, state and local laws and regulations and with the highest commercial standards. VAR agrees to promptly comply with any notices received from Motorola regarding compliance with any state or federal law including but not limited to laws regarding warranty or consumer protection.

K. MASTER RADIO SERVICE SOFTWARE LICENSE AGREEMENT

In the event VAR, at its option, chooses to acquire the software items available to VAR from Motorola under the RSSLA, VAR agrees to execute the RSSLA attached to the Agreement as Attachment L or any amended version thereof.

* * * *

VAR NAME: _____
AGREEMENT DATE: _____
REVISION DATE: _____

ATTACHMENT "D"

VALUE-ADDED-RESELLER MASTER SOFTWARE LICENSE AGREEMENT

between

MOTOROLA, INC.

and

CUSTOMER: Dale C. Rossman, Inc.

The Value-Added-Reseller Master Software License Agreement ("Agreement") is made and entered into by and between Motorola, Inc. ("MOTOROLA") and the customer named below ("Customer"). Any schedule or order (the "Order") between Motorola and Customer which incorporates the terms and conditions of this Agreement by reference shall constitute the license agreement for the software listed in the Order and any supplements thereto and any other standard software, documentation and materials (except public domain software, documentation and materials) provided by Motorola to Customer in connection with such software (the "Software"). This Agreement and the Order are collectively called the "Contract." Any equipment sold under the Value Added Reseller Agreement ("VAR Agreement") between the parties shall be automatically covered by this Agreement if software is involved.

Section 1.

Term of Order. The Order shall become effective on the date it is executed by Motorola, and shall remain in full force and effect until terminated as provided below.

Section 2.

License. Motorola hereby grants to Customer a personal, nonexclusive, nontransferable license to use the Software, within the United States.

Customer may sub-license the Software to its customers, provided Customer does not retain any portion of the Software upon such sub-licensing, and provided that prior to or at the time of receipt of the Software such customer has executed a written agreement ("Customer Agreement") which contains the Minimum Terms of Customer Agreements specified by Motorola in a written Attachment to this Agreement. Motorola may make changes to such Attachment upon written notice to Customer.

Section 3.

Term of License. The license term for each item of Software shall begin on the first business day after Motorola has installed the item and made it ready for use, unless the item will not be installed by Motorola, in which case the term shall begin ten (10) days after Motorola ships the item. The license term shall be permanent so

long as the Software is used on the Equipment and so long as Customer is not in default under the Contract (hereafter "Equipment" shall be defined as the Customer's combination of its products with Motorola's as set forth in Exhibit B to the VAR Agreement). A license shall terminate if the Order terminates.

Section 4.

Charges and Payments. License charges for an item of Software shall be those one-time, lump-sum charges listed in the Order. Customer's prices shall be the then current price as set forth in the VAR Agreement Attachment A between Customer and Motorola.

All charges shall be due and payable upon receipt of invoice. Service charges at the maximum rate permitted by applicable law may be invoiced on accounts more than thirty (30) days past due and shall be due and payable upon receipt of invoice.

Customer shall pay all sales, use and excise taxes, and any other assessments in the nature of taxes however designated, on the Software or its license or use, on or resulting from the Contract or on any amount payable or any services furnished under the Contract, exclusive of personal property taxes assessed on the Software and taxes based on Motorola net income, unless Customer furnishes Motorola with a certificate of exemption from payment of such taxer which is in a form reasonably acceptable to Motorola.

Section 5.

Installation. If requested by Customer, Motorola shall provide phone line assistance on installation matters.

Section 6.

Protection and Security. Customer acknowledges that the Software contains valuable proprietary information and trade secrets and that unauthorized dissemination of the Software (including but not limited to reverse engineering) could cause irreparable harm, and thus agrees that unless it first obtains Motorola's written consent, it will not disclose, transfer, provide or otherwise make available in any form any of the Software (or any portion of it) to any other person or entity except those employees of Customer who must be directly involved in the use of or evaluation of the Software. Customer shall take appropriate action, by instruction, agreement, or otherwise, with any persons permitted access to the Software so as to enable it to hold the Software in confidence and otherwise to satisfy its obligations under the Contract.

Customer shall not make copies of the Software except backup copies which are necessary for Customer's internal data processing needs for use only on the Equipment. All copies of the Software made by Customer, including translations, compilations, partial copies within modifications and updated works, and all rights in patents, copyrights, trade secrets, and other intellectual property rights therein are the property of Motorola or its suppliers, and no title to the Software is transferred to Customer. Customer shall reproduce and include all copyright and trademark notices, and other proprietary legends, on any such copies in accordance with Motorola's or its suppliers' instructions. Current instructions are available from Motorola upon request. So long as any copy of the Software remains in Customer's control or possession, the terms of this Section shall survive the termination of the Contract.

Section 7.

Reporting and Record Keeping Requirements. If requested by Motorola, Customer shall furnish to Motorola a statement, in form acceptable to Motorola, certified by an authorized representative of Customer, identifying each item of Software and the Equipment designated in each Customer Agreement executed by Customer. This statement shall also show the amount of license charges paid and payable for each item of Software on such Equipment, and name the licensing party.

Not more frequently than semi-annually, Motorola and its suppliers may have a certified public accountant make an examination and audit, during normal business hours, of all records kept pursuant to this Section 7 and such other records and accounts as may under recognized accounting practices contain information bearing upon the amount of fees payable to Motorola under this Agreement.

Notwithstanding any statement to the contrary appearing on check or otherwise prompt adjustment shall be made by the proper party to compensate for any errors or omissions disclosed by such examination or audit.

Customer shall furnish whatever additional information Motorola may reasonably request from time to time to enable Motorola to ascertain compliance with this Agreement. By way of illustration and not limitation of Motorola's rights under the preceding sentence, Motorola reserves the right to inspect Customer's Customer Agreements for Software licensed from Motorola to determine compliance with the Section License.

Section 8.

U.S. Government Business. In the event that Customer elects to sell Motorola products or services to the U.S. Government or to a prime contractor or otherwise to the U.S. Government, Customer remains solely and exclusively responsible for compliance with all statutes and regulations governing sales to the U.S. Government. Motorola makes no representations, certifications or warranties whatsoever with respect to the ability of its goods, services or prices to satisfy any such statutes and regulations.

Section 9.

Export Controls. Regardless of any disclosure made by Customer to Motorola of an ultimate destination of the Software, Customer shall not export, either directly or indirectly, any software or documentation without first obtaining a license as required from the United States Government.

Section 10.

Maintenance. Motorola shall not be responsible for support or field service of Software under this Agreement. Customer may elect to enter into a separate software support agreement to have such service provided by Motorola.

Section 11.

Limited Warranty.

- A. Statement of Limited Warranty - Motorola warrants that the Software, when delivered, will conform to its published specifications. If Software licensed hereunder is not as warranted, Motorola shall refund the license fees paid, and accept return of the nonconforming Software. Motorola does not warrant that the functions contained in the Software will meet Customer's requirements, that the operation of the Software will be uninterrupted or error free, or that each defect in the Software will be corrected.

- B. Warranty Service – Standard - Customer must ship non-conforming Software FOB Motorola's authorized plant or repair center within ninety (90) days after delivery. Upon verification by Motorola that the Software does not conform to the warranty, MOTOROLA will refund the license fees paid or provide a new copy of the Software.
- C. Disclaimer of Warranty Against Infringement - Motorola does not represent or warrant that Software furnished hereunder is free of infringement of any third-party patents, copyrights, trade secrets, trademarks or other intellectual property rights.
- D. Disclaimer of Other Warranties - EXCEPT AS PROVIDED IN THIS SECTION, THERE ARE NO WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. MOTOROLA DISCLAIMS TO THE FULL EXTENT PERMITTED BY LAW ALL WARRANTIES.

Section 12.

Default and Limitation of Liability. Either party shall be in default if it fails to perform any of its obligations under the Contract, and such failure remains uncured for a period of thirty (30) days after receipt by such party of written notice thereof from the other party.

If an event of default occurs, the non-defaulting party, in addition to any other rights available to it under law or in equity, may withhold its performance under or may terminate the Order at any time by giving notice thereof in writing to the defaulting party. If Motorola is the non-defaulting party, Motorola may repossess the Software and, until the event of default is cured, may withhold its performance under the Contract. Remedies shall be cumulative and there shall be no obligation to exercise a particular remedy. The defaulting party agrees to pay the non-defaulting party its reasonable expenses, including attorney fees, in enforcing its rights under the Contract.

The entire Motorola liability to Customer for damages concerning performance or non-performance by Motorola under the Contract or in any way related to the subject matter of the Contract, regardless of whether the claim for such damages is based in contract or in tort, shall be limited to Section 18 of the VAR Agreement between the parties.

IN NO EVENT SHALL MOTOROLA OR ITS SUPPLIERS BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF DATA, OR OTHER SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING FROM OR IN CONNECTION WITH THE DELIVERY, LICENSE, USE, PERFORMANCE OR NONPERFORMANCE OF THE SOFTWARE, EVEN IF MOTOROLA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MOTOROLA'S SUPPLIERS SHALL NOT HAVE ANY OBLIGATION TO FURNISH AND ASSISTANCE, INFORMATION, OR DOCUMENTATION WITH RESPECT TO THE SOFTWARE.

Section 13.

Assignment. Customer shall not assign or transfer the Contract without the prior written consent of Motorola (which consent shall not be unreasonably withheld.) Any prohibited assignment or transfer shall be null and void.

MOTOROLA MAY ASSIGN THE ORDER OR ENCUMBER OR SELL THE SOFTWARE EITHER IN WHOLE OR IN PART, WITHOUT NOTICE TO OR THE CONSENT OF CUSTOMER, BUT NO SUCH ASSIGNMENT, ENCUMBRANCE OR SALE SHALL RELIEVE MOTOROLA OF ITS OBLIGATIONS UNDER THE CONTRACT WITHOUT THE PRIOR WRITTEN CONSENT OF CUSTOMER.

Section 14.

Obligations Upon Termination. Upon termination of this Agreement or of any license granted hereunder, Customer agrees to the following:

Customer shall return to Motorola all full or partial copies of the Software (including documentation and materials) in Customer's possession or under its control within twenty (20) days following termination or expiration, including any in-house copies, and shall render unusable all Software placed in any storage apparatus under Customer's control. Customer will provide Motorola a written certificate Customer's best efforts and to the best of Customer's knowledge the acts in the preceding sentence have been completed.

Customer shall be deemed to have conveyed back to Motorola all rights of any kind in the Software as delivered by Motorola to Customer. Termination under this provision shall not relieve Customer of the obligation it has under this Agreement, including without limitation, its obligations under the Section Protection and Security. As of the date of termination, Customer agrees that it shall not use internally nor employ any Software as it was delivered to Customer as part of any portion of any software which Customer may use, sell, assign, lease, license, or transfer to any third parties.

The right to enforce the provisions of any Customer Agreement relating to the protection of Motorola's or its supplier's proprietary interests in the software automatically and without further act by any person shall be assigned to and shall inure to the benefit of Motorola as if Motorola were the "Licensor", "Supplier", or "Owner" named therein.

Section 15.

Notices. All formal notices, consents, and other communications required or permitted under the Contract shall be in writing and shall be sent by registered or certified mail, postage prepaid and return receipt requested, or transmitted by facsimile if confirmed by such mailing, to the addresses indicated in this Agreement. Either party may change its address by written notice to the other party.

Section 16.

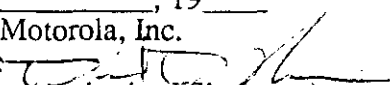
Entire Agreement. THE CONTRACT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN MOTOROLA AND CUSTOMER, AND SUPERSEDES ALL ORAL OR WRITTEN PROPOSALS, PRIOR AGREEMENTS AND OTHER PRIOR COMMUNICATIONS BETWEEN THE PARTIES, CONCERNING THE SUBJECT MATTER OF THE CONTRACT.

Section 17.

General. The Contract shall be governed by and construed in accordance with the laws (excluding the law of conflict of laws) of the State of Illinois. No subsequent representation or promise relating to and no amendment of the Contract shall be binding unless it is in writing and signed by both parties. The terms and conditions of any order submitted by Customer shall be of no force and effect. Except for Customer's obligation to pay Motorola, neither party shall be liable for any failure to perform due to causes beyond its reasonable control.

No waiver by a party of any breach of any provision of the Contract shall constitute a waiver of any other breach of that or any other provision of the Contract. In the event that any of the provisions contained in the Contract are held to be unenforceable, the Contract shall be construed without such provision.

Accepted and Approved as of

_____, 19____
by Motorola, Inc.
By: 
(Authorized Signature)

Please type the following:

Name: _____

Title: _____

Address for Formal Notices:

Motorola, Inc.
1301 East Algonquin Road
Schaumburg, Illinois 60196

Attn: _____

CUSTOMER

Dale C. Rossman, Inc.

By: 
(Authorized Signature)

Please type the following:

Name: Dale C. Rossman

Title: President

Date: _____

Address for Formal Notices:

Dale C. Rossman, Inc.
P.O. Box 1021
2160 State Road 37 South
Mulberry, FL 33860

Attn: _____

Telephone: 813-425-4941