



All purchases by an End User (as defined herein) from Symbol Technologies, Inc., the Enterprise Mobility business of Motorola, Inc. or any of its direct or indirect subsidiaries, (collectively and individually referred to as “**Motorola**”) of service offers identified by a designated SKU number or other identifying factor established by Motorola and described in writing to the End User (the “**Services**”), whether sold directly by Motorola to the End User or through a Motorola Reseller or Distributor (herein after referred to as an “**Authorized Partner**”) shall (as between Motorola and the End User) be governed by these Terms of Service, the associated Services Description Document (“**SDD**”) and any modifications agreed to by Motorola in writing (collectively referred to as the “**Agreement**”) and Motorola’s acceptance of an order for such Services shall be communicated to End User in a written order acceptance communication (“**Acceptance Notice**”).

**ANY OF THE END USER'S TERMS OR CONDITIONS THAT ARE DIFFERENT FROM OR IN ADDITION TO THOSE CONTAINED HEREIN ARE HEREBY REJECTED AND OF NO FORCE OR EFFECT.** Any prior or contemporaneous representations, agreements, comments, covenants or assertions that relate to the subject matter of this Agreement, whether written or oral, are not enforceable under this Agreement.

For all purposes hereof, “End User” shall mean both a customer who buys Service directly from Motorola for its own use and not for resale or the ultimate purchaser or user of the Services who acquires the Services for their own use and not for resale from a Motorola Authorized Partner.

For all purposes hereof, “e-Contract” shall mean a service offer detailed under this Agreement that is purchased via an electronic medium, including but not limited to those via Electronic Data Interchange (commonly referred to as EDI), or Motorola’s My-Symbol-Order Web portal (also known as MSO).

**1.0 NATURE OF AGREEMENT.** By signing this document (or by clicking the “I accept” button), the End User orders and agrees to pay for those services listed herein. Motorola agrees to deliver the ordered service(s). Only the written terms and conditions of this document, the associated Services Description Document, and any attachments agreed upon and signed by both parties will apply. Verbal or other representations unless contained herein, are not enforceable under this Agreement.

**2.0 TERM.** Subject to End User’s compliance with all of the terms and conditions of the Agreement and acceptance by Motorola of End User’s order for the particular package of Services, such Services shall be supplied to the End User for the term as defined by the SKU or as otherwise agreed to in writing by Motorola.

**3.0 AUTOMATIC RENEWALS (“Auto-Renew”).** This Agreement shall automatically renew for subsequent one-year periods to begin upon the expiration date of the prior coverage period unless sixty (60) days written notice of termination is given by either party to the Agreement. Automatic Renewals require: (a) End User’s revised and complete Purchase Order or credit card information reflective of any changes renewals are subject to and (b) End User’s account has no outstanding balances and End User maintains a satisfactory credit and payment history. Motorola will send a renewal notification to the End User, which will include price and terms and conditions (if different from the Agreement) applicable to the renewal term.

**4.0 SUPPORTED EQUIPMENT.**

**4.1** Motorola will provide the Services with such levels of skills and experience as it deems appropriate to perform the Services. Motorola’s obligation to deliver the Services is subject to Motorola’s receipt of all required information regarding the End User and the supported products as Motorola shall request. This information may include but is not limited to: End User billing address; product’s installation address; authorized contact names; valid serial numbers; and service start date. For e-Contract orders, the End-User must provide to Motorola a valid authorized buyer’s e-mail address and company address. Automatic Addition (“Auto-Add”) of additional units of product and Automatic Renewals are only available to End Users who purchase Services directly from Motorola. Purchasers of Services through Motorola Authorized Partners may only change, add or delete units to the Agreement by submitting a written order via a Motorola Authorized Partner.

**4.2** Motorola may require from the End User a proof of purchase of the particular unit of product and the Services for such product. The Services shall cover the particular units of Motorola products described in the Acceptance Notice issued by Motorola which will, among other things, identify the product number and associated serial number for each unit of product covered. During provision of the Services, if replacement parts or units of products are needed, such parts will be new or refurbished, and such units of products will be products equivalent to new in performance.

**4.3** This Agreement covers the individual units of the Motorola products identified in the Acceptance Notice, including any Auto-Add units that are acquired by the End User for which Motorola will issue a separate Acceptance Notice.

**5.0 SERVICE CHARGES.** Service price(s) as listed are for each particular category of Service related to it. These charges do not include applicable taxes. The price(s) will remain as listed during the initial term of the End User's order.

**6.0 INVOICING AND PAYMENT TERMS.** For Services purchased directly from Motorola, invoices will be provided by Motorola up to forty five (45) days in advance of the applicable billing period. All terms are thirty (30) days net from the date of invoice for all Service agreements. Motorola reserves the right, at any time, to revoke any credit extended if payment is in arrears for more than thirty (30) days after notice, or if in Motorola's opinion End User's credit does not warrant further extension of credit. Additionally, Motorola may charge late payment interest of the lesser of the highest legally permissible rate or 1.5% per month for the late payment of any and all accurate balances of invoices from when they are due and payable. For Services purchased through an Authorized Partner, the payment terms agreed to between End User and such Authorized Partner will apply.

**7.0 AUTOMATIC ADDITION OF PURCHASED UNITS ("AUTO-ADD").** Unless the End User has declined Motorola's Auto-Add coverage, Motorola shall automatically add to the Agreement End User's purchases of all quantities of units of the like product type(s) or replacement product type(s) for the same service coverage as covered by this Agreement that are purchased directly from Motorola and shipped, by Motorola, to a location covered by this Agreement. Motorola shall also automatically add to this Agreement all units of the like product type(s) or replacement product type(s) that are provided as replacements for units that are repaired by Motorola pursuant to this Agreement and returned to any of the End User's locations, whether the Service was purchased directly from Motorola or through an Authorized Partner. Products not similarly covered by this Agreement are not eligible for Auto-Add if replaced.

**8.0 LIMITATIONS.** Service coverage does not include physical damage, misuse, unauthorized alterations or attempts to repair, abnormal operating environments, manmade or natural disasters, direct lightning damage, nor damage to consumable items such as tapes, diskettes, ribbons, paper, cables, print heads, batteries or chargers, and any associated equipment or system except as affected by the particular covered product, unless also specifically covered in writing by Motorola. Products submitted for repair under these conditions will be subject to an additional fee to bring product up to Motorola's specifications.

**9.0 SERVICES OUTSIDE SCOPE OF STANDARD OFFERS.** Where Services are requested that are outside the scope of the Service(s) covered under our standard Service offers as described in our SDDs, such Services will require additional payment by the End User in accordance with Motorola's prevailing rates. Prior to carrying out such Services, Motorola

shall issue a quote to the End User for payment via a credit card if less than \$1,000 or requires a Purchase Order if greater than \$1,000 for approved End Users.

**10.0 RIGHT TO INSPECT.** Motorola reserves the right to inspect any unit of product that has not been covered by a Motorola Service Agreement or Motorola Service Warranty and, if necessary, make it operational. End User will be responsible for an inspection fee as well as the cost of any repair work that may be necessary to make the product acceptable for coverage under the Service Agreement. Equipment which had been covered by an Agreement that has expired may also be subject to product inspection fees prior to renewal.

**11.0 END-USER RESPONSIBILITIES.** End-User responsibilities include: (a) notification of Motorola immediately if there is any change regarding the information provided as part of this Agreement and the products (this may impact Motorola's ability to perform and require additional fees); (b) making all reasonable efforts to cooperate with Motorola in resolving problems remotely; executing self tests, diagnostic programs and so on; (c) paying all telecommunications charges associated with provision of telephone and remote Services; (d) compatibility of non-supported products, accessories and devices with the Product(s); (e) security of its own proprietary and confidential information and for maintaining a procedure for reconstruction of lost, or altered files or data programs; and (f) those activities and responsibilities identified in any associated SDDs.

## **12.0 CHANGES AND NOTICES.**

**12.1** Motorola may change the serial number of product(s) covered by the Services when the original product is damaged beyond economic repair and a replacement product is provided or when the offer provides an advance replacement product.

**12.2** In addition to the Auto-Add feature, where applicable, End User may request a change of the unit(s) of each product being covered under the Agreement by forwarding those changes in writing to Motorola, Inc., One Motorola Plaza, Mail Stop A-19, Holtsville, NY, 11742, Attn: Service Contract Administration. Additions to this Agreement may be accepted by Motorola to be effective thirty (30) days after receipt for pro-rata fees for the remaining term under the then current Agreement for such additional units of product; this Agreement is non-cancellable although a deletion of some limited number of units of Product from this Agreement may be accepted by Motorola, at its sole discretion, thirty (30) days after receipt of such proposed request for a deletion of a unit for a pro-rata credit of the pre-paid fee for the service of such units. Products submitted for repair while not under Service coverage or warranty will be charged Motorola's repair rate prevailing at the time such Service is provided prior to placing unit under Service Agreement.

**13.0 TERMINATION.** Termination does not relieve the parties of their respective accrued obligations hereunder. Motorola must deliver all Services due until the termination date, and End User must pay for all Services delivered. Motorola may terminate the Agreement in event of any of the following: (a) failure of End User to comply with any Agreement provision within ten (10) days of written notice of such failure from Motorola; or (b) End User's insolvency, bankruptcy or filing to seek relief from creditors.

**14.0 FORCE MAJEURE.** Motorola shall not be responsible or liable for any failure to perform hereunder if such failure is caused by acts of God, acts of government, strikes or labor disputes, failures of transportation, fire or flood or other casualty, failures of subcontractors or suppliers, or any other cause or causes (whether or not similar in nature to any of those herein specified) which are beyond Motorola's reasonable control.

**15.0 LIMITATION OF LIABILITIES.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, MOTOROLA WILL NOT BE LIABLE TO END USER, ITS AFFILIATES OR ANY OTHER PERSON FOR ANY LOST REVENUES, PROFITS, GOODWILL OR USE, THE COST OF SUBSTITUTED PRODUCTS OR SERVICES, BUSINESS INTERRUPTION OR ANY DAMAGE TO OR LOSS OF ANY SOFTWARE PROGRAMS, DATA OR REMOVABLE DATA STORAGE MEDIA, FOR THE RESTORATION OR REINSTALLATION OF ANY SOFTWARE PROGRAMS OR DATA, OR FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES OF ANY KIND HOWEVER CAUSED RELATED TO THE SERVICES OR THIS AGREEMENT, OR THE INABILITY TO USE THE PRODUCTS, WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE), EQUITY OR ANY OTHER THEORY OF LIABILITY, EVEN IF MOTOROLA HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES OR EVEN IF THOSE DAMAGES ARE FORESEEABLE. END USERS EXCLUSIVE REMEDY IS EXPRESSLY LIMITED TO PERFORMANCE OF THE SERVICES PROVIDED FOR BY THIS AGREEMENT OR THE FAIR MARKET VALUE THEREOF. MOTOROLA'S ENTIRE LIABILITY FOR DAMAGES TO END USER OR OTHERS RESULTING FROM SERVICES PERFORMED UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE ANNUAL SERVICES CHARGE PAID BY END USER, EXCEPT FOR INSTANCES OF PHYSICAL INJURY TO PERSON OR PROPERTY. MOTOROLA DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE SERVICES, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE OR NONINFRINGEMENT. NEITHER PARTY MAY BRING A LEGAL ACTION UNDER THIS AGREEMENT OR RELATED TO THE SERVICES MORE THAN TWO YEARS AFTER THE CAUSE OF ACTION AROSE UNLESS PROVIDED OTHERWISE BY APPLICABLE NONWAIVABLE LAW.

**16.0 HOLIDAYS.** Motorola will observe all local public holidays and no Service shall be provided.

**17.0 DISPUTES.** If any legal proceedings are commenced to resolve any dispute or difference which may arise in connection with this Agreement or the performance of the Services, the prevailing party shall be entitled, in addition to any other award that may be made, to recover costs, attorney's fees and expert witness fees, including any costs or attorney fees incurred in connection with any appeals.

**18.0 ENTIRE AGREEMENT.** No subsequent agreement, arrangement, relationship or understanding between the parties shall be valid, effective or enforceable and no obligation or liability shall be created on behalf of either party hereto unless and until it is contained in writing, signed by a duly authorized representatives of each party. This Agreement constitutes the entire understanding between Motorola and the End User with respect to the subject matter, and supersedes and replaces all prior and contemporaneous agreements, whether written or oral, as to such subject matter. If a conflict exists between these Terms of Service and an SDD, the SDD shall prevail.

**19.0 ASSIGNMENT.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. End User may not transfer or assign its interests in this Agreement, in whole or in part, without the prior written consent of Motorola, which consent shall be in Motorola's sole discretion to grant. Notwithstanding any and all other rights Motorola has to assign and subcontract its interests in and obligations under the Agreement, End User specifically acknowledges and agrees that Motorola may transfer or assign its interests in the Services and this Agreement to Motorola, Inc., or any affiliate of Motorola, Inc., or to the purchaser of all or substantially all of its capital stock, assets or business without the consent of the End User.

## **20.0 GOVERNING LAW AND VENUE.**

**20.1** When the Services are provided in the Americas (North, Latin and South America), this Agreement shall be governed by the laws of the State of New York without giving effect to the conflict of law principles thereof and excluding the Convention on Contracts for the International Sale of Goods. End User hereby irrevocably and unconditionally submits for itself and its property in any legal action or proceeding relating to this Agreement or for recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the courts of the State of New York, in the County of Suffolk, New York, and to the United States District Court for the Eastern District of New York, and to the respective appellate courts thereof in connection with any appeal therefrom.



**20.2** When the Services are provided in the EMEA region (Europe, Middle East and Africa), this Agreement shall be governed by English Law without giving effect to the conflict of law principles thereof and excluding the Convention on Contracts for the International Sale of Goods. End User hereby irrevocably and unconditionally submits for itself and its property in any legal action or proceeding relating to this Agreement or for recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the English courts.

**20.3** When the Services are provided in the APAC region (Asia, Australia and New Zealand), this Agreement shall be governed by Singapore Law. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause. The Tribunal shall consist of one (1) arbitrator to be appointed by the Chairman of the SIAC.

**21.0 EXPORT CONTROL.** Provision of the Services to the End User may be subject to export control law and regulations. Motorola does not represent that any necessary approvals and licenses will be granted. The End User will provide reasonable assistance to Motorola to obtain any necessary consents. If, through no fault of Motorola, any necessary consents are not granted, the parties can terminate this Agreement without any liability to the other.

**22.0 THIRD-PARTY RIGHTS.** If applicable, a person who is not party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

**23.0 LANGUAGE.** The parties hereto confirm that it is their wish that this Agreement, as well as all other documents relating hereto, including all notices, have been and shall be drawn up in the English language only.

Les parties aux présentes confirment leur volonté que cette convention, de même que tous les documents, y compris tout avis, qui s'y rattachent, soient rédigés en langue anglaise.

Los partidos a esto confirman que es su deseo que este acuerdo, así como el resto de los documentos que se relacionaban a esto, incluyendo todos los avisos, ha estado y será elaborado en la lengua inglesa solamente.