Schedule 5 - Lot 2

Software

Version 5.0

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CHANGE HISTORY

Version No.	Date	Details of Changes included in Update	Author(s)	Document Number
4.0	21.10.15	Execution version	ESMCP	36016567.11
4.1	08.11.18	Updates to reflect Kodiak PTT and Third Party SW	Motorola	
4.1	23.11.18	Updates to V4.1 to reflect Kodiak PTT and Third Party SW	Motorola	
4.2	01.02.19	Further updates from Moto	Motorola	
4.3	05.02.19	Moto updates in response to Authority questions	Motorola	
4.4	20.03.19	Initial conforming to align with Ts & Cs	DLAP	95195671
5.0	09.05.19	CAN 500 Execution version	DLAP	96248550.1

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Contents

1 The Software 4

2 Supplier Software 4

3 Third Party Software 16

Annex 1 – Letter
Annex 2 - Confidentiality Undertaking
Annex 3 – Clarification Responses

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1 The Software

1.1 The Software below is licensed to the Authority in accordance with Clauses 16 (Intellectual Property Rights) and 17 (Licences Granted by the Supplier).

1.2 The Parties agree that they will update this Schedule periodically to record any Supplier Software or Third Party Software subsequently licensed by the Supplier or third parties for the purposes of the delivery of the Services.

2 Supplier Software

2.1 The Supplier Software includes the following items:

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Service Component	Software	Supplier (if an Affiliate of the Supplier)	Purpose	Number of Licences (Production & Systems)	Restrictions	Number of Copies	Type (COTS Non-COTS)
1. Public Safety Communication Service	[….✂….]	[….✂….]	Operating system on server	Variable	[….✂….]	1	COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	OS kernel	Variable	[….✂….]	1	COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	Virtualisation software	Variable	[….✂….]	1	COTS

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1. Public Safety Communication Service	[….✂….]	[….✂….]	Element management system docker container	Variable	[….✂….]	1	COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	Web group provisioning docker container	Variable	[….✂….]	1	COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	Web customer service representative docker container	Variable	[….✂….]	1	COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	Data management docker container	Variable	[….✂….]	1	COTS

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1. Public Safety Communication Service	[….✂….]	[….✂….]	Service discovery and management docker container	Variable	[….✂….]	1	COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	Message queuing docker container	Variable	[….✂….]	1	COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	Kodiak push notification docker container	Variable	[….✂….]	1	COTS

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1. Public Safety Communication Service	[…. ✂ ….]	[…. ✂ ….]	Couchbase docker container	Variable	[…. ✂ ….]	1	COTS
1. Public Safety Communication Service	[…. ✂ ….]	[…. ✂ ….]	Sync gateway docker container	Variable	[…. ✂ ….]	1	COTS
1. Public Safety Communication Service	[…. ✂ ….]	[…. ✂ ….]	Sync gateway replicator docker container	Variable	[…. ✂ ….]	1	COTS

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1. Public Safety Communication Service	[….✂….]	[….✂….]	PTX Push to X (text, multimedia and location and file) messaging server	Variable	[….✂….]	1	COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	Enhanced geo location service docker container	Variable	[….✂….]	1	COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	Web Dispatcher docker container	Variable	[….✂….]	1	COTS

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1. Public Safety Communication Service	[….✂….]	[….✂….]	ID Management Docker Container	Variable	[….✂….]	1	COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	Push to Talk over cellular docker container (Call Function)	Variable	[….✂….]	1	COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	Media function docker container	Variable	[….✂….]	1	COTS

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1. Public Safety Communication Service	[….✂….]	[….✂….]	Billing Processor docker container	Variable	[….✂….]	1	COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	Big IP Virtual Machine	Variable	[….✂….]	1	COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	Support License	Variable	[….✂….]	1	COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	Security component	Variable	[….✂….]	1	COTS

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1. Public Safety Communication Service	[….✂….]	[….✂….]	JS library	Variable	[….✂….]	1	COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	AMR narrowband support codec library for iOS	Variable	[….✂….]	1	COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	Mobile couchbase database	Variable	[….✂….]	1	COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	EMS Framework	Variable	[….✂….]		COTS

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1. Public Safety Communication Service	[….✂….]	[….✂….]	AMBE supporting codec library	Variable	[….✂….]	1	COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	SIP stack library	Variable	[….✂….]	1	COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	ASN1 library for LEA reporting	Variable	[….✂….]	1	COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	EVRC codec library	Variable	[….✂….]	1	COTS

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	[….✂….]	[….✂….]			[….✂….]		
1. Public Safety Communication Service	[….✂….]	[….✂….]	Media library	Variable	[….✂….]		COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	In memory database	Variable	[….✂….]		COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	AMR codec library	Variable	[….✂….]		COTS

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1. Public Safety Communication Service	[….✂….]	[….✂….]	Diameter stack	Variable	[….✂….]		COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	Grid gain database client	Variable	[….✂….]		COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	Grid gain database	Variable	[….✂….]		COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	Location mapping functionality	Variable	[….✂….]		COTS

Schedule 5, Table 2.1: Supplier Software

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3 Third Party Software

3.1 The Third Party Software shall include the following items:

Service component	Third Party Software	Supplier	Purpose	Number of Licences - (Production & Reference Systems)	Restrictions	Number of Copies	Type (COTS or Non-COTS)s
	[….✂….]	[….✂….]			[….✂….]		
5. Network Connectivity and Security Systems	[….✂….]	[….✂….]	Firewall	216	[….✂….]	1	COTS
5. Network Connectivity and Security Systems	[….✂….]	[….✂….]	SAN Switch	2	[….✂….]	1	COTS
5. Network Connectivity and Security Systems	[….✂….]	[….✂….]	Load Balancer	10	[….✂….]	1	COTS
5. Network Connectivity and Security Systems	[….✂….]	[….✂….]	Big IP F5 functionality	Variable	[….✂….]	1	COTS

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5. Network Connectivity and Security Systems	[….✂….]	[….✂….]	Access Leaf Switch	3	[….✂….]	1	COTS
5. Network Connectivity and Security Systems	[….✂….]	[….✂….]	SAN Spine Switch	4	[….✂….]	1	COTS
5. Network Connectivity and Security Systems	[….✂….]	[….✂….]	Firewall	9	[….✂….]	1	COTS
3. Operational Support Systems	[….✂….]	[….✂….]	Access Leaf Switch	14	[….✂….]	1	COTS
3. Operational Support Systems	[….✂….]	[….✂….]	SAN Switch	14	[….✂….]	1	COTS
3. Operational Support Systems	[….✂….]	[….✂….]	Load Balancer	11	[….✂….]	1	COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	Access Leaf Switch	20	[….✂….]	1	COTS
1. Public Safety Communication Service	[….✂….]	[….✂….]	SAN Switch	12	[….✂….]	1	COTS

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3. Operational Support Systems	[….✂….]	[….✂….]	Evolved Packet Gateway	8		1	COTS
3. Operational Support Systems	[….✂….]	[….✂….]		4	[….✂….]	1	COTS

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3. Operational Support Systems	[….✂….]	[….✂….]	Diameter Signalling Controller	4	[….✂….]	1	COTS
3. Operational Support Systems	[….✂….]	[….✂….]	IP – Signalling Transer Point	4	[….✂….]	1	COTS
3. Operational Support Systems	[….✂….]	[….✂….]	Home Location Register	4	[….✂….]	1	COTS
3. Operational Support Systems	[….✂….]	[….✂….]	Home Subscriber Server	4	[….✂….]	1	COTS
3. Operational Support Systems	[….✂….]	[….✂….]	Centralised User DataBase	4	[….✂….]	1	COTS
3. Operational Support Systems	[….✂….]	[….✂….]	Smart Service Router	8	[….✂….]	1	COTS
3. Operational Support Systems	[….✂….]	[….✂….]	Extreme Switch	16	[….✂….]	1	COTS
3. Operational Support Systems	[….✂….]	[….✂….]	Ericsson Dynamic Activation	3	[….✂….]	1	COTS
6. User Device Management	[….✂….]	[….✂….]	Mobile Device Management	238216	[….✂….]	1	COTS
6. User Device Management	[….✂….]	[….✂….]	Mobile Device Management	100000	[….✂….]	1	COTS
3. Operational Support Systems	[….✂….]	[….✂….]	Manages and provides virtual environment	104	[….✂….]	1	COTS
3. Operational Support Systems	[….✂….]	[….✂….]	Manages and provides virtual environment	3	[….✂….]	1	COTS
3. Operational Support Systems	[….✂….]	[….✂….]	Manages and provides virtual environment	6	[….✂….]	1	COTS

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3. Operational Support Systems	[….✂….]	[….✂….]	Manages and provides virtual environment	6	[….✂….]	1	COTS
3. Operational Support Systems	[….✂….]	[….✂….]	Manages and provides virtual environment	104	[….✂….]	1	COTS
2. Business Support Systems	[….✂….]	[….✂….]	Database management	1	[….✂….]	1	COTS
2. Business Support Systems	[….✂….]	[….✂….]	Database management	1	[….✂….]	1	COTS
2. Business Support Systems	[….✂….]	[….✂….]	Database management	1	[….✂….]	1	COTS
2. Business Support Systems	[….✂….]	[….✂….]	Database management	1	[….✂….]	1	COTS
2. Business Support Systems	[….✂….]	[….✂….]	Database management	1	[….✂….]	1	COTS
2. Business Support Systems	[….✂….]	[….✂….]	Database management	1	[….✂….]	1	COTS
2. Business Support Systems	[….✂….]	[….✂….]	Database management	1	[….✂….]	1	COTS
2. Business Support Systems	[….✂….]	[….✂….]	Database management	1	[….✂….]	1	COTS
2. Business Support Systems	[….✂….]	[….✂….]	Database management	1	[….✂….]	1	COTS
2. Business Support Systems	[….✂….]	[….✂….]	Database management	1	[….✂….]	1	COTS
2. Business Support Systems	[….✂….]	[….✂….]	Database management	1	[….✂….]	1	COTS

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5. Network Connectivity and Security Systems	[….✂….]	[….✂….]	Server management	90	[….✂….]	1	COTS
5. Network Connectivity and Security Systems	[….✂….]	[….✂….]	Server management	85	[….✂….]	1	COTS
5. Network Connectivity and Security Systems	[….✂….]	[….✂….]	Server management	77	[….✂….]	1	COTS
5. Network Connectivity and Security Systems	[….✂….]	[….✂….]	DNS Server	3	[….✂….]	1	COTS
5. Network Connectivity and Security Systems	[….✂….]	[….✂….]	DNS Server	18	[….✂….]	1	COTS
2. Business Support Systems	[….✂….]	[….✂….]	Data protection	150	[….✂….]	1	COTS
3. Operational Support Systems	[….✂….]	[….✂….]	OSS/BSS Reporting Application	Unlimited	[….✂….]	1	COTS
3. Operational Support Systems	[….✂….]	[….✂….]	OSS/BSS Reporting Application	Unlimited	[….✂….]	1	COTS
3. Operational Support Systems	[….✂….]	[….✂….]	OSS/BSS Reporting Application	12 (x6 Full, x 6 Development)	[….✂….]	1	COTS

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5. Network Connectivity and Security Systems	[….✂….]	[….✂….]	Ant Virus scanning	245	[….✂….]	1	COTS

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	[….✂….]	[….✂….]			[….✂….]		

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3. Operational Support Systems	[….✂….]	[….✂….]	Related to Data Warehousing	1	[….✂….]	1	COTS

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	[….✂….]	[….✂….]			[….✂….]		

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	[….✂….]	[….✂….]			[….✂….]		

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	[….✂….]	[….✂….]			[….✂….]		

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3. Operational Support Systems	[….✂….]	[….✂….]	Server Operating System	107	[….✂….]	1	COTS
5. Network Connectivity and Security Systems	[….✂….]	[….✂….]	Server OS patching	2	[….✂….]	1	COTS

Schedule 5, Table 3.1

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3. Operational Support Systems	[…. ✂ ….]	[…. ✂ ….]		2	[…. ✂ ….]	1	COTS

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	[…. ✂ ….]	[…. ✂ ….]			[…. ✂ ….]		

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3. Operational Support Systems	[….✂….]	[….✂….]		4	[….✂….]	1	COTS

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3. Operational Support Systems	[…. ✂ ….]	[…. ✂ ….]	Performance Testing tool	2	[…. ✂ ….]		COTS

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6. User Device Management	[….✂….]	[….✂….]	LTE Device monitoring	6	[….✂….]		
3. Operational Support Systems	[….✂….]	[….✂….]	Event Logging	5	[….✂….]		COTS

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4. Service Management Systems	[….✂….]	[….✂….]	Service Management Software		[….✂….]		COTS

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	[…. ✂ ….]	[…. ✂ ….]			[…. ✂ ….]		

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	[…. ✂ ….]	[…. ✂ ….]			[…. ✂ ….]		

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	[…. ✂ ….]	[…. ✂ ….]			[…. ✂ ….]		
4. Service Management Systems	[…. ✂ ….]	[…. ✂ ….]	Service Management Software		[…. ✂ ….]		COTS

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3. Operational Support Systems	[….✂….]	[….✂….]	Netcool Event Management	1001	[….✂….]		COTS

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	[….✂….]	[….✂….]			[….✂….]		
3. Operational Support Systems	[….✂….]	[….✂….]	Tivoli Monitoring	1001	[….✂….]		COTS

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3. Operational Support Systems	[….✂….]	[….✂….]	Mail Monitoring/Protection	1	[….✂….]		COTS

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5. Network Connectivity and Security Systems	[….✂….]	[….✂….]	Shared Technology Platform	1	[….✂….]		COTS

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	[….✂….]	[….✂….]			[….✂….]		
5. Network Connectivity and Security Systems	[….✂….]	[….✂….]	250 EPV Users	1	[….✂….]		COTS
5. Network Connectivity and Security Systems	[….✂….]	[….✂….]	50 PSM Concurrent users	2	[….✂….]		COTS
5. Network Connectivity and Security Systems	[….✂….]	[….✂….]	Enterprise High Availability Module Software	1	[….✂….]		COTS
5. Network Connectivity and Security Systems	[….✂….]	[….✂….]	Enterprise Disaster Recovery Module Software	1	[….✂….]		COTS
5. Network Connectivity and Security Systems	[….✂….]	[….✂….]	PIM Test License	1	[….✂….]		COTS

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ANNEX 1

FORM OF LETTER RE SUB-LICENSING OF SUPPLIER COTS SOFTWARE AND SUPPLIER COTS BACKGROUND IPRS

[Supplier letterhead]

[*Insert Authority name and address*]

[*Date*]

Dear Sirs

LICENCES FOR SUPPLIER COTS SOFTWARE AND SUPPLIER COTS BACKGROUND IPRs

We refer to the agreement between us dated [*insert date*] in respect of [*brief summary of subject of the Agreement*] (the "Agreement"). Capitalised expressions used in this letter have the same meanings as in the Agreement.

In accordance with Clause 17.6(b) of the Agreement we confirm that:

1. the Authority is licensed by the Supplier to use the Supplier COTS Software and Supplier COTS Background IPRs identified in the first column of the Appendix to this letter (the "Appendix") on the terms of the licences identified in the second column of the Appendix (the "Licences"); and

2. notwithstanding any provision to the contrary in the Licences, it is agreed that the Authority may sub-license, assign and novate the Supplier COTS Software and Supplier COTS Background IPRs as referred to in Clause 17.6(b) of the Agreement.

Yours faithfully,

Signed:

On behalf of [*name of the Supplier*]

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Appendix to Letter Re Sub-licensing of Supplier COTS Software and Supplier COTS Background IPRs

Supplier COTS Software / Supplier COTS Background IPRs Description	**Applicable Licence Terms**
Supplier COTS Software: All Supplier COTS Software designated as such in Schedule 5, Table 2.1: Supplier Software	See Schedule to this Appendix
Supplier COTS Background IPR: The Kodiak Specification	See Schedule to this Appendix
Supplier COTS Background IPR: All Documentation applicable to Supplier COTS Software listed in Schedule 5, Table 2.1: Supplier Software	See Schedule to this Appendix

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Schedule to Appendix to Letter Re:

Sub-Licensing of Supplier COTS

Software Applicable License Terms

1. Definitions

"Customer" means the Secretary of State for the Home Department.

"Designated Products" means products (whether servers, devices or otherwise and whether provided by Supplier to Customer, or procured independently of the Supplier by or on behalf of the Customer) with which or for which the Customer is entitled to use or have used the Supplier COTS Software and Documentation pursuant to the Primary Agreement.

"Documentation" means product (whether servers, devices or otherwise) and Supplier COTS Software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Supplier COTS Software (including all physical or electronic media upon which such information is provided).

"Primary Agreement" means the ESMCP Lot 2 User Services Agreement between Motorola Solutions UK Ltd ("Supplier") and the Customer as amended from time to time in accordance with its provisions.

"Supplier COTS Software" (i) means Supplier COTS Software (as such term is defined in the Primary Agreement) in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such Supplier COTS Software; (ii) means any modifications, enhancements, new versions and new releases of the Supplier COTS Software provided by Supplier; and (iii) may contain one or more items of software licensed to the Supplier by a third party and embedded within the Supplier COTS Software.

2. Grant of License

Supplier grants to Customer a royalty-free and non-exclusive license under Supplier's copyrights and Confidential Information embodied in the Supplier COTS Software to use the Supplier COTS Software, in object code form, and the Documentation solely in connection with Customer's or permitted third parties use of the Designated Products in accordance with the terms of the Primary Agreement.

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3. Limitation on Use

3.1 Customer may use the Supplier COTS Software only for Customer's internal business purposes in accordance with the terms of the Primary Agreement and only in accordance with the Documentation. Any other use of the Supplier COTS Software is strictly prohibited.

3.2 Customer will not, and will not allow or enable any third party to: (i) reverse engineer, disassemble, peel components, decompile, reprogram or otherwise reduce the Supplier COTS Software or any portion to a human perceptible form or otherwise attempt to recreate the source code; (ii) modify, adapt, create derivative works of, or merge the Supplier COTS Software; (iii) copy, reproduce, distribute, lend, or lease the Supplier COTS Software or Documentation to any third party, other than in accordance with the terms of the Primary Agreement grant any sublicense or other rights in the Supplier COTS Software or Documentation to any third party, or take any action that would cause the Supplier COTS Software or Documentation to be placed in the public domain; (iv) remove, or in any way alter or obscure, any copyright notice or other notice of Supplier's proprietary rights; (v) provide, copy, transmit, disclose, divulge or make the Supplier COTS Software or Documentation available to, or permit the use of the Supplier COTS Software by any third party or on any machine except as expressly authorized by this Agreement or the Primary Agreement; or (vi) Other than as may arise on activation of a dormant application on a device use, or permit the use of, the Supplier COTS Software in a manner that would result in the production of a copy of the Supplier COTS Software solely by activating a machine containing the Supplier COTS Software. With regard to Supplier COTS Software that resides on servers Customer may make one copy of Supplier COTS Software to be used solely for archival, back-up, or disaster recovery purposes. Customer may make as many copies of the Documentation as it may reasonably require for the internal use of the Supplier COTS Software.

3.3 Not Used

3.4 In the event that the Customer exercises its rights under the Primary Agreement to novate its rights and obligations under this Agreement to a Replacement Supplier (as such term is defined in the Primary Agreement) such that the “Customer” for the purposes of this Agreement becomes such Replacement Supplier, Customer will, with effect from such novation, maintain, during the term of this Agreement and for a period of two years thereafter, accurate records relating to this license grant to verify compliance with this Agreement. Supplier or an independent third party (“Auditor”) may inspect Customer’s premises, books and records, upon reasonable prior notice to Customer, during Customer’s normal business hours and subject to Customer's facility and security regulations. Supplier is responsible for the payment of all expenses and costs of the Auditor. Any information obtained by Supplier and the Auditor will be kept in strict confidence by Supplier and the Auditor and used solely for the purpose of verifying Customer's compliance with the terms of this Agreement.

4. Ownership and Title

Supplier, its licensors, and its suppliers retain all of their proprietary rights in any form in and to the Supplier COTS Software and Documentation, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the Supplier COTS Software and Documentation (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, emulations to or derivative works from the Supplier COTS Software or Documentation, whether made by Supplier or another party, or any improvements that result from Supplier’s processes or, provision of information services). No rights are granted to Customer under this Agreement by implication, estoppel or otherwise, except for those rights which are expressly granted to Customer in this Agreement. All intellectual property developed,

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originated, or prepared by Supplier in connection with providing the Supplier COTS Software, Designated Products, Documentation or related services, remains vested exclusively in Supplier, and Customer will not have any shared development or other intellectual property rights.

5. Term and Termination

5.1 Customer's right to use the Supplier COTS Software and Documentation will begin when the Primary Agreement is signed by both parties and will continue for the Term (as such term is defined in the Primary Agreement) unless Customer or any person to whom Customer grants a sub-license pursuant to the terms of the Primary Agreement commits any material breach of this Agreement which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after Supplier gives Customer written notice specifying the breach and requiring its remedy, in which case this Agreement and the Customer's right to use the Supplier COTS Software and Documentation may be terminated by Supplier by giving Customer thirty (30) days (or such other period as may be agreed by the Parties) notice in writing.

5.2 Subject to clause 5.1, within thirty (30) days after termination of this Agreement, Customer must certify in writing to Supplier that all copies of the Supplier COTS Software have been removed or deleted from the Designated Products and that all copies of the Supplier COTS Software and Documentation have been returned to Supplier or destroyed by Customer and are no longer in use by Customer.

6. Confidentiality

Customer acknowledges that the Supplier COTS Software and Documentation contain Supplier's valuable proprietary information and trade secrets and that unauthorized or improper use of the Supplier COTS Software and Documentation will result in irreparable harm to Supplier for which monetary damages would be inadequate and for which Supplier will be entitled to immediate injunctive relief. Accordingly, Customer will limit access to the Supplier COTS Software and Documentation to those of its employees and agents who need to use the Supplier COTS Software and Documentation for Customer's internal business purposes, and Customer will take appropriate action with those employees and agents to preserve the confidentiality of the Supplier COTS Software and Documentation, using the same degree of care to avoid unauthorized or improper disclosure as it use for the protection of its own proprietary Supplier COTS Software, but in no event less than reasonable care.

7. Not Used

8. Transfers and Assignment

Except as provided for in the Primary Agreement Customer will not transfer or assign the Supplier COTS Software or Documentation to any third party without Supplier's prior written consent.

9. Compliance with Laws

Customer acknowledges that the Supplier COTS Software shall be governed by and construed in accordance with English law and Customer will comply with all applicable laws and regulations, including export laws and regulations of the United States. Customer will not, without the prior authorization of Supplier and the appropriate governmental authority of the United States, in any form export or re-export, sell or resell, ship or reship, or divert, through direct or indirect means, any item or technical data or direct or indirect products sold or otherwise furnished to any person within any territory for which the United States Government or any of its agencies at the time of the action, requires an export license or other governmental approval. Violation of this provision is a material breach of this Agreement.

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10. Copyright Notices

The existence of a copyright notice on the Supplier COTS Software will not be construed as an admission or presumption of publication of the Supplier COTS Software or public disclosure of any trade secrets associated with the Supplier COTS Software.

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ANNEX 2

CONFIDENTIALITY UNDERTAKING

THIS AGREEMENT is made on [***date***] 20

BETWEEN:

(1) **[*insert name*]** of [*insert address*] (the "**Sub-licensee"**); and

(2) **[*insert name*]** of [*insert address*] (the **"Supplier"** and together with the Sub-licensee, the **"Parties"**).

WHEREAS:

(A) [*insert name of Authority*] (the "**Authority**") and the Supplier are party to a contract dated [*insert date*] (the "**Contract**") for the provision by the Supplier of [*insert brief description of services*] to the Authority.

(B) The Authority wishes to grant a sub-licence to the Sub-licensee in respect of certain software and intellectual property rights licensed to the Authority pursuant to the Contract (the "**Sub-licence**").

(C) It is a requirement of the Contract that, before the Authority grants such sub-licence to the Sub-licensee, the Sub-licensee execute a confidentiality agreement in favour of the Supplier in or substantially in the form of this Agreement to protect the Confidential Information of the Supplier.

IT IS AGREED as follows:

1 Interpretation

1.1 In this Agreement, unless the context otherwise requires:

"Confidential Information" means:

(a) Information, including all personal data within the meaning of the Data Protection Act 1998, and however it is conveyed, provided by the Authority to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to:

(i) the Supplier; or

(ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;

(b) the source code and the object code of the software sub-licensed to the Sub-licensee pursuant to the Sub-licence together with build information, relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and

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all such other documentation supplied by the Supplier to the Authority pursuant to or in connection with the Sub-licence;

(c) other Information provided by the Authority pursuant to this Agreement to the Sub-licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub-licensee's attention or into the Sub-licensee's possession in connection with the Sub-licence; and

(d) Information derived from any of the above,

but not including any Information that:

(aa) was in the possession of the Sub-licensee without obligation of confidentiality prior to its disclosure by the Authority;

(bb) the Sub-licensee obtained on a non-confidential basis from a third party who is not, to the Sub-licensee's knowledge or belief, bound by a confidentiality agreement with the Supplier or otherwise prohibited from disclosing the information to the Sub-licensee;

(cc) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or

(dd) was independently developed without access to the Confidential Information;

"Information" means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and

"Sub-licence" has the meaning given to that expression in recital (B) to this Agreement.

1.2 In this Agreement:

1.2.1 a reference to any gender includes a reference to other genders;

1.2.2 the singular includes the plural and vice versa;

1.2.3 the words "include" and cognate expressions shall be construed as if they were immediately followed by the words "without limitation";

1.2.4 references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;

1.2.5 headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and

1.2.6 references to Clauses are to clauses of this Agreement.

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2 Confidentiality Obligations

2.1 In consideration of the Authority entering into the Sub-licence, the Sub-licensee shall:

2.1.1 treat all Confidential Information as secret and confidential;

2.1.2 have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);

2.1.3 not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or except as expressly set out in this Agreement;

2.1.4 not transfer any of the Confidential Information outside the United Kingdom;

2.1.5 not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;

2.1.6 immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and

2.1.7 upon the expiry or termination of the Sub-licence:

(a) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;

(b) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Sub-licensee) from any computer, word processor, voicemail system or any other device; and

(c) make no further use of any Confidential Information.

3 Permitted Disclosures

3.1 The Sub-licensee may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:

3.1.1 reasonably need to receive the Confidential Information in connection with the Sub-licence; and

3.1.2 have been informed by the Sub-licensee of the confidential nature of the Confidential Information; and

3.1.3 have agreed to terms similar to those in this Agreement.

3.2 The Sub-licensee shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Sub-licensee.

3.3 Before making a disclosure pursuant to Clause 3.2, the Sub-licensee shall, if the circumstances permit:

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3.3.1 notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and

3.3.2 ask the court or other public body to treat the Confidential Information as confidential.

4 General

4.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.

4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:

4.2.1 to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;

4.2.2 to require the Supplier to disclose, continue disclosing or update any Confidential Information; or

4.2.3 as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.

4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub-licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub-licensee of any of the provisions of this Agreement. Accordingly, the Sub-licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.

4.5 The maximum liability of the Sub-licensee to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).

4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.

4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.

4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

5 Notices

5.1 Any notice to be given under this Agreement (each a "**Notice**") shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery

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provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2 below.

5.2 Any Notice:

5.2.1 if to be given to the Supplier shall be sent to:

[*Address*]
Attention: [*Contact name and/or position, e.g. "The Finance Director"]*

5.2.2 if to be given to the Sub-licensee shall be sent to:

[*Name of Organisation*]
[*Address*]
Attention: [ ]

6 Governing law

6.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.

6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

IN WITNESS of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.
For and on behalf of [*name of Supplier*]

Signature: _____ Date:

Name: Position:

For and on behalf of [*name of Sub-licensee*]

Signature: _____ Date:

Name: Position:

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ANNEX 3 to Schedule 5 – Clarification Responses

1.1 The following table identifies specific Supplier clarification responses that clarify, supplement and are to be read in conjunction with this Schedule 5 as identified in column 2 of the table. Both the relevant Schedule submission and the clarification response comprise parts of this Agreement and to the extent any conflict occurs the clarification responses take precedence:

Lot 2 - Schedule 5	**Section or Paragraph of Schedule (where relevant)**	**Clarification Reference Numbers**
Schedule 5	Appendix 1 (to Letter)	CQ083

Response to ITSB L2-CQ083

CLARIFICATION REQUEST

Clause 2 of the proposed Schedule to Appendix 1 to Schedule 5 includes the grant of a licence to use Supplier COTS Software, however the Authority notes that the licence does not include a licence term. As a result, the licence term would run concurrent to the term of the Core Lot Services Agreement. The Authority requires the Qualified Bidder to clarify how the Qualified Bidder intends to support the ability for the Authority to transition services to a replacement supplier (should that be necessary) on the expiry or termination of the Core Lot Services Agreement, and whether the term of the licence to use the Supplier COTS Software is intended to run beyond the term of the Core Lot Services Agreement if the Supplier COTS Software is agreed to be included in the assets available on exit (as contemplated under Clause 17.18 of the Terms and Conditions)?

RESPONSE

The Authority's licence to use the Supplier COTS Software is granted for as long as the Authority continues to use the PTT service for which that software is used. In practice this means that the licence duration is for as long as the Authority continues to pay Motorola the SC1 / SC2 and therefore it would, as the Authority states, be concurrent with the term of the Core Lot Services Agreement.

The Supplier COTS Software is included within the scope of service that Motorola makes available to a Replacement Supplier (if required) on exit as set out in SCTAP1 in Schedule 7.1 Table 9.

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If a Replacement Supplier required a licence to use the Supplier COTS Software following termination or expiry of the Core Lot Services Agreement then that licence could continue to run on Motorola's then standard terms which Motorola is obliged to grant to the Replacement Supplier pursuant to Clause 17.18(a)(ii).

This would be facilitated either via a novation of the existing Supplier COTS Software licence terms or via a new licence grant.

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