

## FLEXSAFE ESCROW AGREEMENT

Account Number \_\_\_\_\_

This Software Escrow Agreement ("Agreement") is effective as of \_\_\_\_\_, 1997 between Data Securities International, Inc. ("DSI") and Motorola, Inc. ("Depositor"), who collectively may be referred to in this Agreement as "the parties" and who are more fully identified in the Exhibit A.

A. Depositor and Depositor's client have entered or will enter into a license agreement, development agreement, and/or other agreement regarding certain proprietary technology of Depositor (referred to in this Agreement as "the license agreement").

B. Depositor desires to avoid disclosure of its proprietary technology except under certain limited circumstances.

C. Depositor desires to establish an escrow with DSI to provide for the retention, administration and controlled access of the proprietary technology materials of Depositor.

D. The parties desire this Agreement to be supplementary to the license agreement pursuant to 11 United States Bankruptcy Code, Section 365(n).

### ARTICLE 1 -- DEPOSITS

1.1 Obligation to Make Deposit. Upon the signing of this Agreement by the parties, Depositor shall deliver to DSI the proprietary information and other materials ("deposit materials") to be deposited under this Agreement.

1.2 Identification of Tangible Media. Prior to the delivery of the deposit materials to DSI, Depositor shall conspicuously label for identification each document, magnetic tape, disk, or other tangible media upon which the deposit materials are written or stored. Additionally, Depositor shall complete Exhibit B to this Agreement by listing each such tangible media by the item label description, the type of media and the quantity. The Exhibit B must be signed by Depositor and delivered to DSI with the deposit materials. Unless and until Depositor makes the initial deposit with DSI, DSI shall have no obligation with respect to this Agreement, except the obligation to notify Depositor regarding the status of the deposit account as required in Section 3.2 below.

1.3 Deposit Inspection. When DSI receives the deposit materials and the Exhibit B, DSI will conduct a deposit inspection by visually matching the labeling of the tangible media containing the deposit materials to the item descriptions and quantity listed on the Exhibit B.

1.4 Acceptance of Deposit. At completion of the deposit inspection, if DSI determines that the labeling of the tangible media matches the item descriptions and quantity on Exhibit B, DSI will date and sign the Exhibit B and mail a copy thereof to Depositor. If DSI determines that the labeling does not match the item descriptions or quantity on the Exhibit B, DSI will (a) note the discrepancies in writing on the Exhibit B; (b) date and sign the Exhibit B with the exceptions noted; and (c) provide a copy of the Exhibit B to Depositor. DSI's acceptance of the deposit occurs upon the signing of the Exhibit B by DSI.

1.5 Depositor's Representations. Depositor represents as follows:

- a. Depositor lawfully possesses all of the deposit materials deposited with DSI;
- b. With respect to all of the deposit materials, Depositor has the right and authority to grant to DSI the rights as provided in this Agreement; and
- c. The deposit materials are not subject to any lien or other encumbrance.

1.6 Deposit Updates. Updates to the deposit materials shall be added to the existing deposit. All deposit updates shall be listed on a new Exhibit B and the new Exhibit B shall be signed by Depositor. Each Exhibit B will be held and maintained separately within the escrow account. An independent record will be created which will document the activity for each Exhibit B. The processing of all deposit updates shall be in accordance with Sections 1.2 through 1.5 above. All references in this Agreement to the deposit materials shall include the initial deposit materials and any updates.

1.7 Removal of Deposit Materials. The deposit materials may be removed and/or exchanged only on written instructions signed by Depositor or as otherwise provided in this Agreement.

## ARTICLE 2 -- FLEXSAFE BENEFICIARY ENROLLMENTS

2.1 FlexSAFE Enrollments. After DSI's acceptance of the deposit materials, Depositor may enroll one or more beneficiaries to this technology escrow account. Depositor will execute and submit to DSI a FlexSAFE Beneficiary Enrollment document, Exhibit T, listing each beneficiary to be enrolled as a FlexSAFE Beneficiary under the Agreement. Upon DSI's acceptance of Exhibit T, DSI will issue an enrollment letter and a copy of this Agreement to the FlexSAFE Beneficiary.

2.2 Other Third Parties. DSI shall have no obligation to any other third party except a FlexSAFE Beneficiary accepted by DSI. DSI and Depositor shall have the right to modify or cancel the Agreement without the consent of any third party, except a FlexSAFE Beneficiary.

## ARTICLE 3 -- CONFIDENTIALITY AND RECORD KEEPING

3.1 Confidentiality. DSI shall maintain the deposit materials in a secure, environmentally safe, locked facility which is accessible only to authorized representatives of DSI. DSI shall have the obligation to reasonably protect the confidentiality of the deposit materials. Except as provided in this Agreement, DSI shall not disclose the content of this Agreement to any third party and shall not disclose, transfer, make available, or use the deposit materials. If DSI receives a subpoena or other order of a court or other judicial tribunal pertaining to the disclosure or release of the deposit materials, DSI will immediately notify Depositor. It shall be the responsibility of Depositor to challenge any such order; provided, however, that DSI does not waive its rights to present its position with respect to any such order. DSI will not be required to disobey any court or other judicial tribunal order. (See Section 8.5 below for notices of requested orders.)

3.2 Status Reports. DSI will issue to Depositor and FlexSAFE Beneficiary a report profiling the account history at least semi-annually. DSI may provide copies of the account history upon request.

3.3 Audit Rights. During the term of this Agreement, Depositor shall have the right to inspect the written records of DSI pertaining to this Agreement. Any inspection shall be held during normal business hours and following reasonable prior notice.

## ARTICLE 4 -- GRANT OF RIGHTS TO DSI

4.1 Title to Media. Depositor hereby transfers to DSI the title to the media upon which the proprietary information and materials are written or stored. However, this transfer does not include the ownership of the proprietary information and materials contained on the media such as any copyright, trade secret, patent or other intellectual property rights.

4.2 Right to Make Copies. DSI shall have the right to make copies of the deposit materials as reasonably necessary to perform this Agreement. DSI shall copy all copyright, nondisclosure, and other proprietary notices and titles contained on the deposit materials onto any copies made by DSI. With all deposit materials submitted to DSI, Depositor shall provide any and all instructions as may be necessary to duplicate the deposit materials including but not limited to the hardware and/or software needed.

4.3 Right to Transfer Upon Release. Depositor hereby grants to DSI the right to transfer the deposit materials to FlexSAFE Beneficiary upon any release of the deposit materials for use by FlexSAFE Beneficiary in accordance with Section 5.4. Except upon such a release or as otherwise provided in this Agreement, DSI shall not transfer the deposit materials.

## ARTICLE 5 -- RELEASE OF DEPOSIT

5.1 Release of Deposit Upon Depositor's Instruction. Upon receipt by DSI of written instruction directly from Depositor, Depositor's trustee in bankruptcy, or a court of competent jurisdiction, DSI will release a copy of the deposit materials to the FlexSAFE Beneficiary identified in the instruction. However, DSI is entitled to receive any fees due DSI before making the release. This Agreement will terminate upon the release of the deposit materials held by DSI to the FlexSAFE Beneficiary.

5.2 Filing for Release of Deposit by FlexSAFE Beneficiary.

a. Upon notice to DSI by FlexSAFE Beneficiary of the occurrence of a release condition as defined in Section 5.3, DSI shall provide Depositor with a copy of FlexSAFE Beneficiary's notice by certified mail, return receipt requested, or by commercial express mail. If Depositor provides DSI with contrary instructions within sixty (60) days, DSI shall not deliver a copy of the deposit materials to FlexSAFE Beneficiary.

"Contrary Instructions" shall mean a good faith written representation by Depositor that a Release Condition has not occurred or has been cured. Upon receipt of Contrary Instructions, DSI shall send a copy of the Contrary Instructions to FlexSAFE Beneficiary by certified mail, return receipt requested, or by commercial express mail. Additionally, DSI shall notify both Depositor and FlexSAFE Beneficiary that there is a dispute to be resolved pursuant to Section 8.3. Subject to Section 6.3, DSI will continue to store the deposit materials without release pending (a) instructions from Depositor; or (b) order of a court.

b. If no contrary instructions are given to DSI, Depositor agrees that DSI shall deliver a copy of the deposit materials to the FlexSAFE Beneficiary who provides DSI with all of the following:

1. Copy of a current, valid license agreement between Depositor and FlexSAFE Beneficiary;
2. Written demand that a copy of the deposit materials be released and delivered to FlexSAFE Beneficiary;
3. Written notice that the copy of the deposit materials being released to FlexSAFE Beneficiary be used only as permitted under the license agreement;
4. Specific delivery instructions along with any reasonable fees due DSI; and

5. Written notice that the release of the copy of the deposit materials is pursuant to 11 United States Code Section 365(n).

5.3 Release Conditions. As used in this Agreement, "Release Conditions" shall mean the existence of any one or more of the following circumstances, uncorrected for more than thirty (30) days:

- a. Entry of an order for relief under Title 11 of the United States Code;
- b. The making by Depositor of a general assignment for the benefit of creditors;
- c. The appointment of a general receiver or trustee in bankruptcy of Depositor's business or property; or
- d. Action by Depositor under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.
- e. Delivery to DSI of a notice ("Notice") from FlexSAFE Beneficiary stating that one or more of the following circumstances have occurred:
  - (i) Depositor has breached its obligations under the Software License Agreement or Citywide 800 MHz Radio System Project Agreement dated as of \_\_\_\_\_, 1997 between the Depositor and FlexSAFE Beneficiary ("Master Agreement") to maintain the Software or provide released updates thereto.
  - (ii) Depositor has notified the FlexSAFE Beneficiary that Depositor is no longer willing or able to support or maintain the Software or provide released updates thereto.
  - (iii) The sale, assignment or other transfer by Depositor, without the prior consent of FlexSAFE Beneficiary, such of Depositor's rights in the Software as would prevent Depositor or a reliable third party transferee from the timely effective discharge of its obligations with respect to the performance of the Software under the License Agreement or from the effective, timely discharge of its maintenance obligations with respect to the Software under the Master Agreement or any maintenance agreement.
  - (iv) Depositor has made a general announcement to its customers or prospects that it will discontinue supporting or maintaining the Software in whole or in part.

- f. Termination of this Agreement with no replacement escrow agreement having been created and in effect.

5.4 Right to Use Following Release. Unless otherwise provided in the license agreement, upon release of the deposit materials in accordance with this Article 5, FlexSAFE Beneficiary shall have the right to use the deposit materials for the sole purpose of continuing the benefits afforded to FlexSAFE Beneficiary by the license agreement. FlexSAFE Beneficiary shall be obligated to maintain the confidentiality of the released deposit materials, subject to applicable public disclosure laws.

## ARTICLE 6 -- TERM AND TERMINATION

6.1 Term of Agreement. The initial term of this Agreement is for a period of one year. Thereafter, this Agreement shall automatically renew from year-to-year unless (a) Depositor instructs DSI in writing that the Agreement is terminated; or (b) the Agreement is terminated by DSI for nonpayment in accordance with Section 6.3. The Depositor and the City shall be given thirty (30) days written notice prior to the termination under this section becoming effective. If the deposit materials are subject to another escrow agreement with DSI, DSI reserves the right, after the initial one year term, to adjust the anniversary date of this Agreement to match the then prevailing anniversary date of such other escrow arrangements. Thirty (30) days prior to any such termination of this Agreement, DSI shall send written notice to the FlexSAFE Beneficiary.

6.2 Term of Enrollment. Upon receipt by DSI of Depositor's executed Exhibit T, the FlexSAFE Beneficiary will be enrolled for an initial term of one (1) year, unless this Agreement terminates earlier, causing the FlexSAFE Beneficiary enrollment to terminate. Subsequent enrollment terms may be adjusted to the anniversary date of this Agreement and shall automatically renew from year-to-year unless (a) Depositor instructs DSI in writing to terminate the FlexSAFE Beneficiary enrollment; or (b) the enrollment is terminated by DSI for nonpayment in accordance with Section 6.3. DSI may not terminate the FlexSAFE Beneficiary's enrollment unless the Depositor provides DSI with written evidence that it has notified the FlexSAFE Beneficiary of such termination.

6.3 Termination for Nonpayment. In the event of the nonpayment of fees owed to DSI, DSI shall provide written notice of delinquency to all parties to this Agreement. Unless Depositor has instructed DSI to terminate FlexSAFE Beneficiary pursuant to subsection 6.2(a), Depositor or FlexSAFE Beneficiary shall have the right to make the payment to DSI to cure the default. If the past due payment is not received in full by DSI within one month of the date of such notice, then DSI shall have the right to terminate this Agreement at any time thereafter by sending written notice of termination to all parties. DSI shall have no obligation to take any action under this Agreement so long as any payment due to DSI remains unpaid.

6.4 Disposition of Deposit Materials Upon Termination. Upon termination of this Agreement by instruction of Depositor, DSI shall destroy, return, or otherwise deliver the deposit materials in accordance with such instructions. Upon termination for nonpayment, DSI may, at its sole discretion, destroy the deposit materials or return them to Depositor. DSI shall have no obligation to return or destroy the deposit materials if the deposit materials are subject to another escrow agreement with DSI.

6.5 Survival of Terms Following Termination. Upon termination of this Agreement, the following provisions of this Agreement shall survive:

- a. Depositor's Representations (Section 1.5);
- b. The obligations of confidentiality with respect to the deposit materials;
- c. The rights granted in the sections entitled Right to Transfer Upon Release (Section 4.3) and Right to Use Following Release (Section 5.4), if a release of the deposit materials has occurred prior to termination;
- d. The obligation to pay DSI any fees and expenses due;
- e. The provisions of Article 8; and
- f. Any provisions in this Agreement which specifically state they survive the termination or expiration of this Agreement.

## ARTICLE 7 – DSI'S FEES

7.1 Fee Schedule. DSI is entitled to be paid its standard fees and expenses applicable to the services provided. DSI shall notify the party responsible for payment of DSI's fees at least 90 days prior to any increase in fees. For any service not listed on DSI's standard fee schedule, DSI will provide a quote prior to rendering the service, if requested. Depositor shall pay all fees.

7.2 Payment Terms. DSI shall not be required to perform any service unless the payment for such service and any outstanding balances owed to DSI are paid in full. All other fees are due upon receipt of invoice. If invoiced fees are not paid after 30 days written notice, DSI may terminate this Agreement in accordance with Section 6.3. Late fees on past due amounts shall accrue at the rate of one and one-half percent per month (18% per annum) from the date of the invoice.

## ARTICLE 8 – LIABILITY AND DISPUTES

8.1 Right to Rely on Instructions. DSI may act in reliance upon any instruction, instrument, or signature reasonably believed by DSI to be genuine. DSI may assume that any employee of Depositor or FlexSAFE Beneficiary who gives any written notice,

request, or instruction has the authority to do so. DSI shall not be responsible for failure to act as a result of causes beyond the reasonable control of DSI.

8.2 Indemnification. DSI shall be responsible to perform its obligations under this Agreement and to act in a reasonable and prudent manner with regard to this escrow arrangement. Provided DSI has acted in the manner stated in the preceding sentence, Depositor agrees to indemnify, defend and hold harmless DSI from any and all claims, actions, damages, arbitration fees and expenses, costs, attorney's fees and other liabilities incurred by DSI relating in any way to this escrow arrangement.

8.3 Dispute Resolution. Any dispute relating to or arising from this Agreement shall be resolved by non-binding arbitration under the Commercial Rules of the American Arbitration Association. Unless otherwise agreed by Depositor and FlexSAFE Beneficiary, arbitration will take place in San Diego, California, U.S.A. and any court having jurisdiction over the matter may enter judgment on the award of the arbitrator(s). Service of a petition to confirm the arbitration award may be made by First Class mail or by commercial express mail, to the attorney for the party or, if unrepresented, to the party at the last known business address.

8.4 Controlling Law. This Agreement is to be governed and construed in accordance with the laws of the State of California, without regard to its conflict of law provisions.

8.5 Notice of Requested Order. If any party intends to obtain an order from the arbitrator or any court of competent jurisdiction which may direct DSI to take, or refrain from taking any action, that party shall:

- a. Give DSI at least one business days' prior notice of the hearing;
- b. Include in any such order that, as a precondition to DSI's obligation, DSI be paid in full for any past due fees and be paid for the reasonable value of the service to be rendered pursuant to such order; and
- c. Ensure that DSI not be required to deliver the original (as opposed to a copy) of the deposit materials if DSI may need to retain the original in its possession to fulfill any of its other duties.

## ARTICLE 9 -- GENERAL PROVISIONS

9.1 Entire Agreement. This Agreement, which includes the Exhibits described herein, embodies the entire understanding between the parties with respect to its subject matter and supersedes all previous communications, representations or understandings, either oral or written. No amendment or modification of this Agreement shall be valid or binding unless signed by both parties hereto, except the Exhibit A need not be signed by either party.



9.2 Notices. All notices, invoices, payments, deposits and other documents and communications shall be given to the parties at the addresses specified in the attached Exhibit A. It shall be the responsibility of the parties to notify each other as provided in this Section in the event of a change of address. The parties shall have the right to rely on the last known address of the other parties. Unless otherwise provided in this Agreement, all documents and communications may be delivered by First Class mail.

9.3 Severability. In the event any provision of this Agreement is found to be invalid, voidable or unenforceable, the parties agree that unless it materially affects the entire intent and purpose of this Agreement, such invalidity, voidability or unenforceability shall affect neither the validity of this Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.

9.4 Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties. However, DSI shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor unless DSI receives clear, authoritative and conclusive written evidence of the change of parties.

Depositor: Motorola, Inc.

Data Securities International, Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

**DESIGNATED CONTACT**

Account Number \_\_\_\_\_

Notices, deposit material returns and communications to Depositor should be addressed to:

Invoices to Depositor should be addressed to:

Name: Motorola, Inc.  
Address: 9980 Carroll Canyon Road  
San Diego, CA 92131-1186  
Designated Contact: Dan Delaney  
Telephone: 619 / 530-8459  
Facsimile: 619 / 530-8486

Motorola, Inc.  
9980 Carroll Canyon Road  
San Diego, CA 92131-1186  
Attention: Area Controller  
619 / 530-8388

Requests from Depositor to change the designated contact should be given in writing by the designated contact or an authorized employee.

Contracts, deposit materials and notices to DSI should be addressed to:

Invoice inquiries and fee remittances to DSI should be addressed to:

DSI  
Contract Administration  
Suite 200  
9555 Chesapeake Drive  
San Diego, CA 92123

DSI  
Accounts Receivable  
Suite 1450  
425 California Street  
San Francisco, CA 94104

Telephone: (619) 694-1900  
Facsimile: (619) 694-1919

(415) 398-7900  
(415) 398-7914

Date: \_\_\_\_\_

**EXHIBIT B  
DESCRIPTION OF DEPOSIT MATERIALS**

Depositor Company Name: Motorola, Inc. Account Number: \_\_\_\_\_

**PRODUCT DESCRIPTION:**

Product Name \_\_\_\_\_ Version \_\_\_\_\_

Operating System \_\_\_\_\_

Hardware Platform \_\_\_\_\_

**DEPOSIT COPYING INFORMATION:**

Hardware required: \_\_\_\_\_

Software required: \_\_\_\_\_

**DEPOSIT MATERIAL DESCRIPTION:**

Qty	Media Type & Size	Label Description of Each Separate Item (excluding documentation)
_____	Disk 3.5" or _____	
_____	DAT tape _____ mm	
_____	CD-ROM	
_____	Data cartridge tape _____	
_____	TK 70 or _____ tape	
_____	Magnetic tape _____	
_____	Documentation	
_____	Other _____	

I certify for Depositor that the above described materials have been transmitted to DSI

Signature \_\_\_\_\_

Print Name \_\_\_\_\_

Date \_\_\_\_\_

DSI has inspected and accepted the above materials (any exceptions are noted above):

Signature \_\_\_\_\_

Print Name \_\_\_\_\_

Date Accepted \_\_\_\_\_

Exhibit B# \_\_\_\_\_

Send materials to: DSI, 9555 Chesapeake Dr. #200, San Diego, CA 92123

EXHIBIT T

FLEXSAFE BENEFICIARY ENROLLMENT

Account Number \_\_\_\_\_

Pursuant to the Software Escrow Agreement ("Agreement"), Depositor hereby enrolls the following as a FlexSAFE Beneficiary:

City and County of San Francisco, a municipal corporation

Notices and communications to FlexSAFE Beneficiary should be addressed to:

City and County of San Francisco  
Address: \_\_\_\_\_

\_\_\_\_\_

Designated Contact: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Depositor: Motorola, Inc.

Data Securities International, Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_