

any third party to do so. The preceding sentence shall not apply to Open Source Software which is governed by the standard license of the copyright owner.

#### 4.4 Superintendence By Contractor

- a. Motorola will have a competent foreman or superintendent on the job site at all times during the progress of the work. Motorola will be responsible for all construction means, methods, techniques, sequences, and procedures, for coordinating all portions of the work under the Contract except where otherwise specified in the Contract documents, and for all safety and worker health programs and practices. Motorola will notify the STARS Program Director, in writing, of any proposed change in superintendent including the reason therefore prior to making such change.
- b. Motorola will, at all times, enforce strict discipline and good order among the workers on the project, and will not employ on the work any unfit person, anyone not skilled in the work assigned to them, or anyone who will not work cooperatively with those employed by Motorola, the subcontractors, the Commonwealth or the Commonwealth's separate Contractors and their subcontractors.
- c. The Commonwealth may, in writing, require Motorola to remove from the work any employee the Commonwealth deems to be incompetent, careless, not working cooperatively with others on the site, or otherwise objectionable.

#### 4.5 Access To Work

The Commonwealth, the Commonwealth's inspectors and other testing personnel, and inspectors from the Department of Labor and Industry will have access to the work at all times. Motorola will provide proper facilities for access and inspection.

#### 4.6 Contractor's Title To Materials and Equipment

- a. No materials or supplies for the work will be purchased by Motorola or by any subcontractor subject to any security interest, installment or sales Contract or any other agreement or lien by which an interest is retained by the seller or is given to a secured party. Motorola warrants that they have clear title to all materials and supplies, which they use in the work or for which they accept payment in whole or in part.
- b. Risk of loss for all Equipment, materials, infrastructure and accessories will pass to the Commonwealth upon installation and acceptance of the Equipment. Risk of loss for all portable equipment will pass to the Commonwealth upon issuance to employees, agents or similar personnel.
- c. Title to all Equipment, materials, infrastructure and accessories will pass to the Commonwealth upon acceptance of the delivery of the Equipment. *The delivery locations for the Equipment will be to multiple locations within the Commonwealth and to third-party locations. Acceptance procedures for the Equipment will be as follows:*
  - (i) *Prior to the delivery of Equipment, the Commonwealth will provide written authorization to Motorola designating both a delivery location and an authorized individual(s) to accept the delivery on behalf of the Commonwealth.*

- (ii) Upon delivery, the Equipment will be inventoried, in writing, by the individual(s) authorized by the Commonwealth to accept delivery on its behalf.*
- (iii) Motorola will provide the Commonwealth with written confirmation of the delivered Equipment, which the parties agree is acceptance of the delivery of the Equipment. At that time, title to the Equipment will pass to the Commonwealth. (Mod. # 4 Rev.)*

Conditional title to the property passes to the eligible agency when an authorized representative signs for or takes possession, subject to the specified use restrictions. When an agency has complied with all the terms and conditions set forth on the distribution or transfer document, the agency will possess unrestricted title to the item. Nonconforming goods will be rejected by the Commonwealth and title thereto will revert back to Motorola until they conform to the requirements of this Contract.