

ASSIGNMENT AND RELATED TRANSACTIONS AGREEMENT

By and Among

METROPOLITAN TRANSPORTATION COMMISSION

And

MOTOROLA, INC.

And

CUBIC TRANSPORTATION SYSTEMS, INC.

And

ERG TRANSIT SYSTEMS LTD

ERG TRANSIT SYSTEMS (USA), INC

VIDELLI LTD (formerly ERG Ltd)

VIX ERG PTY LTD

ERG R & D PTY LTD

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ASSIGNMENT-AND RELATED TRANSACTIONS AGREEMENT

This Assignment and Related Transactions Agreement (the "Agreement") is made and entered into by and among Metropolitan Transportation Commission, a local public agency formed pursuant to California Government Code §§ 66500 *et seq.* ("MTC"); Motorola, Inc., a Delaware corporation ("Motorola"); Cubic Transportation Systems, Inc., a California corporation ("Cubic"); and the parties listed in Appendix J ("ERG"), referred to separately herein as a "Party" and collectively herein as the "Parties." The Agreement shall be effective ("Effective Date") as of the date last signed by all Parties.

Recitals

A. MTC entered into a contract with Motorola on June 25, 1999 to Design Build Operate and Maintain, the TransLink® fare payment system ("FPS") for the San Francisco Bay Area.

B. Since 2001, substantially all work required under the TransLink® Contract has been performed by ERG, and much of the expertise, intellectual property, and resources necessary to complete the Design Build portion of the Contract and to operate and maintain the FPS are owned, controlled, or employed by ERG.

C. Disputes have arisen between Motorola and MTC as to whether the TransLink® Contract has been assigned or novated to ERG or whether ERG has been performing the work required under the TransLink® Contract as Motorola's primary subcontractor, and Motorola and MTC have agreed to resolve such disputes pursuant to the Settlement Agreement and the Mutual Release and Waiver of Claims.

D. Cubic desires to purchase or license specific assets and assume certain liabilities and contracts of ERG, including those assets, liabilities and obligations related to continued performance of the TransLink® Contract.

E. Cubic desires to contract with ERG for certain professional and technical services necessary or advisable to ensure the completion of the FPS and the continued provision of service to TransLink® customers.

F. Motorola and ERG each desires to assign all of its respective rights, interests and obligations under the TransLink® Contract to Cubic, and Cubic desires to accept such assignment and perform all of the duties and obligations of Contractor under the TransLink® Contract (the "Assignment").

F. Motorola, ERG and Cubic have requested MTC's consent to the proposed Assignment and MTC is willing to consent to such an Assignment of the TransLink® Contract subject to the satisfaction of certain conditions, including but not limited to Cubic's purchase or license of select assets of ERG; agreement by Cubic, MTC, and ERG on a management transition plan that ensures the continued provision of software development and support services by key ERG personnel; agreement by Cubic and MTC on revisions to the TransLink® Contract; notice to and opportunity to concur in elements of the transaction by the Federal Transit Administration; and the consent of the TransLink® Consortium.

Now, therefore, in consideration of the mutual promises herein made, and in consideration of the representations, warranties, and covenants herein contained, the Parties agree as follows.

1. Definitions.

The following definitions apply to the Recitals as well as the body of this Agreement.

- (a) Ancillary Agreements means the Assignment and Assumption Agreement, Settlement Agreement and Mutual Release and Waiver of Claims, the IP Agreement Amendment, the ERG Sublicense Agreement, the Safeco Bonds Release and the Conformed Contract.
- (b) Asset Purchase Agreement means the Asset Purchase Agreement entered into between ERG Transit Systems (USA) Ltd and Cubic Transportation Systems, Inc.
- (c) Assignment and Assumption Agreement means the form of Assignment and Assumption Agreement attached as *Appendix A*.
- (d) Assignment Documentation means the documents, consents and approvals necessary or advisable to effect the Assignment and the transactions contemplated by this Agreement, including but not limited to (i) a certified copy of resolutions of ERG's and Cubic's boards authorizing the Assignment and Assumption Agreement; (ii) a certified copy of a resolution of Motorola's Board granting general signing authority to its Senior Vice Presidents; (iii) opinions of legal counsel for Motorola, ERG and Cubic; (iv) Cubic's financial information as specified in §5(g); and (v) evidence satisfactory to MTC that the Contract Security, as defined in (h) below, is in full force and effect.
- (e) Assumed Rights, Obligations and Liabilities means all of the respective rights, obligations, duties, responsibilities and liabilities of Motorola and/or ERG under or with respect to the TransLink[®] Contract.
- (f) Closing Date means the date on which the Assignment is consummated and all condition precedents and all closing conditions in clause 7 are satisfied or waived and the closing deliveries in clause 8 have been made.
- (g) Conformed Contract means the novated TransLink[®] Contract between MTC and Cubic.
- (h) Contract Security means the financial security furnished by Cubic under Articles 3.1 and 3.2 of the Conformed Contract, Part I, Terms and Conditions.
- (i) Contractor means the Contractor under the TransLink[®] Contract.
- (j) Cubic Corporation means the publicly traded corporation organized under the laws of the State of Delaware, and includes all of its subsidiaries, one of which is Cubic Transportation Systems.

- (k) IP means that certain intellectual property the rights to which ERG owns or has the right to use pursuant to a valid and enforceable written license, sublicense, agreement, or permission that is necessary or desirable for the operation of TransLink[®] as presently conducted and presently proposed to be conducted, including the Smart Card IP, as defined in §1(o) herein.
- (l) ERG R&D means ERG R&D Pty Ltd (ACN 084 634 453).
- (m) ERG Sublicense Agreement means a Sublicense Agreement by and among ERG R&D, MTC and Cubic in the form attached as *Appendix B*.
- (n) FTA means the United States Department of Transportation's Federal Transit Administration.
- (o) IP Agreement means that certain IP Agreement dated as of November 8, 2001, made by and between Motorola and ERG R&D.
- (p) IP Agreement Amendment means the Amendment to Intellectual Property Agreement by and between Motorola and ERG R&D, in the form attached as *Appendix C*.
- (q) Letter of Credit means Letter of Credit No-P-213883 in the original amount of \$3,000,000 (and currently reduced to \$1,500,000) issued by The Chase Manhattan Bank (now JP Morgan Chase) in favor of MTC as beneficiary.
- (r) Management Transition Plan means the plan for the ongoing provision of software development and support services by ERG personnel to Cubic to ensure the timely completion of Design/Build work under the TransLink[®] Contract and the adequacy of resources to operate and maintain the TransLink[®] system throughout the term of the TransLink[®] Contract, to be separately agreed to by MTC and Cubic and included in the Conformed Contract.
- (s) Motorola IP means, collectively, (i) the Motorola Licensed Copyrights, (ii) the Motorola Licensed Trade Secrets, and (iii) the Motorola Licensed Patents, in each case, solely to the extent sublicensed to MTC and Cubic pursuant to the ERG Sublicense Agreement.
- (t) Motorola Licensed Copyrights means the copyrights owned by Motorola and embodied in the Motorola Licensed Deliverables.
- (u) Motorola Licensed Deliverables means the items identified in *Appendix D*.
- (v) Motorola Licensed Patents means the patents identified in Section 1.9 of the IP Agreement.
- (w) Motorola Licensed Trade Secrets means the trade secrets owned by Motorola and discernible by inspection of the Motorola Licensed Deliverables.
- (x) Purchase Agreement Summary means the summary of the purchase agreement ("Purchase Agreement") entered into by Cubic and ERG for the purchase or

license of certain of the assets and assumption of certain of the responsibilities of ERG (the "ERG Asset Purchase") as set forth in *Appendix E*.

- (y) Purchase Documentation means such documents and materials reasonably required by MTC to evidence the acquisition of ERG assets, as described in Section 5(b), including but not limited to (i) a certified copy of resolutions of Cubic's and ERG's boards authorizing the transfer of assets described in the Purchase Agreement Summary; (ii) a certified copy of the minutes of Cubic's and ERG's shareholders meetings (if applicable) approving the acquisition; and (iii) opinions of legal counsel for ERG and Cubic stating that the acquisition was properly effected and in compliance with all applicable laws.
- (z) Safeco Bonds means that certain Performance Bond and that certain Payment Bond, Number 5968156, dated June 28, 1999, issued by Safeco Insurance Company of America, as amended by Decrease Rider dated February 7, 2003.
- (aa) Safeco Bonds Release means a release of the Safeco Bonds in the form attached as *Appendix F*.
- (bb) Settlement Agreement and Mutual Release and Waiver of Claims means the settlement agreement and release and waiver of claims by and among the Parties in the form attached as *Appendix G*.
- (cc) Smart Card IP means that certain intellectual property, the rights to which ERG owns or has the right to use pursuant to a valid and enforceable written license, sublicense, agreement or permission, that details the operating system, key structure, security architecture, APIs and the Mark for the FPS smart cards as currently configured. The Smart Card IP includes the Motorola IP.
- (dd) TransLink[®] Consortium means the San Francisco Bay Area Transit Operators and MTC, who are parties to an Interagency Participation Agreement, dated December 12, 2003, as subsequently amended, formed to establish a joint agency forum for TransLink[®] oversight.
- (ee) TransLink[®] Contract means the contract dated June 25, 1999 between MTC and the Contractor for the design, build, operation and maintenance of the FPS in the San Francisco Bay Area, as amended by all Change Orders through the Closing Date.

2. Assignment and Related Transactions.

- (a) Assignment of TransLink[®] Contract. On and subject to the terms of this Agreement, Motorola and ERG agree to assign to Cubic and Cubic agrees to accept and assume from Motorola and ERG, all of the Assumed Rights, Obligations and Liabilities, and MTC agrees to consent to the Assignment, effective as of the Closing Date.
- (b) Waiver of Claims by Motorola and MTC. Upon the Closing Date, Motorola agrees to waive any claims it may have against MTC, ERG or Cubic under the TransLink[®] Contract, as provided in *Appendix G, Settlement Agreement and Mutual Release and Waiver of Claims* and MTC waives any claims it may have

against Motorola under the TransLink[®] Contract, as provided in Appendix G, Settlement Agreement and Mutual Release and Waiver of Claims.

- (c) Waiver of Claims by ERG and MTC. Upon the Closing Date, ERG agrees to waive any claims it may have against MTC, Motorola or Cubic under the TransLink[®] Contract, as provided in Appendix G, Settlement Agreement and Mutual Release and Waiver of Claims and MTC waives any claims it may have against ERG under the TransLink[®] Contract, as provided in Appendix G, Settlement Agreement and Mutual Release and Waiver of Claims.
- (d) Waiver of Claims by Cubic and MTC. Upon the Closing Date, Cubic agrees to accept the Assumed Rights, Obligations and Liabilities and to waive any claims it may have against MTC, Motorola or ERG in connection with the Assumed Rights, Obligations and Liabilities as provided in Appendix G, Settlement Agreement and Mutual Release and Waiver of Claims and MTC waives any claims it may have against Cubic in connection with the Assumed Rights, Obligations and Liabilities, as provided in Appendix G, Settlement Agreement and Mutual Release and Waiver of Claims.

3. Representations and Warranties of MTC.

MTC represents and warrants that the statements contained in this §3 are correct and complete as of the Effective Date and will be correct and complete in all material respects as of the Closing Date.

- (a) Organization of MTC. MTC is a local public agency formed pursuant to California Government Code §§66500 *et seq.* validly existing, and in good standing under the laws of California.
- (b) Authorization. MTC has full power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which it is a party and to perform its obligations hereunder and thereunder. MTC has complied with all applicable laws (including rules, regulations, codes, plans, injunctions, judgments, orders, decrees, rulings and charges thereunder) of federal, state, local and foreign governments (and all agencies thereof) necessary or desirable for MTC to execute and deliver this Agreement and the Ancillary Agreements and perform its obligations hereunder and thereunder. This Agreement constitutes, and the Ancillary Agreements when executed and delivered by MTC will constitute, the valid and legally binding obligation of MTC, enforceable in accordance with their respective terms and conditions. The person signing this Agreement and the Ancillary Agreements on behalf of MTC has the power and authority so to do and to bind MTC hereto and thereto.
- (c) Noncontravention. Neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby (including the assignments and assumptions referred to in § 2 above), will (i) violate any constitution, statute, government, governmental agency, or court order to which MTC is subject or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which MTC is a

party or by which it is bound or to which any of its assets is subject. MTC does not need to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any other government or governmental agency in order for the Parties to consummate the transactions contemplated by this Agreement.

4. Representations and Warranties of Motorola.

Motorola represents and warrants that the statements contained in this §4 are correct and complete as of the Effective Date and will be correct and complete in all material respects as of the Closing Date.

- (a) Organization of Motorola. Motorola is a Delaware corporation, duly organized, validly existing, and in good standing under the laws of Delaware.
- (b) Authorization of Transaction. Motorola has full power and authority (including full corporate power and authority) to execute and deliver this Agreement and each of the Ancillary Agreements to which it is a party and to perform its obligations hereunder and thereunder. Motorola has complied with all applicable laws (including rules, regulations, codes, plans, injunctions, judgments, orders, decrees, rulings and charges thereunder) of federal, state, local and foreign governments (and all agencies thereof) necessary or desirable for Motorola to execute and deliver this Agreement and perform its obligations hereunder. Without limiting the generality of the foregoing, the execution and delivery by Motorola of this Agreement has been duly authorized by all necessary action of Motorola's governing body. This Agreement constitutes, and the Ancillary Agreements when executed and delivered by Motorola will constitute, the valid and legally binding obligation of Motorola, enforceable in accordance with their respective terms and conditions. The person signing this Agreement and the Ancillary Agreements on behalf of Motorola has the power and authority so to do and to bind Motorola hereto and thereto.
- (c) Noncontravention. Neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby (including the assignments and assumptions referred to in § 2 above), will (i) violate any constitution, statute, government, governmental agency, or court order to which Motorola is subject, or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which Motorola is a party or by which it is bound or to which any of its assets is subject (or result in the imposition of any security interest upon any of its assets). Motorola does not need to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order for the Parties to consummate the transactions contemplated by this Agreement (including the assignments and assumptions referred to in § 2 above).
- (d) Intellectual Property.
 - (i) Motorola owns all right, title and interest in and to the Motorola Licensed Deliverables and the Motorola Licensed Patents that are necessary for the ERG Sublicense, subject only to (1) the exclusive license (subject to

certain reservations) of the Motorola Licensed Copyrights granted to ERG R&D under the IP Agreement, and (2) non-exclusive licenses of the Motorola Licensed Patents and the Motorola Licensed Trade Secrets granted to ERG R&D and third parties.

- (ii) Motorola warrants that, as of November 8, 2001, the Motorola Licensed Deliverables did not infringe any third party copyrights, did not misappropriate any third party trade secrets, and did not infringe any third party patents, except as set forth in Appendix D.
- (iii) Motorola makes no additional warranties or representations as to the validity or enforceability of the Motorola Licensed Patents, Motorola Licensed Trade Secrets or Motorola Licensed Copyright, other than those in Article 7.4 of the TransLink® Contract. Nothing in this clause is an admission of responsibility on the part of Motorola, as opposed to ERG, under Article 7.4 after November 8, 2001.

- (e) The TransLink® Contract. (i) The TransLink® Contract is the legal, valid and binding agreement of Contractor, enforceable against Contractor in accordance with its terms, and in full force and effect; and (ii) no party has repudiated any provision of the TransLink® Contract; provided that notwithstanding anything in this section to the contrary, Motorola avers that its interest in the TransLink® Contract has been novated to ERG and that such novation was accepted by MTC by conduct.

5. Representations and Warranties of Cubic.

Cubic represents and warrants that the statements contained in this §5 are correct and complete as of the Effective Date and will be correct and complete in all material respects as of the Closing Date.

- (a) Organization of Cubic. Cubic is a corporation duly organized, validly existing, and in good standing under the laws of the State of California. Cubic is a wholly-owned subsidiary of Cubic Corporation.
- (b) Acquisition of Assets. On or before the Closing Date, Cubic will acquire or will have the right to use, as of the Closing Date and in the future, pursuant to license, sublicense, agreement or permission, all assets of ERG necessary or desirable to fulfill the obligations of the Conformed Contract, including rights to ERG IP, and Cubic will take all necessary actions to maintain, protect and preserve such assets throughout the term of the TransLink® Contract.
- (c) Assumption of Obligations and Liabilities. On or before the Closing Date, Cubic will assume, pursuant to the Assignment, the Assumed Rights, Obligations and Liabilities of Motorola and ERG under the TransLink® Contract, including all warranties whether contingent or on-going, and shall fully perform all such obligations. Cubic agrees to perform the TransLink® Contract in accordance with the Conformed Contract and ratifies all previous actions and inactions taken by Motorola and ERG with respect to the TransLink® Contract, subject to Article 17.8 of the Conformed Contract.

- (d) Noncontravention. Neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby (including the assignments and assumptions referred to in § 2 above), will (i) violate any constitution, statute, government, governmental agency, or court to which Cubic is subject or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which Cubic is a party or by which it is bound or to which any of its assets is subject (or result in the imposition of any security interest upon any of its assets). Cubic does not need to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order for the Parties to consummate the transactions contemplated by this Agreement (including the assignments and assumptions referred to in § 2 above).
- (e) Authorization of Transaction. Cubic has full power and authority (including full corporate power and authority) to execute and deliver this Agreement and each of the Ancillary Agreements to which it is a party and to perform its obligations hereunder and thereunder. Cubic has complied with all applicable laws (including rules, regulations, codes, plans, injunctions, judgments, orders, decrees, rulings and charges thereunder) of federal, state, local and foreign governments (and all agencies thereof) necessary or desirable for Cubic to execute and deliver this Agreement and the Ancillary Agreements and perform its obligations hereunder and thereunder. Without limiting the generality of the foregoing, the board of directors of Cubic and the Cubic shareholders (if required) have duly authorized the execution, delivery, and performance of this Agreement and the Ancillary Agreements by Cubic. This Agreement constitutes, and the Ancillary Agreements when executed and delivered by Cubic will constitute, the valid and legally binding obligation of Cubic, enforceable in accordance with their respective terms and conditions. The person signing this Agreement and the Ancillary Agreements on behalf of Cubic has the power and authority so to do and to bind Cubic hereto and thereto.
- (f) Purchase Agreement Summary. The Purchase Agreement Summary which is attached to this Agreement as *Appendix E* is true, accurate and complete in all material respects.
- (g) Financial Statements. On or before the Closing Date, Cubic will provide to MTC the following financial statements (collectively the "Financial Statements"): (i) Cubic Corporation's Form 10-K, which includes its audited, consolidated and consolidating balance sheets and statements of income, changes in stockholders' equity and cash flow (the "Financial Statements") as and for the fiscal year ended September 30, 2008 (the "Most Recent Fiscal Year End") for Cubic Corporation and its subsidiaries; and (ii) Cubic Corporation's 10Q statement for the period ending March 31, 2009 (the "Cubic 10Q"). The Financial Statements (including the Notes thereto) have been prepared in accordance with GAAP, consistently applied, present fairly the financial condition of Cubic Corporation and its subsidiaries as of such dates and the results of operations of Cubic Corporation and its subsidiaries for such periods, are correct and complete and are consistent with the books and records of Cubic Corporation and its subsidiaries. Since the Cubic 10Q, there has not been any adverse change to

the business, financial condition, operations, results of operations or future prospects of Cubic Corporation and its subsidiaries.

- (h) The TransLink® Contract. The TransLink® Contract will continue to be the legal, valid and binding agreement of the Contractor, enforceable against the Contractor in accordance with its terms, and in full force and effect, without amendment, following the Assignment and Assumption Agreement, except as amended by the Conformed Contract or otherwise on or after the Closing Date.

6. Representations and Warranties of ERG.

ERG represents and warrants that the statements contained in this §6 are correct and complete as of the Effective Date and will be correct and complete in all material respects as of the Closing Date.

- (a) Organization of ERG. Each ERG entity is a corporation duly organized, validly existing, and in good standing under the laws of its place of incorporation. Appendix I hereto sets forth the name and address of each and every affiliate of ERG and each subsidiary of ERG and its affiliates which have rights under or pertaining to the TransLink® Contract, and the place of incorporation of each. This § 6 applies to all ERG entities in Appendix I.
- (b) ERG IP. ERG owns or has the right to use, pursuant to license, sublicense, agreement, or permission, the ERG IP, including the Smart Card IP. Further ERG has the right to transfer the ERG IP to Cubic (by sale, sublicense or otherwise) for the performance of TransLink® Contract as contemplated by this Agreement and the Assignment and Assumption Agreement.
- (c) Motorola IP. Since entering into the IP Agreement, ERG has not taken any actions in relation to the Motorola IP that would adversely affect the validity or enforceability thereof. ERG warrants that, since November 8, 2001, its use of the Motorola IP on the TransLink® Project has not infringed any third party copyrights, misappropriated any third party trade secrets, or infringed any third party patents, except as set forth in Appendix D.
- (d) ERG Assets. The assets included in the ERG Asset Purchase constitute all the assets and rights required or desirable to fulfill the obligations of the TransLink® Contract (with the exception of the Motorola IP) including the ERG IP, and those which vest in MTC upon Final Acceptance (as such term is defined in the Conformed Contract), and ERG will take all necessary actions to maintain and protect such assets and rights throughout the term of the Conformed Contract.
- (e) Noncontravention. Neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby (including the assignments and assumptions referred to in § 2 above), will (i) violate any constitution, statute, government, governmental agency, or court to which ERG is subject or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which ERG is a party or by which it is bound or to which any of its assets is subject (or result in the imposition of any

security interest upon any of its assets). ERG does not need to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order for the Parties to consummate the transactions contemplated by this Agreement (including the assignments and assumptions referred to in § 2 above).

- (f) Authorization of Transaction. ERG has full power and authority (including full corporate power and authority) to execute and deliver this Agreement and each of the Ancillary Agreements to which it is a party and to perform its obligations hereunder and thereunder. ERG has complied with all applicable laws (including rules, regulations, codes, plans, injunctions, judgments, orders, decrees, rulings and charges thereunder) of federal, state, local and foreign governments (and all agencies thereof) necessary or desirable for ERG to execute and deliver this Agreement and the Ancillary Agreements and perform its obligations hereunder and thereunder. Without limiting the generality of the foregoing, the board of directors of ERG and the ERG shareholders (if required) have duly authorized the execution, delivery, and performance of this Agreement and the Ancillary Agreements by ERG. This Agreement constitutes, and the Ancillary Agreements when executed and delivered by ERG will constitute, the valid and legally binding obligation of ERG, enforceable in accordance with their respective terms and conditions. The person signing this Agreement and the Ancillary Agreements on behalf of ERG has the power and authority so to do and to bind ERG hereto and thereto.
- (g) Sale of Assets. On or before the Closing Date, ERG will sell, assign, license and/or transfer to Cubic all assets and rights, including rights to the ERG IP, necessary or desirable to fulfill the obligations of the Conformed Contract.
- (h) Assignment of Obligations. On or before the Closing Date, ERG will assign to Cubic, pursuant to the Assignment, the Assumed Rights, Obligations and Liabilities of ERG under the TransLink® Contract.
- (i) Product Warranty. Each product manufactured, sold, leased, or delivered by ERG in connection with the TransLink® Contract has been in conformity with all applicable contractual commitments and all applicable warranties, and ERG will assign and transfer to Cubic, pursuant to the ERG Purchase Agreement, all contingent and on-going warranty rights and responsibilities of ERG in connection with the TransLink® Contract.
- (j) The TransLink® Contract. The TransLink® Contract is: (i) the legal, valid and binding agreement of Contractor, enforceable against Contractor in accordance with its terms, and in full force and effect; and (ii) no party has repudiated any provision of the TransLink® Contract; provided that notwithstanding anything in this section to the contrary, Motorola avers that its interest in the TransLink® Contract has been novated to ERG and that such novation was accepted by MTC by conduct.

7. Closing Conditions.

- (a) MTC Closing Conditions. The obligation of MTC to consent to the Assignment is subject to satisfaction of the following conditions, unless waived by MTC in its sole and absolute discretion:
- (i) Purchase and Sale of Assets of ERG. Subject to the terms and conditions of the Purchase Agreement, Cubic shall have purchased, licensed or sublicensed from ERG and ERG shall have transferred to Cubic all of the ERG assets required to perform the TransLink[®] Contract, as described in *Appendix F, Purchase Agreement Summary*.
 - (ii) Management Transition Plan. Cubic and MTC shall have agreed to the Management Transition Plan, to be included in the Conformed Contract.
 - (iii) Conformed Contract. Cubic and MTC shall have agreed to the Conformed Contract.
 - (iv) Settlement Agreement and Mutual Release and Waiver of Claims. Motorola, ERG, and Cubic shall each have executed and delivered to MTC the Settlement Agreement and Mutual Release and Waiver of Claims in substantially the form attached as *Appendix D*.
 - (v) TransLink[®] Consortium Approval. On or before the Closing Date, the TransLink[®] Consortium, acting through its governing board, the TransLink[®] Management Group, shall have consented to the Assignment.
 - (vi) FTA Notice and Opportunity to Concur. MTC shall have confirmed, to its satisfaction, that FTA has either concurred in, or failed to object to, the compromise or settlement of any dispute, breach, default or litigation involving the TransLink[®] Contract.
 - (vii) Attorneys' Fees. MTC shall have been reimbursed for its attorneys' fees in the amount of \$138,695 in connection with *Metropolitan Transportation Commission v. Motorola, Inc.* (United States District Court for the Northern District of California Case No. C 06 2302 MMC) currently pending in the United States Court of Appeals for the Ninth Circuit as Case No. 07 15576.
 - (viii) Deliveries. (i) Motorola shall have delivered or caused to be delivered to MTC the agreements and documents listed in § 8(b)(iii), (ii) ERG shall have delivered or caused to be delivered to MTC the agreements and documents listed in § 8(c)(ii), and (iii) Cubic shall have delivered or caused to be delivered to MTC the agreements and documents listed in § 8(d)(ii).
 - (ix) Smart Card IP. ERG shall have placed in escrow, pursuant to Article 4.6.7 of the TransLink[®] Contract, the Smart Card IP, including the Motorola IP, as currently configured, as further described in *Appendix D*.

- (x) DBE Report. On or before the Closing Date, ERG shall have provided to MTC a disadvantageded business enterprise utilization report satisfactory to MTC covering Phase II of the TransLink® Contract through the Closing Date.
 - (xi) Representations and Warranties. (1) The representations and warranties set forth in § 4 above shall be true and correct in all material respects at and as of the Closing Date, (2) the representations and warranties set forth in § 5 above shall be true and correct in all material respects at and as of the Closing Date, and (3) the representations and warranties set forth in § 6 above shall be true and correct in all material respects at and as of the Closing Date.
 - (xii) Consents. On or before the Closing Date, (1) Motorola shall have procured all of the permits, consents, licenses, and approvals necessary for Motorola to consummate the transactions contemplated by this Agreement. (2) Cubic shall have procured all of the permits, consents, licenses, and approvals necessary for Cubic to consummate the transactions contemplated by this Agreement, and (3) ERG shall have procured all of the permits, consents, licenses, and approvals necessary for ERG to consummate the transactions contemplated by this Agreement,
 - (xiii) Proceedings. No action, suit, or proceeding shall be pending (or threatened) before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction (or before any arbitrator) wherein an unfavorable injunction, judgment, order, decree, ruling or charge would (i) prevent consummation of any of the transactions contemplated by this Agreement; (ii) cause any of the transactions contemplated by this Agreement to be rescinded following consummation; or (iii) affect adversely the right of Cubic to perform the TransLink® Contract and the Conformed Contract.
 - (xiv) Contract Security. The Contract Security shall be in full force and effect as determined by MTC in its reasonable discretion.
 - (xv) Legal Opinions. MTC shall have received from counsel for each of Motorola, ERG and Cubic an opinion in form and substance reasonably acceptable to MTC stating that the transfer of the TransLink® Contract and its related transactions were properly effected under applicable law and the effective date of the transfer, addressed to MTC and dated as of the Closing Date.
- (b) Cubic Closing Conditions. The obligations of Cubic to consummate the transactions to be performed by it in connection with the Closing are subject to satisfaction of the following conditions, unless waived by Cubic in its sole and absolute discretion:
- (i) Purchase and Sale of Assets of ERG. Subject to the terms and conditions of the Purchase Agreement, ERG shall have transferred to

- Cubic all of the ERG assets required to perform the TransLink[®] Contract, as described in Appendix F, Purchase Agreement Summary.
- (ii) Deliveries. (i) Motorola shall have delivered or caused to be delivered to Cubic the agreements and documents listed in § 8(b)(i), (ii) ERG shall have delivered or caused to be delivered to Cubic the agreements and documents listed in § 8(c)(i), and (iii) MTC shall have delivered or caused to be delivered to Cubic the agreements and documents listed in § 8(e)(i).
 - (iii) Representations and Warranties. (1) The representations and warranties set forth in § 3 above shall be true and correct in all material respects at and as of the Closing Date, (2) the representations and warranties set forth in § 4 above shall be true and correct in all material respects at and as of the Closing Date, and (3) the representations and warranties set forth in § 6 above shall be true and correct in all material respects at and as of the Closing Date.
 - (iv) Motorola IP and Smart Card IP. ERG shall have placed in escrow, pursuant to Article 4.6.7 of the TransLink[®] Contract, the Smart Card IP, including the Motorola IP, as currently configured, as further described in Appendix D.
- (c) ERG Closing Conditions. The obligations of ERG to consummate the transactions to be performed by it in connection with the Closing are subject to satisfaction of the following conditions unless waived by ERG in its sole and absolute discretion:
- (i) Purchase and Sale of Assets of ERG. Subject to the terms and conditions of the Purchase Agreement, Cubic shall have purchased, licensed or sublicensed from ERG all of the ERG assets required to perform the TransLink[®] Contract, as described in Appendix F, Purchase Agreement Summary.
 - (ii) Deliveries. (i) Motorola shall have delivered or caused to be delivered to ERG the agreements and documents listed in § 8(b)(ii), (ii) MTC shall have delivered or caused to be delivered to ERG the agreements and documents listed in § 8(e)(ii), and (iii) Cubic shall have delivered or caused to be delivered to ERG the agreements and documents listed in § 8(d)(i).
 - (iii) Representations and Warranties. (1) The representations and warranties set forth in § 3 above shall be true and correct in all material respects at and as of the Closing Date, (2) the representations and warranties set forth in § 4 above shall be true and correct in all material respects at and as of the Closing Date, and (3) the representations and warranties set forth in § 5 above shall be true and correct in all material respects at and as of the Closing Date.
- (d) Motorola Closing Conditions. The obligations of Motorola to consummate the transactions to be performed by it in connection with the Closing are subject to

satisfaction of the following conditions unless waived by Motorola in its sole and absolute discretion:

- (i) Deliveries. (i) ERG shall have delivered or caused to be delivered to Motorola the agreements and documents listed in § 8(c)(iii), (ii) MTC shall have delivered or caused to be delivered to Motorola the agreements and documents listed in § 8(e)(iii), and (iii) Cubic shall have delivered or caused to be delivered to Motorola the agreements and documents listed in § 8(d)(iii).
- (ii) Representations and Warranties. (1) The representations and warranties set forth in § 3 above shall be true and correct in all material respects at and as of the Closing Date, (2) the representations and warranties set forth in § 5 above shall be true and correct in all material respects at and as of the Closing Date, and (3) the representations and warranties set forth in § 6 above shall be true and correct in all material respects at and as of the Closing Date.
- (iii) Proceedings. Save for the *Metropolitan Transportation Commission v Motorola, Inc* No. C 06-2303 MMC (N.D. Cal.) and appeals which is to be released under clause 2(b), no action, suit, or proceeding shall be pending (or threatened) before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction (or before any arbitrator) wherein an unfavorable injunction, judgment, order, decree, ruling or charge would prevent consummation of any of the transactions contemplated by this Agreement.

8. The Closing of the Assignment.

- (a) The closing of the Assignment and the transactions contemplated by this Agreement (the "Closing") shall take place following or concurrent with the satisfaction or waiver in writing of all of the conditions described in § 7 above on such date as the Parties may mutually determine in writing (the "Closing Date"), subject to the Closing Deliveries described in (b) through (e) below.
- (b) Motorola Closing Deliveries. Upon the Closing Date, Motorola shall:
 - (i) deliver to Cubic:
 - (1) one original of the Assignment and Assumption Agreement duly executed by Motorola;
 - (2) one original of the Settlement Agreement and Mutual Release and Waiver of Claims duly executed by Motorola; and
 - (3) a certificate to the effect that the condition specified above in § 7(b)(iii)(2) is satisfied.
 - (ii) deliver to ERG:

- (1) one original of the Assignment and Assumption Agreement duly executed by Motorola;
 - (2) one original of the Settlement Agreement and Mutual Release and Waiver of Claims duly executed by Motorola;
 - (3) one original of the IP Agreement Amendment duly executed by Motorola;
 - (4) a certificate to the effect that the condition specified above in § 7(c)(iii)(2) is satisfied; and
 - (5) one joint notice in the form of Appendix K duly executed by Motorola.
- (iii) deliver to MTC:
- (1) one original of the Assignment and Assumption Agreement duly executed by Motorola;
 - (2) one original of the Settlement Agreement and Mutual Release and Waiver of Claims duly executed by Motorola;
 - (3) a certificate to the effect that the conditions specified above in §§ 7(a)(vii)(1) and 7(a)(viii)(1) are satisfied in all material respects, and that Motorola has no knowledge that the condition specified above in § 7(a)(ix) is not satisfied in all material respects;
 - (4) a legal opinion in accordance with § 7(a)(xi); and
 - (5) A payment in the amount of \$138,695 for MTC's attorneys' fees, pursuant to §7(a)(vii).
- (c) ERG Closing Deliveries. Upon the Closing Date, ERG shall:
- (i) deliver to Cubic:
 - (1) one original of the Assignment and Assumption Agreement duly executed by ERG;
 - (2) one original of the Settlement Agreement and Mutual Release and Waiver of Claims duly executed by ERG;
 - (3) one original consent to the Management Transition Plan, separately agreed between ERG, MTC and Cubic and duly executed by ERG;
 - (4) one original of the ERG Sublicense Agreement duly executed by ERG; and
 - (5) a certificate to the effect that the conditions specified above in § 7(b)(iii)(3) is satisfied.

- (ii) deliver to MTC:
 - (1) one original of the Assignment and Assumption Agreement duly executed by ERG;
 - (2) one original of the Settlement Agreement and Mutual Release and Waiver of Claims duly executed by ERG;
 - (3) one original of the ERG Sublicense Agreement duly executed by ERG;
 - (4) a certificate to the effect that the conditions specified above in §§ 7(a)(i), 7(a)(vii)(3) and 7(a)(viii)(3) are satisfied, and that ERG has no knowledge that the condition specified above in § 7(a)(ix) is not satisfied in all material respects; and
 - (5) a legal opinion in accordance with § 7(a)(xi).
- (iii) deliver to Motorola:
 - (1) one original of the Assignment and Assumption Agreement duly executed by ERG;
 - (2) one original of the Settlement Agreement and Mutual Release and Waiver of Claims duly executed by ERG;
 - (3) one original of the IP Agreement Amendment duly executed by ERG; and
 - (4) copy of the ERG Sublicense Agreement executed by ERG; and
 - (5) a certificate to the effect that the conditions specified above in § 7(d)(ii)(3) is satisfied.
- (d) Cubic Closing Deliveries. Upon the Closing Date, Cubic shall:
 - (i) deliver to ERG:
 - (1) one original of the Assignment and Assumption Agreement duly executed by Cubic; and
 - (2) one original of the Settlement Agreement and Mutual Release and Waiver of Claims duly executed by Cubic;
 - (3) one original of the ERG Sublicense Agreement duly executed by Cubic; and
 - (4) a certificate to the effect that the conditions specified above in § 7(c)(iii)(3) is satisfied.
 - (ii) deliver to MTC:

- (1) one original of the Assignment and Assumption Agreement duly executed by Cubic;
 - (2) one original of the Conformed Contract separately agreed between Cubic and MTC and duly executed by Cubic;
 - (3) one original of the Settlement Agreement and Mutual Release and Waiver of Claims duly executed by Cubic;
 - (4) originals of the Contract Security pursuant to § 1(h);
 - (5) one original of the ERG Sublicense Agreement duly executed by Cubic;
 - (6) a legal opinion in accordance with § 7(a)(xi); and
 - (7) a certificate to the effect that the conditions specified above in §§ 7(a)(i), 7(a)(vii)(2) and 7(a)(viii)(2) are satisfied, and that Cubic has no knowledge that the condition specified above in § 7(a)(ix) is not satisfied in all material respects;
- (iii) deliver to Motorola:
- (1) one original of the Assignment and Assumption Agreement duly executed by Cubic;
 - (2) one original of the Settlement Agreement and Mutual Release and Waiver of Claims duly executed by Cubic;
 - (3) copy of the ERG Sublicense Agreement executed by Cubic; and
 - (4) a certificate to the effect that the condition specified above in § 7(d)(ii)(2) is satisfied.
- (e) MTC Closing Deliveries. Upon the Closing Date, MTC shall:
- (i) deliver to Cubic:
- (1) one original of the Assignment and Assumption Agreement duly executed by MTC;
 - (2) one original of the Settlement Agreement and Mutual Release and Waiver of Claims duly executed by MTC
 - (3) one original of the Conformed Contract duly executed by MTC;
 - (4) one original of the ERG Sublicense Agreement duly executed by MTC; and
 - (5) a certificate to the effect that the condition specified above in § 7(b)(iii)(1) is satisfied.

- (ii) deliver to ERG:
 - (1) one original of the Assignment and Assumption Agreement duly executed by MTC;
 - (2) one original of the Settlement Agreement and Mutual Release and Waiver of Claims duly executed by MTC;
 - (3) one original of the ERG Sublicense Agreement duly executed by MTC; and
 - (4) deliver to ERG a certificate to the effect that the condition specified above in § 7(c)(iii)(1) is satisfied.

- (iii) deliver to Motorola:
 - (1) one original of the Assignment and Assumption Agreement duly executed by MTC;
 - (2) one original of the Settlement Agreement and Mutual Release and Waiver of Claims duly executed by MTC;
 - (3) the originals of the Safeco Bonds;
 - (4) one original of the Safeco Bonds Release duly executed by MTC;
 - (5) the original Letter of Credit;
 - (6) copy of the ERG Sublicense Agreement executed by MTC; and
 - (7) a certificate to the effect that the condition specified above in § 7(d)(ii)(1) is satisfied.

9. Covenants.

(a) MTC Payments to ERG

- (i) Milestones Payment. At the Closing Date, if not already paid, MTC shall pay to ERG all sums due, according to applicable TransLink[®] Contract requirements, for the achievement of BART Revenue Ready and completion of work required under the following TransLink[®] Contract Change Orders:

- 42 - BART Fare Gate Integration
- 43 - Muni Fare Gate retrofit
- 47 - Data Warehouse
- 52 - Install Additional Muni CIDs
- 52-1 - Install Additional AC Transit CIDs
- 56, 56-1 - BART High Value Discount
- 56-1 - BART Business Rule Change (Zero Minimum Balance)
- 57 - Caltrain Dual Tag
- 64 - BART Faregate Network

75 - Relocation of Muni Driver Console
76-2 Caltrain Network
82 - Adult Card Registration
89 - TDS Store
94-2 - Muni Network
94-3 - Muni Network
98 - BART HCR3 Network
99 - TOT Keyboard

- (ii) Settlement of Third-Party Load Fee Claim. MTC shall pay to ERG, upon submission of an invoice, the sum of \$597,000 as full settlement of its claim regarding Third Party Load fees.
 - (iii) Equipment Payment Retainage. At the Closing Date, MTC shall pay to ERG, the 5% retainage withheld from previously paid equipment invoices for "installed" equipment, as defined in Article 13.6 of the TransLink[®] Contract Terms and Conditions.
 - (iv) Withheld Amounts. At the Closing Date, MTC shall pay to ERG, all amounts withheld from payments due the TransLink[®] Contractor as a result of late completion of Mandatory Milestones pursuant to the TransLink[®] Contract Terms and Conditions, Article 5.4.1, through the Closing Date.
 - (v) Price Adjustments. Within 7 days of the effective date of the Conformed Contract, MTC shall pay to ERG, any amounts still due for the adjustment of prices contained in previously paid invoices pursuant to Article 13.6 of the TransLink[®] Contract Terms and Conditions, if any, provided, however, that the such amounts shall be determined based on the requirements of Article 13.6 prior to the effective date of the Conformed Contract.
- (b) Product Warranties. Cubic shall be responsible for performance of all contingent and ongoing warranties by Motorola or ERG in connection with the TransLink[®] Contract, including but not limited to warranties for equipment, copyright, and workmanship.
 - (c) Further Assurances. Each of the Parties will use its reasonable best efforts to take all action and do all things necessary, proper, or advisable in order to consummate and make effective the transactions contemplated by this Agreement (including satisfaction, but not waiver, of the closing conditions set forth in § 7 above).
 - (d) Notice of Developments. Prior to the Closing Date, each Party will give prompt written notice to the other Parties of any material adverse development causing a breach of any of its own representations and warranties in §§ 3, 4, 5 and 6, above.

10. Termination.

- (a) Mutual Consent. The Parties may terminate this Agreement by mutual written consent at any time prior to the Closing.

- (b) By Notice. Any Party may terminate this Agreement by giving written notice to the other Parties on or before the 90th day following the Effective Date if the Closing Date has not occurred and such Party is not reasonably satisfied with the progress made toward satisfying the closing conditions set forth in § 7 above and the delay in the Closing Date or in satisfying the closing conditions is not attributable to the delays or nonperformance of such Party.
- (c) On Breach. In the event that any Party (i) fails to perform in any material respect any of its agreements contained herein required to be performed by it at or prior to the Closing or (ii) materially breaches any of its representations and warranties contained herein, which failure or breach is not cured within thirty (30) days following written notice of such breach, any other Party may terminate this Agreement by written notice to the other Parties.
- (d) Effect of Termination. If any Party terminates this Agreement pursuant to this §10, all rights and obligations of the Parties hereunder shall terminate without any Liability of any Party to any other Party (except for any Liability of any Party then in breach). Nothing in this section diminishes any claims, rights of recovery, or liability existing between any of the Parties that arise or exist separate from this Agreement.

11. Indemnification.

Subject to the limitations set forth in the immediately following paragraph, in the event of any material inaccuracy or breach by a Party of any of the representations, warranties or covenants contained herein, such Party shall indemnify, defend and hold harmless any Party that was harmed by such inaccurate representation, warranty or covenant (“Harmed Party”) from and against the entirety of any losses, liabilities, claims, actions, damages and expenses (including without limitation, reasonable attorneys’ fees and disbursements) (collectively, “Losses”) such Harmed Party incurs (except to the extent they could reasonably mitigate such Losses) through and after the date of the claim for indemnification resulting from, arising out of, relating to, in the nature of, or caused by the breach or misrepresentation. Nothing herein diminishes the indemnification rights and obligations under the TransLink® Contract and the Conformed Contract.

12. Limitation of Liability

NONE OF THE PARTIES WILL BE LIABLE UNDER ANY CIRCUMSTANCES OR LEGAL THEORY FOR DAMAGES RELATED TO INCONVENIENCE, DOWNTIME, INTEREST, COST OF CAPITAL, FRUSTRATION OF ECONOMIC OR BUSINESS EXPECTATIONS, LOST PROFITS, LOST REVENUES, LOST SAVINGS, LOSS OF USE, TIME, DATA, OR GOOD WILL, OR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF, CAUSED BY OR RELATED TO THIS AGREEMENT OR THE ANCILLARY AGREEMENTS, REGARDLESS OF WHETHER SUCH LOSSES ARE FORESEEABLE. The Parties expressly agree that the limitations on damages set forth in this paragraph are agreed allocations of risk constituting in part the consideration for their respective obligations under this Agreement, and that such limitations shall survive the determination of any court of competent jurisdiction that any remedy provided herein or available at law fails of its essential purpose. This paragraph shall survive the termination or expiration of this Agreement. Nothing in this clause will prevent Cubic and ERG from pursuing their full rights and remedies against one another pursuant to the Asset Purchase Agreement.

13. Miscellaneous.

- (a) No Third-Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.
- (b) Entire Agreement. This Agreement (including the documents referred to herein) constitutes the entire agreement between the Parties and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they related in any way to the subject matter hereof.
- (c) Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other Parties.
- (d) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.
- (e) Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.
- (f) Notices. All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given if (and then two business days after) it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

If to MTC:
Melanie J. Morgan
Deputy General Counsel
MTC
101 – 8th St.
Oakland, CA 94607
510/817-5720
Fax: 510/817-5848

If to Cubic:

Copy to:
Melanie Crotty
TransLink[®] Contract Manager
MTC
101-8th St.
Oakland, CA 94607
510/817-5880
Fax: 510/817-5848

Copy to:

If to Motorola:

If to ERG:
General Counsel

121-127 High Street
Prahran, VIC, Australia 3181
Fax: +61 3 9526 2351

Copy to:

Any Party may send any notice, request, demand, claim, or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, facsimile copy, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless and until it actually is received by the intended recipient. Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Party notice in the manner herein set forth.

- (g) Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California, without reference to its conflict of laws rules.
- (h) Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the Parties. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder shall be valid unless made in writing and signed by the Party making the waiver.
- (i) Construction. The word “including” shall mean including without limitation and the words “herein”, “hereby”, “hereto” and “hereunder” refer to this Agreement as a whole. The Parties intend that each representation, warranty, and covenant contained herein shall have independent significance. References to Sections (§) or Appendices are to Sections (§) or Appendices of this Agreement. No rule of construction will be applied to the disadvantage of a Party because that Party was responsible for the preparation of this Agreement or any part hereof.
- (j) Severability. If any term or condition of the Agreement is found to be illegal or unenforceable, such term or condition shall be deemed stricken and the remaining terms and conditions shall remain valid and in full force and effect. The Parties will expeditiously negotiate in good faith to replace such illegal or unenforceable term or condition with the legal and enforceable term and condition that most closely reflects the intentions of the Parties as set forth herein. Nothing in this Section is intended to affect or modify the requirement that all of the Closing Conditions be met prior to Assignment.
- (k) Incorporation of Appendices. The Appendices identified in this Agreement are incorporated herein by reference and made a part hereof, whether or not attached to the Agreement at the time of its execution.
- (l) Specific Performance. Each of the Parties acknowledges and agrees that the other Party(ies) would be damaged irreparably in the event any of the provisions

of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each of the Parties agrees that the other Party(ies) shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action instituted in any court of the United States or any state thereof having jurisdiction over the Parties and the matter (subject to the provisions set forth in §13(n) below), in addition to any other remedy to which it may be entitled, at law or in equity.

- (m) Attorneys' Fees. The prevailing Party(ies) in any litigation or dispute arising out of this Agreement shall be entitled to attorneys' fees and court costs.
- (n) ~~(n)~~ Submission to Jurisdiction. Each of the Parties submits to the jurisdiction of the United States District Court, Northern District, unless subject matter jurisdiction is lacking, in which case suit shall be filed in the Superior Court of the State of California in and for the County of Alameda, in any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Each Party also agrees not to bring any action or proceeding arising out of or relating to this Agreement in any other court. Each of the Parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of any other Party with respect thereto.
- (o) Survival of Representations and Warranties. All of the representations and warranties of the Parties contained in this Agreement shall survive the Closing hereunder for, and all claims for indemnification in connection therewith shall be asserted not later than thirty six (36) months following the Closing Date.
- (p) ~~(p)~~ Costs and Expenses. Each of the Parties will bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

METROPOLITAN
TRANSPORTATION COMMISSION

By: _____
Name: _____
Title: _____

CUBIC TRANSPORTATION
SYSTEMS, INC., a California
corporation

By: _____
Name: _____
Title: _____

MOTOROLA, INC., a Delaware
corporation

By: _____
Name: _____
Title: _____

ERG Transit Systems (USA), Inc., a
California corporation

By: _____
Name: _____
Title: _____

ERG Transit Systems Ltd a Western
Australian corporation

By: _____
Name: _____
Title: _____

VIX ERG PTY. LTD., a Western Australian
corporation

By: _____
Name: _____
Title: _____

ERG R & D Pty Ltd a Western Australian
corporation

By: _____
Name: _____
Title: _____

Videlli LTD., a Western Australian corporation

By: _____
Name: _____
Title: _____

APPENDIX A

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of _____, 2009 (the "Effective Date"), is made by and among MOTOROLA, INC., a Delaware corporation ("Motorola"), the parties listed in schedule A ("ERG"); (Motorola and ERG, collectively, "Assignor"), CUBIC TRANSPORTATION SYSTEMS, INC., a California corporation ("Assignee"), and METROPOLITAN TRANSPORTATION COMMISSION, a local public agency formed pursuant to California Government Code §§ 66500 *et seq.* ("MTC").

W I T N E S S E T H

WHEREAS, MTC entered into a contract with Motorola on June 25, 1999 to Design Build Operate and Maintain, the TransLink® fare payment system ("TransLink® Contract");

WHEREAS, Assignor, Assignee and MTC have entered into that certain Assignment and Related Transactions Agreement dated as of _____, 2009 (the "MTC Agreement"), which agreement provides, among other things, for the assignment and assumption of the TransLink® Contract from Assignor to Assignee upon the satisfaction of certain closing conditions specified in Section 7 of the MTC Agreement;

WHEREAS, pursuant to the MTC Agreement, MTC has agreed, among things, to consent to this Assignment and Assumption Agreement subject to and upon the terms and conditions contained in the MTC Agreement, including any and all representations and warranties by Assignee to fully perform all the obligations of Contractor (as defined in the TransLink® Contract) under the TransLink® Contract; and

WHEREAS, all of the terms and conditions for this Assignment and Assumption Agreement and MTC's consent thereto have been satisfied;

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby undertake and agree as follows:

1. Transfer and Assignment. Assignor hereby assigns and transfers to Assignee all of-Assignor's rights, obligations, duties, responsibilities and liabilities with respect to the TransLink® Contract, pursuant to the terms and conditions contained in the MTC Agreement.
2. Assumption of Obligations. The Assignee hereby accepts the assignment from Assignor of the Assignor's rights, obligations, duties, responsibilities and liabilities with respect to the TransLink® Contract and assumes and agrees to perform and discharge all of the obligations, duties, responsibility and liabilities of Contractor (as defined in the TransLink® Contract) under the TransLink® Contract, pursuant to the terms and conditions contained in the MTC Agreement.

3. MTC Consent. MTC hereby consents to this Assignment and Assumption Agreement.

4. Benefit; Purpose; Modification. This Assignment and Assumption Agreement shall inure to the benefit of the Assignee, Assignor, MTC, and their respective legal representatives, successors and assigns.

5. Cooperation. The parties agree to execute such other documents and take such other actions as may be reasonably necessary or desirable to confirm or effectuate the assignments and assumptions contemplated hereby.

6. Governing Law. This Assignment and Assumption Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its conflicts of laws rules.

7. Counterparts. This Assignment and Assumption Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which shall together constitute one agreement.

8. Severability. Should any part of this Assignment and Assumption Agreement be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity and enforceability of the remaining portions.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Assumption Agreement to be signed by their respective duly authorized officers as of the date first above written.

ASSIGNOR:
MOTOROLA, INC., a Delaware corporation

VIX ERG PTY. LTD., a Western Australian corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ERG R & D Pty Ltd a Western Australian corporation

ERG Transit Systems (USA), Inc. a California corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ERG Transit Systems Ltd a Western Australian corporation

Videlli LTD., a Western Australian corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ASSIGNEE:

CUBIC TRANSPORTATION SYSTEMS, INC., a California corporation

By: _____
Name: _____
Title: _____

MTC:

METROPOLITAN TRANSPORTATION COMMISSION,
a local public agency

By: _____
Name: _____
Title : _____

Schedule A

1. ERG Transit Systems (USA), Inc
2. Videlli Ltd (Formerly ERG Ltd)
3. Vix ERG Pty Ltd
4. ERG R & D Pty Ltd
5. ERG Transit Systems Ltd

APPENDIX B
FORM OF ERG SUBLICENSE AGREEMENT

APPENDIX C

FORM OF IP AGREEMENT AMENDMENT

APPENDIX D

MOTOROLA DELIVERABLES

1. Description of Motorola IP

Document Title	Revision	Date	Comment	CD path
Cheetah Operating Platform Software Requirement Specification	R1.1	25/6/01	(fm+pdf)	MV5000\doc\cheetah\requirements
COP Software Detailed Design	V1.00	13/10/2000	(fm+pdf)	MV5000\doc\cheetah\design
COP (Protocol Layer) Detailed Design	V1.00	21/09/2000	(fm+pdf)	MV5000\doc\cheetah\design
Motorola Smart Card MV5100 Technical User Guide	V1.02	19/04/2001	(fm+pdf)	MV5000\doc\cheetah\user_manual
Motorola Smart Card MV5000 Series Interface Specification	1.02	19/04/2001	(fm+pdf)	MV5000\doc\cheetah\interface
Urquhart Technical Requirements Specification	V3.00	21/06/2000	(fm)	MV5000\doc\urquhart
Urquhart Transit Requirements Specification	V3.1	01/09/2000	(fm)	MV5000\doc\urquhart
Urquhart Transit Software Architecture	V1.3	04/05/2000	(fm)	MV5000\doc\urquhart
Urquhart Proton Requirement Specification	V3.00	18/07/2000	(fm)	MV5000\doc\urquhart
Urquhart Proton Software Architecture	V1.4	26/04/2000	(fm)	MV5000\doc\urquhart
Urquhart Proton Unit Test Plan	V0.2	18/01/2000	(fm)	MV5000\doc\urquhart
Urquhart System Integration Test Plan	V1.00	30/07/1999		Available as paper copies in data room
Urquhart Proton 3 SIT Environment Overview	V0.1	23/01/2000		Available as paper copies in data room
Urquhart Test Cases & Procedures	V1.0	24/07/2000		Available as paper copies in data room
Urquhart SIT Report Release 18	V1.0	09/06/2000		Available as paper copies in data room
Urquhart System Integration Report for DILs Containing Urquhart Release 18	V1.0	16/08/2000		Available as paper copies in data room
Urquhart SIT Report SF024	V0.1	29/02/2000		Available as paper copies in data room
SIT Turnover Form Software/Firmware Defect Info	V1.0	28/02/2000		MV5000\doc\defects and improvements list
COP Test Campaign Strategy and Followup	V1.0	02/02/2001		MV5000\doc\patches\urquhart (v07)
COP Box Test Plan	V1.0	21/09/2000	(fm+pdf)	MV5000\doc\cheetah\validation\emulator
COP Panther Core C-BTCP	V2.1	17/01/2001	(fm+pdf)	MV5000\doc\pop\validation\card
COP RF Interface C-BTCP	V2.0	19/02/2001	(fm+pdf)	MV5000\doc\cheetah\validation\card
COP RF Interface E-BTCP	V2.0	19/02/2001		Available as paper copies in data room
Panther Open Platform Processing	V0.2	31/07/2000	(pdf+fm)	MV5000\doc\pop\maintenance

Document Title	Revision	Date	Comment	CD path
Time Optimisation				
Panther Operating Platform E-BTCP	V2.0	12/01/2001	(pdf+fm)	MV5000\doc\pop\validation\emulator
Panther Operating System Fabrication Procedures	V1.21	24 Aug 2000	(word)	MV5000\doc\pop\init_perso
Panther Initialisation & pre-personalisation Procedures	V1.3	16/05/2001	(Word)	MV5000\doc\pop\init_perso
Panther personalisation Procedures	V1.21	24/08/2000	(Word)	MV5000\doc\pop\init_perso
Panther Initialization Software Requirement Specifications	V0.8	7/05/2001		
MV5000 and MV5100 Initialization and Personalization	V0.1	24/04/2001		Available as paper copies in data room
Proton HSM Technical Requirement Specifications	V0.1	15/05/2001		Available as paper copies in data room
HSM Key Exchange Technical Requirement Specification	V0.7	25/01/2001	(fm+pdf)	HSM\doc\manufacturing\requirements\key exchange
E-HSM Technical Requirement Specification	V1.0	06/10/2000	(fm+pdf)	HSM\doc\e-hsm\requirements
E-HSM Interface Requirement Specification	V0.6	26/06/2001	(fm+pdf)	HSM\doc\e-hsm\requirements
F-HSM Software Detailed Design	V0.4	06/11/2000 20/11/2000	(fm+pdf)	HSM\doc\fab-sam\requirements
F-HSM External Specifications	V0.2	13/07/2000	(fm+pdf)	HSM\doc\fab-sam\user_manual
F-HSM Technical Requirement Specification	V0.3	9/08/2000		Available as paper copies in data room
FAB-SAM Technical Requirement Specification	V0.3	10/07/2000		Available as paper copies in data room
F-HSM Interface Requirement Specification	V0.5	13/11/2000	(fm+pdf)	HSM\doc\fab-sam\requirements
F-HSM Software Requirement Specification	V0.4	06/11/2000	(fm+pdf)	HSM\doc\fab-sam\requirements
MV5000 System Test Plan	V0.04	27/10/2000		Available as paper copies in data room
MV5000 V2.00 with ISO FDIS Patch V.07	V1.0	13/03/2001		Available as paper copies in data room
Panther Test Cases & Procedures	V.03	05/03/2000		Available as paper copies in data room
Software Directory & File Listing for: (a) Venus Panther				Available as paper copies in data room

2. Third Party Claims

(a) As of November 8, 2001, Motorola was aware of the following claims:

- (i) U.S. Patents 4,972,050 and 5,378,857. In year 2000 and 2001, Advanced Interconnection Technology (“AIT”) offered Motorola a license under the '857 Patent. Motorola informed AIT, that its products do not need a license under the '857 Patent. AIT later brought the '050 Patent to Motorola's attention. From an initial review of the claims of the '050 Patent, Motorola concluded that it did not require a license under this patent and did not formally responded to AIT regarding the '050 Patent.

- (ii) U. S. Patent 6,088,230. Amatech is an antenna supplier of WSSD, and manufactured antennas to Motorola's specification. Amatech sent Motorola a letter inquiring whether Motorola would be interested in licensing an alternative antenna design claimed in the '230 Patent. On March 7, 2001, Motorola informed Amatech that it was not interested in obtaining the alternative antenna design, and therefore Motorola declined Amatech's offer to obtain a license under the Amatech Patent.
- (iii) EP 0 424 726/ DE3935364 C1. The first number refers to a European patent and the second the German counterpart. In March of 2001, Motorola received correspondence from CLM GmbH and Angewandte Digital Elektronik (ADE) regarding essentially the same patent. Motorola responded that it did not need a license.
- (iv) Jacomet Letter. In 2000, Motorola received an offer to take a license regarding certain anti-collision algorithms from Mr. Jacomet. No specific patents were identified. Motorola did not respond.
- (v) U.S. Patents 5,530,232 and 5,578,808. On or about May 2000, Motorola received a letter from Smart Card LLC concerning these patents as being important to anyone in the multi-application smart card field. Motorola did not respond.
- (vi) U.S. Patents 5,734,722, 4,906,828, 4,877,950, 4,859,837, 4,661,691 and 4,499,556 and some foreign patents. On April 26, 2000, Mr. Halpern, through his attorney Mr. Davies, offered Motorola a license or ownership of this portfolio. Mr. Halpern represented that his patents were relevant to the ISO/IEC FCD 14443-2 standard. Motorola indicated that if these patents were essential to the standard, Motorola could be interested in exploring a potential business arrangement. Mr. Davies never followed up with Motorola.
- (vii) Bull Licensing Discussions. Motorola was involved in licensing discussions with Bull for a number of years. Both Bull and Motorola patent portfolios are worldwide. Although smartcard patents were involved in these discussions, the primary focus of the licensing activities relates to licensing GSM products. These licensing discussions encompassed more than WSSD products. As of November 8, 2001 Motorola had not licensed, assigned, or otherwise transferred any of the Licensed Copyrights and Licensed Trade Secrets to Bull.
- (viii) U.S. Patent 6,036,099. WSSD received a package containing a copy of U.S. Patent 6,036,099 and a business card from Keith Leighton the inventor. Motorola did not respond to the inquiry.

Notwithstanding anything in Paragraph 2(a) to the contrary, all descriptions of claims in Paragraph 2(a) are as of November 8, 2001, and Motorola is unable to make any representation or warranty as to any activity with respect to such claims after November 8, 2001.

- (b) Motorola is also aware of the following claims made since November 8, 2001, but cannot warrant that these items are an inclusive list of claims or potential claims made since November 8, 2001:
- (i) Based on information provided to Motorola by ERG, Innovatron SA obtained a French patent number 2 777 371, with extensions in various countries, and on or before December 2005 claimed that the Venus card infringed its patents and threatened litigation.
 - (ix) In February 26, 2002, Cubic claimed that the multiple protocol smart card reader to be used in the FPS would infringe upon Cubic's patent claims.

3. Escrow

On or before the Closing Date, ERG shall place in escrow, pursuant to the TransLink® Contract Terms and Conditions, Article 4.1.3 and 4.6.7, the Smart Card IP, including the Motorola IP, as currently configured. The Smart Card IP deposited in escrow shall include: specifications, software source code, list of software development tools, security algorithms, standards, procedures and processes necessary to detail the operating system, key structure, security architecture, APIs, and the Mask. In addition, the escrow deposit shall include a narrative as to the history of TransLink® smart card development, areas of caution and the process for developing a new chip. ERG shall include documentation of the current hardware, software, security, and communication design at the level of detail necessary to recreate the TransLink® card on another card platform. The names and contact information shall be provided in this escrow deposit for key smart card developers within ERG's organization.

ERG's obligation to place the Motorola IP in escrow is subject to Motorola's consent.

APPENDIX E
PURCHASE AGREEMENT SUMMARY

APPENDIX F
FORM OF SAFECO BONDS RELEASE
[to be drafted]

APPENDIX G

FORM OF SETTLEMENT AGREEMENT AND MUTUAL RELEASE AND WAIVER OF CLAIMS

Settlement Agreement and Mutual Release and Waiver of Claims

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE AND WAIVER OF CLAIMS

("Settlement Agreement") is entered into this ___th day of June, 2009, by and among Metropolitan Transportation Commission, a local public agency formed pursuant to California Government Code §§ 66500 *et seq.* ("MTC"); Motorola, Inc., a Delaware corporation ("Motorola"); Cubic Transportation Systems, Inc., a California corporation ("Cubic"); and corporationthe entities and Schedule A ("ERG"), referred to separately herein as a "Party" and collectively herein as the "Parties."

For good and valuable consideration, as set forth herein, the Parties hereby agree as follows:

1. Defined Terms. The following terms when used in this Settlement Agreement shall have the meanings ascribed to such terms as set forth below:
 - (a) "Affiliate" of any Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such Person. For the purposes of this definition, the term "control" (including its correlative meanings, "controlled by" and "under common control with") shall mean possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).
 - (b) "Agreement" means the Assignment and Related Transactions Agreement dated as of _____, 2009 made and entered into by and among MTC, Motorola, ERG and Cubic Transportation Systems, Inc.
 - (c) "Claim" and "Claims" mean any and all manner of action or actions, cause or causes of action, suits, damages (whether general, special or punitive), debts, liabilities, demands, rights, obligations, costs, expenses, losses, attorneys' fees (whether or not litigation is commenced), liens and indemnities of every kind and nature whatsoever, whether known or unknown, suspected or unsuspected (without regard to the subsequent discovery of additional or different facts), and whether based on contract, tort, statute or other legal or equitable theory of recovery.
 - (d) "Escrow Agreement" means the escrow agreement between Videlli, Motorola, Inc. and SunTrust Bank.
 - (e) "Person" means an individual, a partnership, a joint venture, a corporation, a business trust, a limited liability company, a trust, an unincorporated organization, a government or any department or agency thereof, or any other entity recognized at law as a "person."

- (f) “Representative” means with respect to a particular Person, any director, officer, employee, agent, contractor, consultant, advisor, or other representative of such Person, including legal counsel, accountants, and financial advisors.
- (g) “Transit Operators” means Alameda-Contra Costa Transit District; Golden Gate Bridge Highway and Transportation District; the San Francisco Bay Area Rapid Transit District; the City and County of San Francisco, acting by and through its Municipal Transportation Agency; the San Mateo County Transit District; and the Santa Clara Valley Transportation Authority, and also includes the TransLink® Consortium and the TransLink® Management Group.

Capitalized terms that are used but not defined herein shall have the meanings ascribed to them in the Agreement.

2. MTC Released Claims. This Settlement Agreement is a full and final settlement of, and renders to Motorola, ERG and Cubic, complete compensation for all MTC Released Claims, as the term is defined below. Motorola, ERG, and Cubic (collectively referred to herein as the “Contractor Releasing Parties”) hereby release and forever discharge MTC, the Transit Operators, and their respective past and present directors, managers, officers, agents, employees, transferees, successors and assigns and each of them separately and collectively (the “MTC Releasees”) from any and all Claims or potential Claims of whatever kind or character, whether known or unknown, suspected or unsuspected, fixed or unfixed, direct or indirect, contingent or otherwise, both at law and in equity, which the Contractor Releasing Parties or any of them now has, heretofore ever had or may hereafter have against any MTC Releasees, which arise from or are related to the TransLink® Contract or the performance of work thereunder as of or prior to the Closing Date, as defined in the Agreement, other than Claims arising out of a breach of the Agreement by MTC including MTC's representations and warranties thereunder (the released claims: the “MTC Released Claims”). The MTC Released Claims include, but are not limited to, claims for losses, damages, extra work, extensions of time, unforeseen conditions, change orders and change notices issued. The MTC Released Claims include, without limitation, Claims that were or could have been asserted in, or otherwise arise from, *Metropolitan Transportation Commission v. Motorola, Inc.*, No. C 06-2302 MMC (N.D. Cal.) and appeals, including, without limitation, any claim to the supersedeas bond. The MTC Released Claims also include without limitation the following four Claims or potential Claims:

- (a) The claim submitted December 13, 2006 entitled “Third Party Load Services Fee Claim” to which MTC responded on March 20, 2007.
- (b) A potential claim for which the statute of limitation was tolled in the agreement effective 22 October 2007.
- (c) The claim submitted September 12, 2008 entitled “Notice of Claim for Delay and Damages Cause [sic] by MTC’s Direction to Perform the Revenue Cycle Test on the BART System” to which MTC responded on October 24, 2008.
- (d) The potential claim submitted on February 17, 2009 entitled “Notice of Potential Delay for BART Delay to IIT” and the potential claim submitted on February 24, 2009 entitled “Notice of Second Potential Delay for BART Delay to IIT” to which

MTC responded on March 9, 2009; and the potential claim submitted on April 17, 2009 entitled "Notice of Third Potential Delay for BART due to Testing Delay."

The foregoing release includes all costs, losses or damages arising out of or related in any way to the MTC Released Claims, whether incurred before or after the Closing Date.

3. Contractor Released Claims. This Settlement Agreement is also a full and final settlement of, and renders to the MTC Releasing Parties (as defined below) complete compensation for all Contractor Released Claims, as the term is defined below. MTC, for itself and the Transit Operators and their respective transferees, successors, assigns, Affiliates and Representatives and each of them separately and collectively (collectively referred to as the "MTC Releasing Parties") hereby release and forever discharge each of (a) Motorola (b) ERG, (c) Cubic and (d) their shareholders, Affiliates and Representatives (and each of them separately and collectively (collectively referred to as the "Contractor Released Parties"), from any and all actions, demands, proceedings, matters, causes of action, obligations, liability, changes, Claims or potential Claims of whatever kind or character, whether known or unknown, suspected or unsuspected, fixed or unfixed, direct or indirect, contingent or otherwise, both at law and in equity, which the MTC Releasing Parties or any of them now has, heretofore ever had or may hereafter have against any Contractor Released Parties, which arise from or are related to the TransLink[®] Contract, the performance of work thereunder or omissions to perform work thereunder, as of or prior to the Closing Date other than Claims arising out of a breach of the Agreement by a Contractor Released Party, including a Party's Contractor Released Party's representations and warranties (thereunder (the released claims, the "Contractor Released Claims"). The Contractor Released Claims include, but are not limited to, claims for losses, damages, extra work, extensions of time, unforeseen conditions, change orders and change notices issued, and includes any Contractor Released Claims that might be made by or on behalf of any of the MTC Releasees, as defined in paragraph 1. The Contractor Released Claims include, without limitation, Claims that were or could have been asserted in, or otherwise arise from, *Metropolitan Transportation Commission v. Motorola, Inc.*, No. C 06-2302 MMC (N.D. Cal.) and appeals, including, without limitation, any claim to the supersedeas bond. This release also includes all costs, losses or damages arising out of or related in any way to the Contractor Released Claims, whether incurred before or after the Closing Date.
4. Release of Claims among Motorola, ERG And Cubic
 - (a) Motorola hereby releases and forever discharges ERG, Cubic and their respective past and present directors, managers, officers, agents, employees, transferees, successors and assigns and each of them separately and collectively (the "ERG/Cubic Releasees") from any and all Claims or potential Claims of whatever kind or character, whether known or unknown, suspected or unsuspected, fixed or unfixed, direct or indirect, contingent or otherwise, both at law and in equity, which Motorola now has, heretofore ever had or may hereafter have against any ERG/Cubic Releasees, which arise from or are related to the TransLink[®] Contract or the performance of work thereunder as of or prior to the Closing Date, other than Claims arising out of a breach of (i) the Agreement by an ERG/Cubic Releasee, including an ERG/Cubic Releasee's representations and warranties thereunder or (ii) the IP Agreement by ERG (the released claims, the "ERG/Cubic Released Claims"). The ERG/Cubic Released Claims include,

but are not limited to, claims for losses, damages, extra work, extensions of time, unforeseen conditions, change orders and change notices issued:

- (b) ERG hereby releases and forever discharges Motorola, Cubic and their respective past and present directors, managers, officers, agents, employees, transferees, successors and assigns and each of them separately and collectively (the "Motorola/Cubic Releasees") from any and all Claims or potential Claims of whatever kind or character, whether known or unknown, suspected or unsuspected, fixed or unfixed, direct or indirect, contingent or otherwise, both at law and in equity, which ERG now has, heretofore ever had or may hereafter have against any Motorola/Cubic Releasees, which arise from or are related to the TransLink[®] Contract or the performance of work thereunder as of or prior to the Closing Date, other than Claims arising out of a breach of the Agreement by a Motorola /Cubic Releasee, including a Motorola/Cubic Releasee's representations and warranties thereunder (the released claims, the "Motorola/Cubic Released Claims"). The Motorola/Cubic Released Claims include, but are not limited to, claims for losses, damages, extra work, extensions of time, unforeseen conditions, change orders and change notices issued but for the avoidance of doubt does not include any Claim in respect of the release of funds to ERG pursuant to the Escrow Agreement:

- (c) Cubic hereby releases and forever discharges Motorola and its past and present directors, managers, officers, agents, employees, transferees, successors and assigns and each of them separately and collectively (the "Motorola Releasees") from any and all Claims or potential Claims of whatever kind or character, whether known or unknown, suspected or unsuspected, fixed or unfixed, direct or indirect, contingent or otherwise, both at law and in equity, which Cubic now has, heretofore ever had or may hereafter have against any Motorola Releasees, which arise from or are related to the TransLink[®] Contract or the performance of work thereunder as of or prior to the Closing Date, other than Claims arising out of a breach of the Agreement by a Motorola Releasee, including a Motorola Releasee's representations and warranties thereunder (the released claims, the "Motorola Released Claims"; the ERG/Cubic Released Claims, the Motorola/Cubic Released Claims and the Motorola/ERG Released Claims, collectively, the "ERG/Cubic/Motorola Released Claims"). The Motorola Released Claims include, but are not limited to, claims for losses, damages, extra work, extensions of time, unforeseen conditions, change orders and change notices issued:

- 5. Waiver of Civil Code § 1542 Rights. The Parties expressly understand and acknowledge that it is possible that unknown losses or Claims exist or that present losses may have been underestimated in amount or severity and that they explicitly took that into account in entering into this Settlement Agreement. Consequently, each Party expressly waives all rights under California Civil Code § 1542, which provides that:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

6. Dismissal of Pending Appeal. Motorola covenants and agrees to voluntarily dismiss its appeal of the judgment in *Metropolitan Transportation Commission v. Motorola, Inc.*, Case No. C 06-2302 MMC (N.D. Cal.) currently pending in the United States Court of Appeals for the Ninth Circuit as Case No. 07-15576. Such dismissal shall be made not later than five (5) days after execution of this Settlement Agreement. MTC and Motorola also shall make all appropriate filings to release Motorola and Safeco Insurance Company of America from the supersedeas bond filed with the district court on July 24, 2007. Such filings to release the supersedeas bond shall be made not later than five (5) days after execution of this Settlement Agreement. MTC and Motorola each agree to bear their own costs and attorneys' fees incurred during the proceedings in the district court and the court of appeals, except as provided in §7(a)(vii) of the Agreement.
7. Covenant Not to Sue MTC Releasees. Motorola, ERG and Cubic covenant and agree not to commence, maintain, or prosecute any action at law or in equity against the MTC Releasees based on the MTC Released Claims.
8. Covenant Not to Sue Contractor Released Parties. The MTC Releasing Parties covenant and agree not to commence, maintain or prosecute any action at law or in equity against the Contractor Released Parties based on the Contractor Released Claims.
9. Covenant Not to Sue Among Motorola, ERG and Cubic. Motorola, ERG and Cubic each covenants and agrees not to commence, maintain, or prosecute any action at law or in equity against the other of them based on the ERG/Cubic/Motorola Released Claims, save that nothing in this clause shall prevent Cubic or ERG from asserting their rights against one another pursuant to the Asset Purchase Agreement.
10. No Admissions. Each Party hereto acknowledges that the promises made herein in consideration of the Claims referred to herein do not constitute an admission or concession of liability by any Party on account of any said Claims, liability for which is expressly denied.
11. Attorneys' Fees and Costs. The Parties understand and agree that this Settlement Agreement includes all Claims for costs, expenses, and attorneys' fees, taxable or otherwise, incurred by the parties in or arising out of the release of Claims referenced above, and that each Party will bear his or its own attorneys fees' and costs.
12. Successors or Assigns. This Settlement Agreement shall be binding upon and for the benefit of the Parties hereto and their respective successors or assigns.
13. Further Assurances. Each Party shall from time to time on being reasonably requested to do so by another Party, now or at any time in the future, do, or so far as each is able to procure the doing of, all such acts, and/or execute or procure the execution of, all such documents in a form reasonably satisfactory to such other Party as such Party may reasonably consider necessary for giving full effect to this Settlement Agreement, and for securing to such Party the full benefit of the rights, powers and remedies conferred upon such Party by this Settlement Agreement.

14. Representations, Warranties and Covenants.
- (a) Each Party hereby represents to the other Parties that it has not assigned any Claims subject to this Settlement Agreement to any other Person.
 - (b) Each Party hereby acknowledges that it is, and has been, represented by counsel in connection with the negotiation and preparation of this Settlement Agreement, that the provisions of this Settlement Agreement and the legal effect thereof have been fully explained to them, and that it has entered into this Settlement Agreement freely and voluntarily and without coercion or undue influence.
 - (c) Each Party hereby represents to the other Parties that this Settlement constitutes its valid and legally binding obligation, enforceable in accordance with its terms and conditions and that the person signing this Settlement Agreement on its behalf has the power and authority so to do and to bind such Party hereto.
 - (d) Contribution and Indemnity. If a third Person brings an action against a Party to this Settlement Agreement based on transactions, dealings, or incidents related to the subject matter of the Settlement Agreement, such Party shall not seek recovery by way of contribution, indemnity or otherwise from any other Party to this Settlement Agreement.
15. Entire Agreement. Each Party hereto warrants that no promise, inducement, or agreement not expressed herein has been made to it in connection with this Settlement Agreement, and that this Settlement Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof.
16. Amendment. It is expressly understood and agreed that this Settlement Agreement may not be altered, amended, modified, or otherwise changed in any respect whatsoever except by a writing duly executed by authorized representatives of the Parties thereto. Each Party hereto agrees and acknowledges that he or it will make no claim at any time or place that this Settlement Agreement has been orally altered or modified or otherwise changed by oral communication of any kind or character.
17. Forum Selection. The Parties agree that the venue for any claim and/or lawsuit arising under or concerning the Settlement Agreement shall be the United States District Court for the Northern District of California.
18. Counterparts. This Agreement may be executed in counterparts by facsimile or by pdf, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.
19. Choice of Law. This Settlement Agreement shall be construed and enforced pursuant to the laws of the State of California, without reference to its conflict of laws rules.
20. Construction. No rule of construction will be applied to the disadvantage of a Party because that Party was responsible for the preparation of this Settlement Agreement or any part hereof. The section headings contained in this Settlement Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Settlement Agreement.

21. Severability. If any term or condition of this Settlement Agreement is found to be illegal or unenforceable, such term or condition shall be deemed stricken and the remaining terms and conditions shall remain valid and in full force and effect. The Parties will expeditiously negotiate in good faith to replace such illegal or unenforceable term or condition with the legal and enforceable term and condition that most closely reflects the intentions of the Parties as set forth herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement as of the date first above written.

METROPOLITAN TRANSPORTATION COMMISSION

By: _____
Name: _____
Title: _____

CUBIC TRANSPORTATION SYSTEMS, INC.,
a California corporation

By: _____
Name: _____
Title: _____

MOTOROLA, INC., a Delaware corporation

By: _____
Name: _____
Title: _____

VIX ERG, Ltd., a Western Australian corporation

By: _____
Name: _____
Title: _____

ERG Transit Systems Ltd a Western Australian corporation

By: _____
Name: _____
Title: _____

ERG R & D Pty Ltd a Western Australian corporation

By: _____
Name: _____
Title: _____

ERG Transit Systems (USA), Inc a Californian corporation

By: _____
Name: _____
Title: _____

Videlli Ltd, a Western Australian corporation

By: _____
Name: _____
Title: _____

SCHEDULE A TO SETTLEMENT AGREEMENT AND MUTUAL RELEASE

1. ERG Transit Systems (USA), Inc
2. Videlli Ltd
3. Vix ERG Pty Ltd
4. ERG R & D Pty Ltd
5. ERG Transit Systems Ltd

APPENDIX H

ERG ENTITIES

1. ERG Transit Systems (USA), Inc
2. Videlli Ltd
3. Vix ERG Pty Ltd
4. ERG R & D Pty Ltd
5. ERG Transit Systems Ltd

**APPENDIX I
SUNTRUST ESCROW NOTICE**

**Escrow Agreement between Videlli Ltd (formerly ERG Ltd), Motorola, Inc. and
SunTrust Bank (“Escrow Agreement”)**

Motorola, Inc (Motorola) confirms that as at the date of this letter, no Claim Notice (as defined in the Escrow Agreement) has been or is proposed to be filed with SunTrust Bank, and no Claim Amount (as defined in the Escrow Agreement) is required to be set aside.

Motorola and Videlli Ltd (“ERG”) jointly confirm that the remaining balance of the Escrow Account in the sum of three million US dollars (US\$3,000,000.00) shall be immediately released by SunTrust Bank to ERG, with any balance of income or gain realized as a result of any investment pursuant to the Escrow Agreement, after payment of Suntrust Bank’s fees and permitted costs and expenses pursuant to the Escrow Agreement, distributed to Motorola

ERG directs you to transfer the sum of three million US dollars (US\$3,000,000.00) to the following account:

Account address: 50 St Georges Terrace, Perth WA 6000

Account number: 517465177

BSB number: 086 006

Videlli Ltd

By: _____
Name: _____
Title: _____

MOTOROLA, INC.

By: _____
Name: _____
Title: _____