

## CONTRACT FOR TWO-WAY RADIO EQUIPMENT AND ACCESSORIES

This Contract is made as of this 20<sup>th</sup> day of September, 2012 by and between the State of South Dakota ("State") and E.F. Johnson Company ("E.F. Johnson" or "Contractor"). State and E.F. Johnson are sometimes referred to herein individually as a "Party" and collectively as "Parties".

The State and E.F. Johnson agree and covenant between themselves to the following terms and conditions:

### 1. DEFINITIONS

In this Contract, the following words have the meanings indicated:

- 1.2. **"Contract"** means this Contract for Two-Way Radio Equipment and Accessories.
- 1.3. **"Contractor"** means E.F. Johnson Company, whose principal business address is 1440 Corporate Drive, Irving, Texas 75038-2401.
- 1.4. **"Purchase Order"** authorizes Contractor to proceed with delivery of products and/or services.
- 1.5. **"State"** means the State of South Dakota through the Bureau of Information and Telecommunications.

### 2. SCOPE OF WORK

The Contractor shall provide Two-Way Radio Equipment and Accessories ("Products") for the State as listed in Exhibit A. These Products shall be provided in accordance with the terms and conditions of this Contract, and the following Exhibits, which are attached and incorporated herein by reference. If there are any inconsistencies between this Contract and Exhibits A-C, the terms of the Contract shall control. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision.

Exhibit A – Product and Pricing Information

Exhibit B – E.F. Johnson Warranty Statement

Exhibit C – E.F. Johnson Software License Agreement

### 3. PURCHASES AND PAYMENT

- 3.1. **State Purchases.** State may purchase Products by submitting a written Purchase Order detailing the following: Product(s) requested (including model number), description, quantity requested of each Product(s), date of order, bill-to and ship-to address(es), purchasing agent's signature and contact information, and the delivery date(s) ("Purchase Order"). Contractor may reject State's Purchase

Order at Contractor's full discretion within five (5) business days of submission of the Purchase Order; however Contractor shall endeavor to accept all reasonable Purchase Orders. Contractor's acceptance of State's Purchase Order shall be confirmed to State in writing ("Sales Order Confirmation").

- 3.2. Payment Terms.** Payment terms are governed by SDCL ch. 5-26 and are net forty five (45) from invoice date. If payment is not received within forty five (45) days, State shall pay interest at the rate of one and one-half percent (1½%) per month on the unpaid portion of any payment not paid when due until payment is received by Contractor as set forth in SDCL ch. 5-26.

#### **4. TERM**

- 4.1. Term.** This Contract shall be for an initial term ending September 30, 2013 ("Initial Term"), and may be renewed by mutual agreement of the parties for two (2) additional twelve month terms ("Renewal Term"). It is the intention of the Parties that pricing shall remain firm during the any applicable Initial Term or Renewal Term. Notwithstanding the number of renewals, if any, this Agreement is and always shall be interpreted as a fixed and not indefinite term Agreement. Expiration or termination of this Agreement will not affect any warranty period that has not yet expired nor the survival of Contractor's obligations under Sections 12 and 13 of this Agreement.

- 4.2. Price Escalation.** The Contractor may request a price adjustment in writing ninety (90) days prior to any Renewal Term. Proposed pricing may be based on an adjustment in the Consumer Price Index ("CPI") measured at the time of the request. If State and Contractor do not reach agreement in writing on renewal pricing prior to the expiration of the current term, the Contract will be terminated by either Party with no penalty to the other Party.

#### **5. DEFAULT AND TERMINATION**

If a Party fails to perform a material obligation under this Contract, unless based on a Force Majeure pursuant to Section 6, the other Party may consider that Party to be in default. The non-defaulting Party shall give the defaulting party written notice of such default, and specify in writing a reasonable amount of time that is in no event less than thirty (30) days during which the defaulting Party has to cure such default or provide a cure plan. The amount of time to cure specified shall take into consideration the gravity and nature of the default.

If a defaulting Party fails to cure the default in the paragraph above, unless otherwise agreed in writing, the non-defaulting Party may terminate any unfulfilled portion of the contract. In the event of such termination, the defaulting Party will promptly return to the non-defaulting Party any of its confidential information. If State is the non-defaulting Party, terminates this contract as permitted by this Paragraph and completes the work through a third party, State may, as its exclusive remedy recover from Contractor reasonable

costs incurred to complete the work to a capability not exceeding that specified in the portion of the contract that serves as the basis for the default, less the unpaid portion of that work. State agrees to use reasonable efforts to mitigate such costs and to provide Contractor with invoices substantiating the charges.

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State; however, Contractor shall be entitled to payment for all products and services ordered by the State prior to the effective date of such termination.

## **6. FORCE MAJEURE**

In the event of either Party hereto is rendered unable, wholly or in part, by Force Majeure to carry out its obligations under this Agreement, other than to make payments when due hereunder, it is agreed that upon such Party giving notice and full particulars of such Force Majeure in writing to the other Party as soon as possible after the occurrence of the cause relied on, then the obligations of the Party giving such notice, so far as they are affected by such Force Majeure, and any corresponding obligations of the other Party, shall be suspended during the continuance of any inability caused by such Force Majeure, but for no longer period, and such Force Majeure shall as far as possible be remedied with all reasonable and diligent dispatch by the Party claiming Force Majeure in order to put itself in a position to carry out its obligations under this Agreement. The term "Force Majeure" shall mean any event or circumstance beyond the reasonable control of the Party claiming Force Majeure, and which by exercise of due foresight such Party could not reasonably have been expected to avoid and which the Party is unable to overcome by the exercise of due diligence, including but not necessarily limited to, any act of God, any act or omission of any government authority not caused by the act or omission of the Party claiming Force Majeure, explosions, fire, riot, war and natural disasters; provided, however, the term "Force Majeure" shall include strikes or labor disputes which commence during the applicable period for service rendered hereunder.

## **7. SHIPPING, RISK OF LOSS AND TITLE TRANSFER**

Contractor will ship all products FOB destination. All freight charges will be pre-paid by Contractor and added to the invoices Title to the products shall pass to State upon delivery, except that title to software will not pass to State at any time. Risk of loss will transfer from Contractor to State upon delivery of the products to the State.

Partial shipment and partial performance are hereby authorized by the State. Contractor shall issue invoices to State for all Products as they are shipped or performed.

**8. WARRANTY**

Products sold hereunder carry Contractor's standard product warranty attached hereto as Exhibit B. CONTRACTOR MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OR TRADE, OR ANY OTHER MATTER.

**9. DISCONTINUANCE OF PRODUCTS**

Contractor reserves the right at any time to discontinue any model in its product line and to make changes or improvements in specifications or design in such products without incurring any obligations to State with respect to the past or future sale of such products.

**10. LIMITATION OF LIABILITY**

ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, NEITHER PARTY (nor any of ITS OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS AND REPRESENTATIVES) WILL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR THE PERFORMANCE OF SERVICES BY VENDOR PURSUANT TO THIS AGREEMENT.

IN NO EVENT SHALL CONTRACTOR HAVE ANY LIABILITY TO THE STATE (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE FOR ANY DAMAGES FOR LOST PROFITS, LOST SAVINGS, LOSS OF USE, BUSINESS INTERRUPTION, LOST OR DAMAGED FILES OR DATA, OR OTHERWISE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THIS TRANSACTION EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CONTRACTOR'S LIABILITY FOR DAMAGES, FROM ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, WILL BE LIMITED TO THE ACTUAL DAMAGES PROVEN, IN NO EVENT TO EXCEED THE AGGREGATE PURCHASE PRICE OF THIS AGREEMENT.

**THE PROVISIONS OF THIS SECTION DO NOT APPLY TO CONTRACTOR'S OBLIGATIONS UNDER SECTIONS 12 AND 13 OF THIS AGREEMENT.**

**11. CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

**11.1. Confidentiality**

Confidential Information and any rights therein shall be and remain the property of the Disclosing Party.

E.F. Johnson and State, for itself and on behalf of its officers, employees and agents, agree: (i) to hold Confidential Information of the other Party in strict confidence and not to disclose any part of it to others, exercising at least the same degree of care as it takes in protecting its own trade secrets (but no less than a reasonable degree of care); (ii) not to disclose Confidential Information of the other Party without the other Party's prior written consent to any entity or person other than its employees or contractors who require disclosure to perform under the terms of this Agreement (the "Purpose"); (iii) not to allow any persons or entities other than such employees access to Confidential Information of the other Party, and then only upon execution by the employee of the confidentiality agreement; and, (iv) except as needed to perform the Purpose, not to make any use of Confidential Information of the other Party unless authorized, in writing, in advance by the other Party.

Neither Party shall attempt to gain unauthorized access to any Confidential Information of the other Party and in the event access is obtained, it shall immediately report that fact to the other Party and to the extent possible explain the details of the procedure used to gain such access.

The obligations of this section shall continue with respect to any Confidential Information during the term of this Agreement and for a period of three (3) years following termination of this Agreement.

Within thirty (30) calendar days after termination of this Agreement or upon written request by the Disclosing Party, whichever is earliest, the Receiving Party shall return to the Disclosing Party all Confidential Information of the Disclosing Party that is not needed by the Receiving Party to perform its obligations hereunder (including that generated by or on behalf of Receiving Party which is in the possession of the Receiving Party or its employees or subcontractors and is in tangible form) and all copies thereof, or with the Disclosing Party's prior written approval the Receiving Party shall destroy the same and certify in writing, such destruction to the Disclosing Party.

The Receiving Party shall require protective covenants and agreements from third parties to whom Confidential Information of the other Party is disclosed. The

Receiving Party shall inform its employees assigned to the services with respect to this Agreement and/or any of its obligations contained in this section.

If the Receiving Party is required by law, regulation, or judicial order to disclose Confidential Information of the Disclosing Party, the Receiving Party, except to the extent prohibited by law, shall promptly notify the Disclosing Party and cooperate with Disclosing Party if requested to minimize such disclosure and to otherwise protect the confidentiality of such Confidential Information as is required to be disclosed to the maximum extent possible under the relevant circumstances.

State and Contractor acknowledge and agree that the Confidential Information and intellectual property may contain valuable trade secrets of each other, the disclosure of which would cause the other Party irreparable harm for which monetary compensation would be inadequate. Therefore, the Parties agree that in the event of a breach by the other Party of its nondisclosure obligations under this Agreement it shall be entitled to injunctive relief from a court of competent jurisdiction without the need to post any bond or demonstrate actual damages.

Contractor finally acknowledges that the State's ability to comply with these confidentiality provisions is subject to South Dakota's open records provisions, SDCL ch. 1-27 and that the State's good faith compliance with these provisions does not constitute a breach of this agreement and will not result in liability on behalf of the State. The State finally acknowledges that it will adhere to SDCL ch. 1-27- 1.5 (3) Trade secrets. Information and documents provided in this contract or in conjunction with this contract are considered other proprietary or commercial information which if released would infringe intellectual property rights, give advantage to business competitors, or serve no material public purpose.

## **11.2. Intellectual Property.**

All intellectual property, including but not limited to, patent, trademark, copyright, mask work, design, trade dress, trade secrets, design drawings, sketches, models, samples, software, tooling, processes, methods and ideas, and all technical data relating to the products is and shall remain Contractor's intellectual property ("Contractor IP"). In addition to Contractor's other remedies, State agrees that any benefit or property derived from any unauthorized use of Contractor IP shall be the exclusive property of Contractor. Sale of Products to State does not convey a license to Contractor IP other than a right to use the Product in accordance with product specifications.

## **12. Patent and Copyright Infringement.**

Contractor warrants that it has good title to the Software or the right to license the same hereunder purchased by the State under this Agreement and that, to the best

of Contractor knowledge, the Software does not infringe upon any valid U.S. patent issued prior to the date of the Agreement. Contractor will defend, at its expense, any action brought against State to the extent it is based on a claim that the Software, used within the scope of this license, infringes upon any such U.S. patent, but only if (a) State promptly notifies Contractor in writing of any such claim or proceeding, (b) State permits Contractor to fully control the defense of such action, (c) State cooperates with Contractor in connection with such defense, (d) State does not compromise or settle any claim without the prior written consent of Contractor and (e) the infringement does not relate to any (i) modifications to the Software made other than by Contractor, or (ii) modifications made to State's specifications. Contractor shall have no other or further obligation or liability with respect to any claim of infringement or for breach of its warranty of title. If any part of the Software becomes, or if Contractor considers any of the Software likely to become, subject to a claim of infringement, Contractor may in its sole discretion (a) procure for State the right to continue using such Software, (b) replace or modify the Software to make it non-infringing, refund the paid purchase price of the Equipment upon return of the Equipment upon return of the Equipment in undamaged condition, or (c) take such other action as is necessary and feasible to maintain State's use of the Software.

In addition to Contractor's obligation to defend, and subject to the same conditions, Contractor will pay all damages, costs and expenses, including reasonable attorney fees finally awarded against State by a court of competent jurisdiction for an infringement claim or agreed to, in writing, by Contractor in settlement of an infringement claim. Finally, Contractor will indemnify State for all reasonable costs and expenses incurred as the result of an Infringement Claim covered by this section.

### **13 Indemnification**

Contractor will indemnify and hold State harmless from any and all liability, cost and expense, reasonable attorney fees, judgment, suit, cause of action, or demand for personal injury, death, or direct damage to tangible property which may accrue against State to the extent it is caused by the willful misconduct or negligence of Contractor, its subcontractors, or their employees or agents, while performing their duties under this Agreement, if State gives Contractor prompt, written notice of any the claim or suit. State will cooperate with Contractor in its defense or settlement of the claim or suit. This section sets forth the full extent of Contractor's general indemnification of State from liabilities that are in any way related to Contractor's performance under this Agreement.

### **14 DISPUTES**

If a claim, dispute, or other matter in question arises out of this Contract, which the Parties are unable to resolve through mutual, good faith, negotiations, it shall first be mediated by a mutually selected mediator through non-binding mediation.

The Parties will not unreasonably withhold their consent to the selection of a mediator and will share in the cost of the mediation equally; may postpone mediation until they have completed some specific but limited discovery about the dispute. If such claim, dispute or other matter cannot be resolved by non-binding mediation within sixty (60) days of submittal to the mediator, each Party shall be free to pursue such legal remedies as the Party believes it is entitled to under the terms of this Contract. Each Party may resort to judicial proceedings described in this section before the expiration of the sixty (60) day mediation period if good faith efforts to resolve the dispute under these procedures have been unsuccessful; or interim relief from the court is necessary to prevent serious and irreparable injury to the Party.

## **15. MISCELLANEOUS PROVISIONS**

- 15.1. Export Administration.** The Parties undertake to comply with all applicable export/re-export laws and regulations regarding the Products or Confidential Information. Specifically in the previous regard, the Receiving Party shall adhere to the U.S. Exports Administration Laws and Regulations and shall not export or re-export any Confidential Information or technical data or products received from the other Party or the direct product of such Confidential Information or technical data to any country or party unless properly authorized by the U.S. Government. The Parties agree that these obligations shall survive the termination of this Contract.
- 15.2. Independent Contractor.** E.F. Johnson's relationship with State under this Agreement is that of an independent contractor. Nothing in this Agreement, any Exhibit to this Agreement, or any Order Confirmation shall be construed as being inconsistent with that status. E.F. Johnson shall be solely responsible for its employees, sub suppliers and agents and for their benefits, contributions and taxes, as applicable.
- 15.3. Assignment.** This Contract, including all Exhibits, are not assignable by either Party, in whole or in part, without the prior written consent of the other (which consent shall not be unreasonably or untimely withheld), and any attempted assignment without such consent, whether by operation of law or otherwise, shall be void; provided however and notwithstanding anything herein to the contrary, either Party may assign this Contract, in whole or in part, without the other Party's consent, to any Affiliate or any purchaser of a substantial portion of that Party's Affiliate, business or facility(s) as to which this Contract relates. If the non-assigning Party fails to respond within twenty (20) business days to a written request by the assigning Party for written consent to the assignment, the non-assigning Party will be deemed to have consented to the assignment. Subject to the foregoing, this Contract and Exhibits shall bind and inure to the benefit of the successors and assigns of the respective Parties hereto, including without limitation, any purchaser of a substantial portion of State's or Contractor's respective Affiliate, business or facility as to which this Contract and Exhibits

relate. Notwithstanding any provision to the contrary in this Contract, including all Exhibits, any assignment of this Contract or part thereof shall not relieve the assignor Party from any obligation to pay amounts owing to the non-assigning Party.

- 15.4. Waiver.** The failure of either Party to enforce at any time any of the provisions of this Contract or an Exhibit shall in no way constitute or be construed as a waiver of that or any other provision of this Contract or an Exhibit, nor in any way to affect the validity of this Contract or an Exhibit or any provision thereof or the right of such Party to enforce thereafter each and every provision of this Contract. No waiver of any provision or breach of this Contract shall be deemed to be a waiver of any other provision or breach. The remedies herein reserved by the Parties shall be cumulative and additional to any other or further remedies provided in law or equity which the Parties may possess.
- 15.5. Governing Law and Venue.** This Contract, Exhibits are made under and shall be governed by the local laws of the State of South Dakota, U.S.A. (without giving effect to the conflict of law principles thereof). Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota. Each Party irrevocably agrees to submit to the exclusive jurisdiction of the courts in over any claim or matter arising under or in connection with this Agreement.
- 15.6. Reformation.** In the event any provision of this Contract or an Exhibit is determined to be invalid, illegal or otherwise unenforceable for any reason, that provision shall be reformed to the maximum extent permitted to preserve the Parties' original intent, failing which it shall be severed from this Contract or the applicable Exhibit, with the balance of this Contract and of the applicable Exhibit or Purchase Order continuing in full force and effect.
- 15.7. Reproductions.** This Contract, Exhibits, Purchase Orders and all documents relating hereto and thereto may be stored and/or reproduced by any means or process including electronic or mechanical means. Any reproduction shall be admissible into evidence as the original in any litigation without regard to whether the original is in existence. If a Party signs this Contract, an Exhibit, and/or any Purchase Order (whether in writing, by a computer generated signature, or by a signature created, transmitted, received, or stored by electronic means) and then transmits an electronic facsimile of the signature page, (including, without limitation, in PDF format), the receiving Party may rely upon such electronic facsimile as an originally executed signature page without any modification or change to this Contract, unless such modification or change is noted on such electronic facsimile by the transmitting Party.
- 15.8. Counterparts.** This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute

one and the same instrument. For purposes hereof, a facsimile copy of this Contract, including the signature pages hereto, shall be deemed to be an original.

**15.9 Entire Agreement.** This Contract and Exhibits contain the entire agreement of the Parties with regard to the subject matter hereof and thereof and supersedes any prior communications, commitments, representations or warranty, or contracts between the Parties relating to the subject matter hereof and thereof. No modifications of this Contract shall be of any force or effect unless reduced to a writing which specifically references this Agreement, states an express intent to modify or amend this Agreement, and is signed by the Parties claimed to be bound thereby.

**15.11 Insurance.** Contractor maintains and will maintain during the term of this Agreement the following: General and Products Liability in the general aggregate amount of \$2,000,000 (combined single limit for bodily injury and property damage); automobile liability in the amount of \$2,000,000 (aggregate and per occurrence, combined single limit); statutory workers' compensation; and employer liability in the amount of \$1,000,000. Upon written request from the State, Contractor will provide an industry standard certificate of insurance.

**15.12. Notices.** Notices required under this Agreement to be given by one Party to the other must be in writing and either delivered personally or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as Federal Express, UPS, or DHL), or by facsimile with correct answerback received, and will be effective upon receipt:

State  
Attn: Jeffrey Pierce  
910 E Sioux  
Pierre, SD 57501  
fax: (605)773-3741

EF Johnson  
Attn: VP, Sales  
1440 Corporate Drive.  
Irving, Texas 75038  
fax: (972) 819-0639

with a copy of legal notices to:

Attn: General Counsel  
1440 Corporate Drive  
Irving, Texas 75038  
fax: (972) 819-2314

**15.13. Compliance With Applicable Laws.** Each Party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement

**15.14. Records and Auditing.** Contractor agrees to maintain all records that are pertinent to this Agreement for a period of three years following termination and final payment. These records shall be subject at all reasonable times for

inspection, review, or audit by personnel duly authorized by the state of South Dakota, and Federal officials so authorized by law.

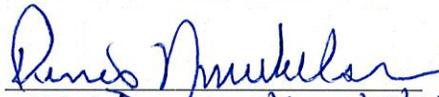
**15.15 Antitrust Assignment.** The Contractor hereby agrees to convey, assign and transfer to the State of South Dakota all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States, 15 U.S.C.A. §1, et seq. (1973), and under the antitrust laws of the State of South Dakota, SDCL ch. 37-1, and amendments thereto, relating to the particular goods, services and materials purchased by the Attorney General in connection with this Agreement.

In witness whereof, we, the undersigned agree to the foregoing terms and conditions of this Contract.

E.F. Johnson Company ("E.F. Johnson")

State of South Dakota ("State")

By:   
Name (Print): Tasha Bell  
Title: CFO  
Date: 9/14/2012

By:   
Name (Print): Dennis Winceheler  
Title: Director  
Date: 9-20-12

By: \_\_\_\_\_  
Name (Print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## EXHIBIT A

### Product and Pricing Information

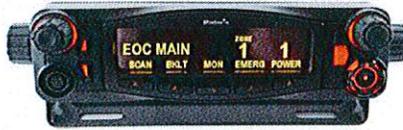
---

## 53SL ES MOBILE RADIO AND CONTROL STATION

Includes 1 Year Warranty (Extended Warranties Available-See Below)



**53SL Mobile**  
(Dash Mount Shown )



**Lightning Control Head (Optional)**

<u>Model/Part #</u>		<u>Description</u>	<u>Unit Price</u>
<b>Dash Mount Mobile Radios</b>			
242-541G-201-ABAH6	1	53SL ES Dash Mt, VHF, Standard Control Head, Analog and P25 Digital Conventional, SmartZone and P25 Trunking, 256 Channels/Talkgroups, Single Key DES/DES-OFB Encryption	\$2,364.00
242-541G-20A-ABAH6	1	53SL ES Dash Mt, VHF, Lightning Control Head, Analog and P25 Conventional, SmartZone and P25 Trunking, 256 Channels/Talkgroups, Single Key DES/DES-OFB Encryption	\$2,980.00
<b>Control Stations - Order Dash Mount Mobile Radio and Control Station Kit</b>			
242-541G-203-ABAH6	1	53SL ES Dash Mt, VHF, Standard Control Head, Analog and P25 Conventional, SmartZone and P25 Trunking, 256 Channels/Talkgroups, Single Key DES/DES-OFB Encryption, No Mic	\$2,300.00
250-4001-202	1	Control Station Kit. Includes Power Supply, Cabinet, Cables	\$236.00
589-0012-02201	1	Desk Microphone - Standard Control Head Radio	\$100.00
242-541G-20C-ABAH6	1	53SL ES Dash Mt, VHF Lightning Control Head, Analog and P25 Conventional, SmartZone and P25 Trunking, 256 Channels/Talkgroups, Single Key DES/DES-OFB Encryption, No Mic	\$2,916.00
250-4001-2002	1	Control Station Kit. Includes Power Supply, Cabinet, Cables	\$236.00
589-0012-02202	1	Desk Microphone - Lightning Control Head Radio	\$100.00
<b>Remote Mount Mobile Radios</b>			
242-541G-201-RBAH6	1	53SL ES Remote Mt, VHF, Standard Control Head, Analog and P25 Conventional, SmartZone and P25 Trunking, 256 Channels/Talkgroups, Single Key DES/DES-OFB Encryption	\$2,740.00
242-541G-20A-RBAH6	1	53SL ES Remote Mt, VHF, Lightning Control Head, Analog and P25 Conventional, SmartZone and P25 Trunking, 256 Channels/Talkgroups, Single Key DES/DES-OFB Encryption	\$3,356.00

<b>Options (Model # of Radio will Change)</b>			
	1	512 Channels/Talkgroups Upgrade	\$120.00
	1	48 Channels/Talkgroups Downgrade	-\$80.00
	1	DES/DES-OFB Encryption - Multi-Key	\$440.00
	1	UHF (450-512 MHz) Radio                      ADD	\$112.00
	1	800 MHz Radio	Same Price as VHF Above
	1	Dash Mount Radio w/ 2nd Remote Control Head - Available with Standard or Lightning Control Head	Call for Pricing
	1	Dual Remote Control Head - Available with Standard or Lightning Control Head	Call for Pricing
	1	Handheld Controller Configuration	Call for Pricing and Availability
	1	Control Station with Tone or Digital Remote Controllers	Call for Pricing and Configuration
<b>Accessories</b>			
501-0012-001	1	Roof Mount Antenna	\$44.00
250-0740-31001 / 31002	1	Microphone	\$80.00
589-0016-592 / 593-01	1	Noise Cancelling Microphone	\$116.00
589-0016-03501 / 03502	1	Digital Keypad Microphone	\$232.00
250-0151-006	1	5" Remote Speaker, Environmentally Sealed	\$44.00
<b>Manuals</b>			
001-5300-70000CD	1	Service Manual-CD	\$36.00
002-5400-700-03CD	1	Operating Manual - CD	\$12.00
<b>Warranty Extentions (must be purchased at the time of radio purchase)</b>			
299-0045-017	1	1 Year Extended Warranty	\$45.00
299-0045-013	1	2 Year Extended Warranty	\$95.00
299-0045-029	1	3 Year Extended Warranty	\$150.00
299-0045-045	1	4 Year Extended Warranty	\$250.00
<b>Other Radio Configurations and Accessories Available - Call for Details and Pricing</b>			

## 51SL ES PORTABLE RADIO

Includes 1 Year Warranty (Extended Warranties Available-See Below)



**Model 1**

**Model 2**

**Model 3**

**Fire Package  
Model 2 or 3 Only**

<u>Model/Part #</u>		<u>Description</u>	<u>Unit Price</u>
<b>Model 1 Portable Radio</b>			
242-521A-630JD6	1	51SL ES Portable Radio, Model 1, VHF, No Front Panel Controls, Analog and P25 Conventional, SmartZone and P25 Trunking, 48 Channels/Talkgroups, Single Key DES-DES/OFB Encryption, NiMH Battery, Wideband Antenna	\$1,472.00
<b>Model 2 Portable Radio</b>			
242-521B-630GB6	1	51SL ES Portable Radio, Model 2, VHF, Front Panel Display and Limited Keypad, Analog and P25 Conventional, SmartZone and P25 Trunking, 512 Channels/Talkgroups, Single Key DES-DES/OFB Encryption, NiMH Battery, Wideband Antenna	\$1,732.00
<b>Model 3 Portable Radio</b>			
242-521C-630GB6	1	51SL ES Portable Radio, Model 3, VHF, Front Panel Display and DTMF Keypad, Analog and P25 Conventional, SmartZone and P25 Trunking, 512 Channels/Talkgroups, Single Key DES-DES/OFB Encryption, NiMH Battery, Wideband Antenna	\$1,852.00
<b>Model 2 Portable Radio - FIRE PACKAGE</b>			
242-521E-674JA6	1	51SL ES Portable Radio, Model 2, VHF, Front Panel Display and Limited Keypad, Intrinsically Safe, YELLOW Immersion Housing, Analog and P25 Conventional, SmartZone and P25 Trunking, 512 Channels/Talkgroups, Single Key DES-DES/OFB Encryption, NiMH Battery, Wideband Antenna	\$1,932.00
<b>Model 3 Portable Radio - FIRE PACKAGE</b>			
242-521F-674JA6		51SL ES Portable Radio, Model 3, VHF, Front Panel Display and DTMF Keypad, Intrinsically Safe, YELLOW Immersion Housing, Analog and P25 Conventional, SmartZone and P25 Trunking, 512 Channels/Talkgroups, Single Key DES-DES/OFB Encryption, NiMH Battery, Wideband Antenna	\$2,112.00

<b>Options (Model # of Radio will Change)</b>			
	1	Intrinsically Safe (Included in FIRE PACKAGE)	\$40.00
	1	Submersible (Immersion Housing)(Included in FIRE PACKAGE)	\$80.00
	1	Lithium Ion Battery Upgrade (Not compatible with Intrinsically Safe Option or FIRE PACKAGE )	\$28.00
	1	DES/DES-OFB Encryption - Multi-Key	\$440.00
	1	UHF (450-512 MHz) Radio	Same Price as VHF Above
	1	800 MHz Radio	Same Price as VHF Above
<b>Accessories</b>			
585-5100-057	1	Standard Speaker Microphone (Intrinsically Safe)	\$104.00
589-0015-054	1	Speaker Microphone w/ Emergency Button	\$120.00
589-0015-056	1	Speaker Microphone (Immersion Capable)	\$128.00
589-30150-7325	1	Speaker Microphone, Amplified, Emergency Button 25" Cord	\$216.80
589-30150-7318	1	Speaker Microphone, Amplified, Emergency Button 18" Cord	\$216.80
589-30150-7330	1	Speaker Microphone, Amplified, Emergency Button 30" Cord	\$216.80
589-0015-058	1	Public Safety Speaker Microphone (Must Order Antenna Separately)	\$212.00
589-5100-129	1	Lightweight Headset/in-line PTT (requires adapter below)	\$92.00
589-5100-057	1	Coil Cord Earphone, Right Angle Plug (requires adapter below)	\$56.00
589-5100-055	1	2-Wire Palm Mic Kit (requires adapter below)	\$112.00
589-5100-056	1	3-Wire Lapel Mic Kit (requires adapter below)	\$144.00
589-5100-051	1	Accessory Adapter (intrinsically safe)	\$68.00
501-0017-110	1	Antenna, Wideband	\$36.00
587-5100-387	1	NiMH Standard Battery Immersion Rated	\$80.00
587-5100-373	1	NiMH Battery Immersion Rated, FM I/S	\$100.00
587-5100-364	1	Lithium Ion Battery	\$108.00
250-5100-235	1	Charger Kit (NiMH and NiCad Only)	\$80.00
250-5100-315	1	Tri-Chemistry Charger/Conditioner	\$120.00
250-5100-360	1	Multi-Bay Tri-Chemistry Charger, 6 Dock, Normal Rate	\$600.00
250-5100-365	1	Multi-Bay Tri-Chemistry Charger, 4 Dock, Rapid Rate	\$600.00
585-5100-14010	1	Leather Case, 3" D Swivel Belt Loop (Model 1 and 2)	\$56.00
585-5100-14012	1	Leather Case, 3" D Swivel Belt Loop (Model 3)	\$56.00
585-5100-15002	1	Nylon Case, 3" D Swivel Belt Loop (Model 2 and 3)	\$48.00
585-5100-129	1	Belt Clip, Spring Loaded (one comes with each radio)	\$12.00

<b>Manuals</b>			
001-5100-70002CD	1	Service Manual-CD	\$36.00
002-5200-70004CD	1	Operating Manual - CD Model 1	\$12.00
002-5200-72004CD		Operating Manual - CD Model 2 and 3	\$12.00
<b>Warranty Extentions (must be purchased at the time of radio purchase)</b>			
299-0045-017	1	1 Year Extended Warranty	\$45.00
299-0045-013	1	2 Year Extended Warranty	\$95.00
299-0045-029	1	3 Year Extended Warranty	\$150.00
299-0045-045	1	4 Year Extended Warranty	\$250.00
<b>Other Radio Configurations and Accessories Available - Call for Details and Pricing</b>			

# VIKING VP600 PORTABLE RADIO

Includes 2 Year Warranty (Extended Warranties Available-See Below)



**Model 2**

**Model 3**

<u>Model/Part #</u>		<u>Description</u>	<u>Unit Price</u>
<b>Model 2 Portable Radio</b>			
242-571B-653IJ8	1	Viking VP600 Portable Radio, Model 2, VHF, Front Panel and Top Display, Limited Keypad, Analog and P25 Conventional, SmartZone and P25 Trunking, 1024 Channels/Talkgroups, Single Key DES-DES/OFB Encryption, Li-IonBattery, Wideband Antenna	\$2,332.00
<b>Model 3 Portable Radio</b>			
242-571C-653IJ8	1	Viking VP600 Portable Radio, Model 3, VHF, Front Panel and Top Display, Full Keypad, Analog and P25 Conventional, SmartZone and P25 Trunking, 1024 Channels/Talkgroups, Single Key DES-DES/OFB Encryption, Li-IonBattery, Wideband Antenna	\$2,532.00
<b>Options (Model # of Radio will Change)</b>			
	1	Intrinsically Safe (Future-Pending New FM Standards Late 2012)	\$40.00
	1	Submersible (Immersion Housing) Standard	\$0.00
	1	DES/DES-OFB Encryption - Multi-Key	\$440.00
	1	UHF (450-512 MHz) Radio	Future Release
	1	800 MHz Radio	Same Price as VHF Above
<b>Accessories</b>			
Future-Pending New FM Standards Late 2012	1	Standard Speaker Microphone (Intrinsically Safe)	TBD
589-360005225	1	Speaker Microphone w/ Emergency Button 25" Cord	\$120.00
589-360005218	1	Speaker Microphone w/ Emergency Button 18" Cord	\$120.00

589-360005230	1	Speaker Microphone w/ Emergency Button 30" Cord	\$120.00
589-360005625	1	Public Safety Speaker Microphone w/ Antenna, 25" Cord	\$252.00
589-360005618	1	Public Safety Speaker Microphone w/ Antenna, 18" Cord	\$252.00
589-360005630	1	Public Safety Speaker Microphone w/ Antenna, 30" Cord	\$252.00
589-5100-0056	1	3-Wire Lapel Mic Kit (requires adapter below)	\$144.00
Call for Part #	1	Antenna, Wideband	\$36.00
587-5700-0374	1	Lithium Ion Battery	\$104.00
250-5100-315	1	Tri-Chemistry Charger/Conditioner	\$120.00
250-5100-360	1	Multi-Bay Tri-Chemistry Charger, 6 Dock, Normal Rate	\$600.00
250-5100-365	1	Multi-Bay Tri-Chemistry Charger, 4 Dock, Rapid Rate	\$600.00
Call for Availability and Part #	1	Leather Case, 3" D Swivel Belt Loop (Model 1 and 2)	TBD
Call for Availability and Part #	1	Leather Case, 3" D Swivel Belt Loop (Model 3)	TBD
Call for Availability and Part #	1	Nylon Case, 3" D Swivel Belt Loop (Model 2 and 3)	TBD
585-5100-128	1	Belt Clip, Spring Loaded (one comes with each radio)	\$12.00
<b>Manuals</b>			
Call for Part #	1	Service Manual-CD	\$36.00
Call for Part #	1	Operating Manual - CD Model 1	\$12.00
Call for Part #	1	Operating Manual - CD Model 2 and 3	\$12.00
<b>Warranty Extentions (must be purchased at the time of radio purchase)</b>			
299-0045-017	1	1 Year Extended Warranty	\$45.00
299-0045-013	1	2 Year Extended Warranty	\$95.00
299-0045-029	1	3 Year Extended Warranty	\$150.00
299-0045-041	1	4 Year Extended Warranty	\$250.00
<b>Other Radio Configurations and Accessories Available - Call for Details and Pricing</b>			

## EFJOHNSON PROGRAMMING TOOLS

<u>Model/Part #</u>		<u>Description</u>	<u>Unit Price</u>
<b>Programming Tools</b>			
250-5300-104	1	PC Configure Programming Kit - Mobile. Includes Software, Cable, Manual on CD	\$396.00
250-5100-104	1	PC Configure Programming Kit - Portable. Includes Software, Cable, Manual on CD	\$396.00
250-5400-104	1	PC Configure Programming Kit - Mobile and Portable. Includes Software, 2-Cables, Manual on CD	\$496.00
250-5300-06	1	PC Tune Kit - Mobile. Includes Software, Radio Cable, Audio Cable, Manual on CD	\$480.00
250-5100-005	1	PC Tune Kit - Portable. Includes Software, Radio Cable, Audio Cable, Manual on CD	\$320.00
250-5400-005	1	PC Tune Kit - Mobile and Portable. Includes Software, Radio Cables, Audio Cables, Manual on CD	\$720.00
023-5100-970	1	Programming Cable - USB, Portable	\$120.00
023-500-98001	1	Programming Cable - USB, Mobile Standard Control Head	\$120.00
023-500-98002	1	Programming Cable - USB, Mobile Lightning Control Head	\$120.00
597-0600-970	1	Programming Cable - USB, Viking VP600 Portable	\$196.00
597-0600-971	1	PC Tune Cable - Viking VP600 Portable	\$244.00
<b>Software Subscriptions</b>			
299-0045-038	1	Programming Software Subscription - 5 Years - ARMADA and PC Configure	\$500.00
299-0045-039	1	PC Tune Software Subscription - 5 Years	\$400.00

**EXHIBIT B**

**E.F. Johnson Warranty Statement**

---



## Product Warranty

E.F. Johnson Company ("EFJohnson") warrants to the original purchaser for use ("Customer") that the equipment manufactured by EFJohnson ("Products") are free from defects in material and workmanship and will conform to EFJohnson's published technical specifications for a period of one (1) year from the date of shipment by EFJohnson with the exception of the Viking series of portable radios offered by EFJohnson covered by a warranty for a period of two (2) years from the date of shipment by EFJohnson. EFJohnson makes no warranty with respect to the equipment not manufactured by EFJohnson, and any such equipment shall carry the original equipment manufacturer's warranty only. EFJohnson further makes no warranty as to, and specifically disclaims liability for, availability, range, coverage, grade of service or operation of the repeater system provided by the carrier or repeater operator.

If any Product fails to meet the warranty set forth above during the applicable warranty period and is returned to a location designated by EFJohnson, EFJohnson, at its option, shall either repair or replace such Product, directly or through an authorized service agent, within thirty (30) days of receipt of same. No Products may be returned without the prior authorization from EFJohnson. Any repaired or replaced Products shall be warranted for the remainder of the original warranty period. Customer shall pay all shipping and handling charges for returning the in-warranty Products to EFJohnson or EFJohnson's authorized service agent. Customer is also responsible for other cost and expenses of transit and delivery, including all applicable taxes and duties. EFJohnson will pay the returned shipping charges if the Product is repaired or replaced under warranty. Repair or replacement of Products as set forth in this paragraph fulfills any and all warranty obligations on the part of EFJohnson.

This warranty is void and EFJohnson shall not be obligated to replace or repair any Products if: (i) the Product has been used in other than its normal and customary manner, (ii) the Product has been subject to misuse, accident, neglect or damage or has been used with other than EFJohnson approved accessories and equipment or has been improperly installed, (iii) the Products have been installed and/or maintained by individuals who are not trained and certified by EFJohnson on the Products, (iv) unauthorized alterations or repairs have been made or unapproved parts have been used with the Product, or (v) Customer failed to notify EFJohnson or EFJohnson authorized service agent of the defect during the applicable warranty period.

THE AFORESAID WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED AND IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EFJOHNSON AND CUSTOMER AGREE THAT CUSTOMER'S EXCLUSIVE REMEDY FOR ANY BREACH OF ANY SAID WARRANTIES IS AS SET FORTH ABOVE. CUSTOMER AGREES THAT IN NO EVENT SHALL EFJOHNSON BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, OR EXEMPLARY DAMAGES WHETHER ON THE BASIS OF NEGLIGENCE, STRICT LIABILITY OR OTHERWISE. THE TOTAL LIABILITY OF EFJOHNSON ON ANY AND ALL CLAIMS SHALL NOT EXCEED THE PRICE ALLOCABLE TO THE SERVICES GIVING RISE TO THE CLAIM. The purpose of the exclusive remedies set forth above shall be to provide Customer with repair or replacement of non-complying Products in the manner provided above. These exclusive remedies shall not be deemed to have failed of their essential purpose so long as EFJohnson is willing and able to repair or replace non-complying Products in the manner set forth above.

EXHIBIT C

E.F. Johnson Software License Agreement



## *Software License Agreement*

**WARNING: If you elect to use the Equipment, you agree to be bound by this Software License Agreement.**

1. **Limited License.** If Licensee elects to use the Equipment, Licensee agrees to be bound by the terms and conditions set forth in this Agreement. For any software provided with, or contained or embedded in, the equipment manufactured by EF Johnson Technologies, Inc. (the "Equipment") and sold the user of such Equipment that this Software License Agreement accompanied (the "Licensee") pursuant to an agreement between EFJohnson and Licensee regarding the purchase of the Equipment by the Licensee (the "Sales Agreement") and any additional EFJohnson manufactured equipment which Licensee may purchase from EFJohnson from time to time hereinafter for use with the Equipment (collectively, the "Software"), EFJohnson hereby grants to Licensee a personal, non-exclusive, non-transferable, non-assignable (by operation of law or otherwise), terminable license to use the Software on the terms and subject to the conditions contained herein with the exception of software developed by a manufacturer other than EFJohnson ("third-party software manufacturer") pursuant to a third-party license agreement. Such third-party software manufacturer may be a beneficiary of this Software License Agreement if required under such third-party license agreement. Licensee shall not have the right to sublicense, rent, lease, copy, modify, reverse engineer, disassemble, decompile or otherwise transfer the Software, except as provided herein. The license granted herein authorizes Licensee to use the Software for its own internal purposes and only in connection with the use of the Equipment. Licensee agrees not to use the Software for any other purpose or install the Software on any replacement or additional computer or equipment. EFJohnson prohibits (a) the use of the programs for rental, timesharing, subscription service, hosting or outsourcing; (b) the removal or modification of any program markings or any notice of proprietary rights; (c) the Licensee from making the programs available in any manner to any third party for use in any third party's business operations. Licensee shall not exercise any rights with respect to the Software that are not expressly granted herein.

2. **Maintenance; New Releases; Copies.** Provided Licensee is current in its payment of software maintenance fees, Licensee shall be entitled to receive any error or bug fixes provided by EFJohnson as part of the software maintenance. Maintenance shall be provided in accordance with the EFJohnson maintenance policy. EFJohnson may, but has no obligation to do so, offer for an additional license fee new features or enhancements to the Software. Licensee shall not copy, print, disassemble, modify, distribute, translate, reverse engineer or reproduce all or any portion of the Software or related documentation; provided that Licensee shall be entitled to make two (2) copies for backup purposes only and not production use of the portions of the Software provided to Licensee.

3. **Proprietary Rights.** Licensee acknowledges that (a) the Software, including each program or system of which it is a part, and all supporting documentation and materials therefore, are the exclusive property of EFJohnson and/or any third-party software manufacturer as applicable, and (b) title to and all rights to the Software, including copyright, patent, intellectual property rights, trade secret and other rights in the Software, shall remain with EFJohnson and/or any third-party software manufacturer as applicable. Licensee shall not copy, reproduce, disclose or divulge the Software to any person, except to the extent reasonably required for purposes consistent with this license to an officer, employee, independent accountant, attorney or other similar agent of Licensee, and then only if Licensee uses the same degree of care, but no less than a reasonable degree of care, that Licensee uses to protect the confidentiality and title thereto of its own confidential or proprietary information of a like nature. Licensee shall not publish any results of benchmark tests run on the programs. Licensee acknowledges EFJohnson's right to seek equitable relief, including an injunction in the event of any breach or threatened breach by Licensee of this license. Notwithstanding the foregoing, Licensee shall have the right to disclose the Software to the extent required by a governmental agency or court with appropriate jurisdiction, provided that Licensee notifies EFJohnson in writing of the need to so disclose in advance of such disclosure. Licensee agrees that if any use of the Software comes to Licensee's attention which, in its opinion is unauthorized, Licensee shall promptly notify EFJohnson of such unauthorized use. Licensee, however, shall be under no affirmative obligation to make investigations to determine if an unauthorized use has occurred. In addition to the system key and encryption keys (and any programming materials or documents foregoing, Licensee acknowledges and agrees that, in order to protect the privacy of its radio system, it shall treat its encryption key and/or Multi-Net containing such keys) as highly confidential information and not disclose such keys to any third party unless such third party is subject to obligations of confidentiality in favor of Licensee.

4. **Warranty of Title.** EFJohnson warrants that it has good title to the Software or the right to license the same hereunder and that, to the best of EFJohnson's knowledge, the Software does not infringe upon any valid U.S. patent issued prior to the date of the Agreement. Subject to the terms of this license, EFJohnson will defend, at its expense, any action brought against Licensee to the extent it is based on a claim that the Software, used within the scope of this license, infringes upon any such U.S. patent, but only if (a) Licensee promptly notifies EFJohnson in writing of any such claim or proceeding, (b) Licensee permits EFJohnson to fully control the defense of such action, (c) Licensee fully cooperates with EFJohnson in connection with such defense, (d) Licensee does not compromise or settle any claim without the prior written consent of EFJohnson and (e) the infringement does not relate to any (i) modifications to the Software made other than by EFJohnson, (ii) modifications made to Licensee's specifications or (iii) use of the Software in combination with any equipment or products not manufactured by EFJohnson. EFJohnson shall have no other or further obligation or liability with respect to any claim of infringement or for breach of its warranty of title. If any part of the Software becomes, or if EFJohnson considers any of the Software likely to become, subject to a claim of infringement, EFJohnson may in its sole discretion (a) procure for Licensee the right to continue using such Software, (b) replace or modify the Software to make it non-infringing, refund the paid purchase price of the Equipment upon return of the Equipment upon return of the Equipment in undamaged condition, or (c) take such other action as is necessary and feasible to maintain Licensee's use of the Software.

5. **Limited Operational Warranty.** EFJohnson warrants that, for a period of twelve (12) months from the initial shipment of the Equipment, the Software will conform, as to the substantial operational features, to EFJohnson's applicable user's guide for the Software. EFJohnson does not warrant that the Software will meet Licensee's particular applications or requirements or that operation of the Software will be uninterrupted or error free or that each and every defect will be corrected. EFJohnson's sole obligation under this warranty shall be to make such adjustments or corrections which are necessary to render the Software workable in accordance with the applicable user's guide. This warranty shall not apply if (i) the Equipment or Software are used other than in accordance with the applicable user's guide; (ii) the Software is changed, modified, or maintained other than by EFJohnson or becomes defective as a result of Licensee's hardware or systems software conversion or malfunction; or (iii) the Equipment or Software are used or integrated with additional products or equipment which are not compatible with the operating specifications or characteristics of the Equipment or the Software. The investigation and/or adjustments or corrections of defects resulting from such causes shall be at Licensee's expense at EFJohnson's standard rate then in effect. EFJohnson shall not be responsible for any maintenance support or field service of any Software.

6. **Term and Termination.** This license shall become effective as of the date of the initial shipment of the Equipment and shall remain effective thereafter so long as Licensee owns and operates the Equipment in accordance with the terms of this Agreement; provided that, this license and all Licensee's rights under this license shall be deemed to automatically terminate upon the cancellation, breach or termination of the Agreement. Immediately upon such termination, Licensee shall cease use of the Software and either return to EFJohnson or destroy the original and all copies of the Software and, if requested by EFJohnson, certify in writing that the Software has been so destroyed.

7. **Export.** Licensee will fully comply with all relevant export laws and regulations of the United States and other applicable export and import laws to assure that neither the programs, nor any direct product thereof, are exported, directly or indirectly, in violation of applicable laws.

8. **Audit.** Licensee grants EFJohnson the right to audit the use of the programs, and may require the Licensee to provide reasonable assistance and access to information in the course of such audit and allows EFJohnson to report the audit results to third-party software manufacturers of the Software if applicable.

[remainder of page intentionally left blank]

THE FOREGOING LIMITED OPERATIONAL WARRANTY, OTHER THAN THE WARRANTY SET FORTH IN SECTION 4 ABOVE, IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ANY LIABILITY OF EFJOHNSON OR ANY THIRD-PARTY SOFTWARE MANUFACTURER RELATED TO THE SOFTWARE FOR ANY CAUSE WHATSOEVER AND WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, SHALL BE LIMITED TO THE DIRECT AND ACTUAL DAMAGES INCURRED BY LICENSEE, TO THE EXTENT RECOVERABLE BY LAW AND, IN NO EVENT, SHALL SUCH DAMAGES EXCEED THE PORTION OF THE PURCHASE PRICE OF THE EQUIPMENT WHICH IS ALLOCATED TO THE SOFTWARE ACCORDING TO EFJOHNSON'S PRICING POLICIES. UNDER NO CIRCUMSTANCES SHALL EFJOHNSON OR ANY THIRD-PARTY SOFTWARE MANUFACTURER BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL OR DAMAGES OF ANY KIND, EVEN IN THE EVENT THAT EFJOHNSON IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER EFJOHNSON NOR ANY THIRD-PARTY SOFTWARE MANUFACTURER SHALL BE LIABLE FOR ANY LOSS OF PROFITS, REVENUE, DATA OR DATA USE, ARISING FROM THE USE OF THE PROGRAMS. THIS SOFTWARE LICENSE EXCLUDES THE APPLICATION OF THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT.