



## BOARD OF SUPERVISORS AGENDA ITEM REPORT AWARDS / CONTRACTS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: 08/08/2023

\* = Mandatory, information must be provided

or Procurement Director Award: ☐

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**\*Contractor/Vendor Name/Grantor (DBA):**

Motorola Solutions, Inc. (Headquarters: Salt Lake City, UT)

**\*Project Title/Description:**

Motorola Flex Software & Support

**\*Purpose:**

Award: Master Agreement No. MA-PO-23-180. This Master Agreement is for an initial term of one (1) year in the annual award amount of \$1,200,000.00 (including sales tax) and includes four (4) one-year renewal options. Administering Departments: Information Technology Department and Sheriff's Department.

**\*Procurement Method:**

Pursuant to Pima County Procurement Code 11.12.050, Sole source procurement, award of Requisition No. 23-228 is recommended to Motorola Solutions, Inc. which has accepted the terms of the County's Sole Source Procurement Agreement.

PRCUID: 484693

Attachment: Sole Source Procurement Agreement.

**\*Program Goals/Predicted Outcomes:**

To meet critical public safety functions such as Computer Aided Dispatching (CAD), Records Management System (RMS), and Jail Management Systems (JMS).

**\*Public Benefit:**

Provides a critical system that facilitates Sheriff Department's responsiveness to public safety service for the community.

**\*Metrics Available to Measure Performance:**

Performance will be measured against the contractual service expectations.

**\*Retroactive:**

Yes, vendor review of contract draft took considerable time.

TO: COB 07/21/2023

VERS: 1

PGS: 27

**THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED**

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (\*) fields

**Contract / Award Information**

Document Type: MA Department Code: PO Contract Number (i.e., 15-123): 23-180  
 Commencement Date: 07/11/23 Termination Date: 07/10/24 Prior Contract Number (Synergen/CMS): N/A  
☒ Expense Amount \$ 1,200,000.00 \* ☐ Revenue Amount: \$ N/A

**\*Funding Source(s) required: General Fund**

Funding from General Fund? ☒ Yes ☐ No If Yes \$ \_\_\_\_\_ % 100

Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No

If Yes, is the Contract to a vendor or subrecipient? \_\_\_\_\_

Were insurance or indemnity clauses modified? ☐ Yes ☒ No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? ☐ Yes ☒ No

If Yes, attach the required form per Administrative Procedure 22-10.

**Amendment / Revised Award Information**

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Contract Number (i.e., 15-123): \_\_\_\_\_  
 Amendment No.: \_\_\_\_\_ AMS Version No.: \_\_\_\_\_  
 Commencement Date: \_\_\_\_\_ New Termination Date: \_\_\_\_\_  
 Prior Contract No. (Synergen/CMS): \_\_\_\_\_

☐ Expense ☐ Revenue ☐ Increase ☐ Decrease

Is there revenue included? ☐ Yes ☐ No If Yes \$ \_\_\_\_\_

**\*Funding Source(s) required: \_\_\_\_\_**

Funding from General Fund? ☐ Yes ☐ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

**Grant/Amendment Information (for grants acceptance and awards)**

☐ Award ☐ Amendment

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Grant Number (i.e., 15-123): \_\_\_\_\_  
 Commencement Date: \_\_\_\_\_ Termination Date: \_\_\_\_\_ Amendment Number: \_\_\_\_\_  
☐ Match Amount: \$ \_\_\_\_\_ ☐ Revenue Amount: \$ \_\_\_\_\_

**\*All Funding Source(s) required: \_\_\_\_\_**

\*Match funding from General Fund? ☐ Yes ☐ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

\*Match funding from other sources? ☐ Yes ☐ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

**\*Funding Source: \_\_\_\_\_**

\*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)? \_\_\_\_\_

Contact: Procurement Officer, Troy McMaster  
 Department: Procurement Director, Terri Spencer

Division Manager, Ana Wilber  
 Telephone: 520.724.8728

Department Director Signature: Javier Baca  
 Deputy County Administrator Signature: [Signature]  
 County Administrator Signature: [Signature]

Date: \_\_\_\_\_  
 Date: 7-21-2023  
 Date: 7-21-23

**Pima County Procurement Department**  
**Administering Department:** Information Technology

**Project:** Motorola Flex Software & Support

**Contractor:** Motorola Solutions, Inc.  
4625 Lake Park Boulevard  
Salt Lake City, UT 84120

**Amount:** \$ 1,200,000.00

**Contract No.:** MA-PO-23-180

**Funding:** General Fund

## **SOLE SOURCE PROCUREMENT AGREEMENT**

### **1. Parties, Background and Purpose.**

- 1.1. Parties. This Contract is between Pima County, a political subdivision of the State of Arizona ("County"), and Motorola Solutions, Inc. ("Contractor").
- 1.2. Purpose. The Pima County Sheriff's Department requires the continued use and support of Contractor's Motorola (formerly Spillman) Flex software.
- 1.3. Authority. County selected Contractor pursuant to Pima County Procurement Code 11.12.050.

### **2. Term.**

- 2.1. Initial Term. The term of this Contract commences on July 11, 2023 and will terminate on July 10, 2024 ("Initial Term"). "Term," when used in this Contract, means the Initial Term plus any exercised extension options under Section 2.2. If the commencement date of the Initial Term is before the signature date of the last party to execute this Contract, the parties will, for all purposes, deem the Contract to have been in effect as of the commencement date.
- 2.2. Extension Options. County may renew this Contract for up to four (4) additional periods of up to one year each (each an "Extension Option"). An Extension Option will be effective only upon execution by the Parties of a formal written amendment.

### **3. Scope of Services.** Contractor will provide County with ongoing services, maintenance and support for the Spillman Flex software. County may purchase additional modules, learning management services and professional services as needed to expand its use of the software.

- 3.1. Terms of Use; Software. Use of Contractor's software will be governed by the terms and conditions of this Contract, and by the Contractor's terms and conditions previously agreed to by the parties in **Exhibit C** (13 pages).
- 3.2. Order of Precedence. In the event of conflicting terms between the incorporated documents, the following order of precedence, superior to subordinate, dictates the order in which these conflicts will be resolved.

3.2.1. Amendments to Contract.

3.2.2. This Sole Source Procurement Agreement No. MA-PO-23-180.

3.2.3. **Exhibit C:** Contractor's Maintenance and Support Agreement.

#### **4. Intentionally Omitted.**

#### **5. Compensation and Payment.**

5.1. Rates; Adjustment. County will pay Contractor at the rates set forth in **Exhibit A** (2 pages) and **Exhibit B** (1 page). Those rates will remain in effect during an Extension Option period unless Contractor, at least 90 days before the end of the then-existing Term, or at the time the County informs Contractor that the County intends to extend the Term, if that is earlier, notifies County in writing of any adjustments to those rates, and the reasons for the adjustments.

5.2. Not-To-Exceed (NTE) Amount. County's total payments to Contractor under this Contract, including any sales taxes, may not exceed \$1,200,000.00 per year (the "NTE Amount"). The NTE Amount can only be changed by a formal written amendment executed by the Parties. Contractor is not required to provide any services, payment for which will cause the County's total payments under this Contract to exceed the NTE Amount; if Contractor does so, it is at the Contractor's own risk.

5.3. Sales Taxes. The payment amounts or rates in **Exhibit A** and **Exhibit B** do not include sales taxes. Contractor may invoice County for sales taxes that Contractor is required to pay under this Contract. Contractor will show sales taxes as a separate line item on invoices.

5.4. Timing of Invoices. Contractor will invoice County on a monthly basis unless a different billing period is set forth in **Exhibit A** or **Exhibit B**. County must receive invoices no more than 30 days after the end of the billing period in which Contractor delivered the invoiced products or services to County. County may refuse to pay for any product or service for which Contractor does not timely invoice the County and, pursuant to A.R.S. § 11-622(C), will not pay for any product or service invoiced more than 6-months late.

5.5. Content of Invoices. Contractor will include detailed documentation in support of its invoices and assign each amount billed to an appropriate line item.

5.6. Invoice Submittal. Invoices are to be sent to:

Pima County Finance & Risk Management – Accounts Payable  
P.O. Box 791  
Tucson, AZ 85702

5.7. Invoice Adjustments. County may, at any time during the Term and during the retention period set forth in Section 23 below, question any payment under this Contract. If County raises a question about the propriety of a past payment, Contractor will cooperate with County in reviewing the payment. County may set-off any overpayment against amounts due to Contractor under this or any other contract between County and Contractor. Contractor will promptly pay to County any overpayment that County cannot recover by set-off.

**6. Insurance.** The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. Contractor's insurance shall be placed with companies licensed in the State of Arizona and the insureds shall have an "A.M. Best" rating of not less than A- VII, unless otherwise approved by County. County in no way warrants that the minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

6.1. Minimum Scope and Limits of Insurance. Contractor will procure and maintain at its own expense, until all contractual obligations have been discharged, the insurance coverage with limits of liability not less than stated below. County in no way warrants that the minimum insurance limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract. If necessary, Contractor may obtain commercial umbrella or excess insurance to satisfy the County's Insurance Requirements.

6.1.1. Commercial General Liability (CGL). Occurrence Form with limits of \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include cover for liability arising from premises, operations, independent contractors, personal injury, bodily injury, property damage, broad form contractual liability coverage, personal and advertising injury and products – completed operations.

6.1.2. Business Automobile Liability. Bodily Injury and Property Damage for any owned, leased, hired, and/or non-owned automobiles assigned to or used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000 Each Accident.

6.1.3. Workers' Compensation (WC) and Employers' Liability. Statutory requirements and benefits for Workers' Compensation. In Arizona, WC coverage is compulsory for employers of one or more employees. Employers' Liability coverage with limits of \$1,000,000 each accident and \$1,000,000 each person - disease.

6.1.4. Technology Errors and Omissions (E&O) Insurance. The Technology E&O coverage shall have minimum limits not less than \$2,000,000 Each Claim and \$2,000,000 Annual Aggregate.

Such insurance shall cover any, and all errors, omissions, or negligent acts in the delivery of products, services, and/or licensed programs under this contract.

Coverage shall include or shall not exclude settlement and/or defense of claims involving intellectual property, including but not limited to patent or copyright infringement.

In the event that the Technology E&O insurance required by this Contract is written on a claims-made basis, Contractor shall warrant that continuous coverage will be maintained as outlined under "Additional Insurance Requirements – Claims-Made Coverage" section.

- 6.1.5. Network Security (Cyber)/Privacy Insurance. Coverage shall have minimum limits not less than \$3,000,000 Each Claim with a \$6,000,000 Annual Aggregate.

Such insurance shall include, but not be limited to, coverage for third party claims and losses with respect to network risks (such as data breaches, unauthorized access or use, ID theft, theft of data) and invasion of privacy regardless of the type of media involved in the loss of private information, crisis management and identity theft response costs. This should also include breach notification costs, credit remediation and credit monitoring, defense and claims expenses, regulatory defense costs plus fines and penalties, cyber extortion, computer program and electronic data restoration expenses coverage (data asset protection), network business interruption, computer fraud coverage, and funds transfer loss.

In the event that the Network Security and Privacy Liability insurance required by this Contract is written on a claims-made basis, Contractor must warrant that either continuous coverage will be maintained as outlined under "Additional Insurance Requirements – Claims-Made Coverage" section, or an extended discovery period will be exercised for a period of two (2) years beginning at the time of work under this Contract is completed.

- 6.2. Additional Insurance Requirements. The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions.

- 6.2.1. Claims Made Coverage. If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Contract, and Contractor must maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.

- 6.2.2. Additional Insured Endorsement. The General Liability and Business Automobile, Liability policies must each be endorsed to include Pima County and all its related special districts, elected officials, officers, agents, employees and volunteers (collectively "County and its Agents") as additional insureds with respect to vicarious liability arising out of the activities performed by or on behalf of the Contractor. The full policy limits and scope of protection must apply to the County and its Agents as an additional insured, even if they exceed the Insurance Requirements.

- 6.2.3. Subrogation Endorsement. The General Liability, Business Automobile Liability, and Workers' Compensation Policies shall each contain a waiver of subrogation endorsement in favor of County and its departments, districts, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

- 6.2.4. Primary Insurance Endorsement. The Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by Pima County, its agents, officials, or employees shall be excess and not contributory insurance. The Required Insurance policies may not obligate the County to pay any portion of a Contractor's deductible or Self Insurance Retention (SIR).

- 6.2.5. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.
- 6.2.6. Subcontractors. Contractor must either (a) include all subcontractors as additional insureds under its Required Insurance policies, or (b) require each subcontractor to separately meet all Insurance Requirements and verify that each subcontractor has done so, Contractor must furnish, if requested by County, appropriate insurance certificates for each subcontractor. Contractor must obtain County's approval of any subcontractor request to modify the Insurance Requirements as to that subcontractor.
- 6.3. Notice of Cancellation. Each Required Insurance policy must provide, and certificates specify, that County will receive not less than thirty (30) days advance written notice of any policy cancellation, except 10-days prior notice is sufficient when the cancellation is for non-payment of a premium. Notice must be mailed, emailed, hand-delivered or sent via facsimile transmission to the County Contracting Representative, and must include the County project or contract number and project description.
- 6.4. Verification of Coverage. Contractor shall furnish County with certificates of insurance (valid ACORD form or equivalent approved by County) as required by this Contract. An authorized representative of the insurer shall sign the certificates. Each certificate must include.
- 6.4.1. The Pima County tracking number for this Contract, which is shown on the first page of the Contract, and a project description, in the body of the Certificate.
- 6.4.2. A notation of policy deductibles or SIRs relating to the specific policy.
- 6.4.3. Certificates must specify that the appropriate policies are endorsed to include additional insured and subrogation waiver endorsements for the County and its Agents. Note: Contractors for larger projects must provide actual copies of the additional insured and subrogation endorsements.
- 6.5. All certificates and endorsements, as required by this written agreement, are to be received and approved by County before, and be in effect not less than 15 days prior to, commencement of work. A renewal certificate must be provided to County not less than 15 days prior to the policy's expiration date to include actual copies of the additional insured and waiver of subrogation endorsements. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- 6.6. All certificates required by this Contract shall be sent directly to the appropriate County Department. The Certificate of Insurance shall include the County project or contract number and project description on the certificate. County reserves the right to require complete copies of all insurance policies required by this Contract at any time.

6.7. Approval and Modifications. County's Risk Manager may modify the Insurance Requirements at any point during the Term of this Contract. This can be done administratively, with written notice from the Risk Manager, and does not require a formal Contract amendment. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, nor the County's receipt of any other information from the Contractor, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

**7. Indemnification.** To the fullest extent permitted by law, Contractor will defend, indemnify, and hold harmless County and any related taxing district, and the officials and employees of each of them (collectively, "Indemnatee") from and against any and all claims, actions, liabilities, losses, and expenses (including reasonable attorney fees) (collectively, "Claims") arising out of actual or alleged injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by any act or omission of Contractor or any of Contractor's directors, officers, agents, employees, volunteers, or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Indemnatee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all Claims. Contractor is responsible for primary loss investigation, defense and judgment costs for any Claim to which this indemnity applies. This indemnity will survive the expiration or termination of this Contract.

## **8. Laws and Regulations.**

8.1. Compliance with Laws. Contractor will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders.

8.2. Licensing. Contractor warrants that it is appropriately licensed to provide the services under this Contract and that its subcontractors will be appropriately licensed.

8.3. Choice of Law; Venue. The laws and regulations of the State of Arizona govern the rights and obligations of the parties under this Contract. Any action relating to this Contract must be filed and maintained in the appropriate court of the State of Arizona in Pima County.

**9. Independent Contractor.** Contractor is an independent contractor. Neither Contractor, nor any of Contractor's officers, agents or employees will be considered an employee of County for any purpose or be entitled to receive any employment-related benefits, or assert any protections, under County's Merit System. Contractor is responsible for paying all federal, state and local taxes on the compensation received by Contractor under this Contract and will indemnify and hold County harmless from any and all liability that County may incur because of Contractor's failure to pay such taxes.

**10. Subcontractors.** Contractor is fully responsible for all acts and omissions of any subcontractor, and of persons directly or indirectly employed by any subcontractor, and of persons for whose acts any of them may be liable, to the same extent that the Contractor is responsible for the acts and omissions of its own employees. Nothing in this Contract creates any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.



- 11. Assignment.** Contractor may not assign its rights or obligations under this Contract, in whole or in part, without the County's prior written approval. County may withhold approval at its sole discretion.
- 12. Non-Discrimination.** Contractor will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this Contract, including flow-down of all provisions and requirements to any subcontractors. During the performance of this Contract, Contractor will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.
- 13. Americans with Disabilities Act.** Contractor will comply with Title II of the Americans with Disabilities Act (Public Law 110-325, 42 U.S.C. §§ 12101-12213) and the federal regulations for Title II (28 CFR Part 35).
- 14. Authority to Contract.** Contractor warrants its right and power to enter into this Contract. If any court or administrative agency determines that County does not have authority to enter into this Contract, County will not be liable to Contractor or any third party by reason of such determination or by reason of this Contract.
- 15. Full and Complete Performance.** The failure of either party to insist, in one or more instances, upon the other party's complete and satisfactory performance under this Contract, or to take any action based on the other party's failure to completely and satisfactorily perform, is not a waiver of that party's right to insist upon complete and satisfactory performance, or compliance with any other covenant or condition in this Contract, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.
- 16. Cancellation for Conflict of Interest.** This Contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.
- 17. Termination by County.**
- 17.1. Without Cause. County may terminate this Contract at any time, without cause, by serving a written notice upon Contractor at least 30 days before the effective date of the termination. In the event of such termination, County's only obligation to Contractor will be payment for services rendered prior to the date of termination.
- 17.2. With Cause. County may terminate this Contract at any time without advance notice and without further obligation to County when County finds Contractor to be in default of any provision of this Contract.
- 17.3. Non-Appropriation. Notwithstanding any other provision in this Contract, County may terminate this Contract if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Contract. In the event of such termination, County will have no further obligation to Contractor, other than to pay for services rendered prior to termination.

**18. Notice.** Any notice required or permitted to be given under this Contract must be in writing and be served by personal delivery or by certified mail upon the other party as follows:

County:

Terri Spencer, Procurement Director  
Pima County Department  
150 W Congress, 5<sup>th</sup> Floor  
Tucson, AZ 85701  
520.724.3722  
terri.spencer@pima.gov

Contractor:

Carrie Hemmen, Vice President MSI  
Motorola Solutions, Inc.  
4625 West Lake Park Blvd.  
Salt Lake City, UT 84120  
602.319.2355  
carrie.hemmen@motorolasolutions.com

**19. Intentionally Omitted.**

**20. Remedies.** Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

**21. Severability.** Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law will be ineffective to the extent of such prohibition without invalidating the remainder of this Contract.

**22. Use of County Data.** Unless it receives County's prior written consent, Contractor: (a) shall not access, process, or otherwise use County Data other than as necessary to provide contracted services or products; and (b) shall not intentionally grant any third party access to County Data, including without limitation Contractor's other customers, except subcontractors that are subject to a reasonable nondisclosure agreement. Notwithstanding the foregoing, Contractor may disclose County Data as required by applicable law or by proper legal or governmental authority. Contractor shall give County prompt notice of any such legal or governmental demand and reasonably cooperate with County in any effort to seek a protective order or otherwise to contest such required disclosure, at County's expense. Upon termination or completion of the Contract, Contractor will, within 60 calendar days, either return all County Data to County or will destroy County Data and confirm destruction to County in writing. As between the parties, County retains ownership of County Data. "County Data" means data in electronic or paper form provided to Contractor by County, including without limitation personal identifying information as defined in A.R.S. § 13-2001(10).

**23. Books and Records.** Contractor will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of County. In addition, Contractor will retain all records relating to this Contract for at least five (5) years after its expiration or termination or, if later, until any related pending proceeding or litigation has concluded.

**24. Public Records.**

24.1. Disclosure. Pursuant to A.R.S. § 39-121 et seq., all documents related to this Contract, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.

- 24.2. Records Marked Confidential; Notice and Protective Order. If Contractor reasonably believes that some of its records contain proprietary, trade-secret or otherwise-confidential information, Contractor must prominently mark those records "CONFIDENTIAL" before submitting them to County. In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Contractor of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Contractor has, within that period, secured an appropriate order from a court of competent jurisdiction in Arizona, enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.

## **25. Legal Arizona Workers Act Compliance.**

- 25.1. Compliance with Immigration Laws. Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor will further ensure that each subcontractor who performs any work for Contractor under this Contract likewise complies with the State and Federal Immigration Laws.
- 25.2. Books & Records. County has the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.
- 25.3. Remedies for Breach of Warranty. Any breach of Contractor's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion. Any additional costs attributable directly or indirectly to such remedial action are the responsibility of Contractor.
- 25.4. Subcontractors. Contractor will advise each subcontractor of County's rights, and the subcontractor's obligations, under this Section 25 by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor is a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

## **26. Intentionally Omitted.**

**27. Written Orders.** County will order products or services under this Contract by issuing a Delivery Order (DO) document. Order documents will be furnished to Contractor via e-mail or telephone.

Contractor must not supply materials or services pursuant to the contract that are not documented or authorized by a Delivery Order (DO) at the time of provision. County accepts no responsibility for control of or payment for materials or services not documented by a County Delivery Order (DO).

Contractor will establish, monitor, and manage an effective contract administration process that assures compliance with all requirements of this Contract. In particular, Contractor will not provide goods or services other than those described in this Contract, in excess of the Maximum Payment Amount, or after the Term of the Contract has ended, without a Contract amendment properly executed and issued by County, as provided below. Any items provided in excess of that stated in this Contract are at Contractor's own risk.

**28. Counterparts.** The parties may execute the Contract that County awards pursuant to the solicitation in any number of counterparts, each counterpart is considered an original, and together such counterparts constitute one and the same instrument.

**29. Israel Boycott Certification.** Pursuant to A.R.S. § 35-393.01, if Contractor engages in for-profit activity and has 10 or more employees, and if this Contract has a value of \$100,000.00 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

**30. Forced Labor of Ethnic Uyghurs.** Pursuant to A.R.S. § 35-394 if Contractor engages in for-profit activity and has 10 or more employees, Contractor certifies it is not currently using, and agrees for the duration of this Contract to not use (1) the forced labor of ethnic Uyghurs in the People's Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and (3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Contractor becomes aware during the term of the Contract that the Company is not in compliance with A.R.S. § 35-394, Contractor must notify the County within five business days and provide a written certification to County regarding compliance within one hundred eighty days.

**31. Amendment.** The parties may modify, amend, alter or extend this Contract only by a written amendment signed by the parties.

**32. Entire Agreement.** This document constitutes the entire agreement between the parties pertaining to the subject matter it addresses, and this Contract supersedes all prior or contemporaneous agreements and understandings, oral or written.

***THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK***

This Contract will become effective when all parties have signed it. The effective date of the Contract will be the date this Contract is signed by the last party (as indicated by the date associated with that party's signature).

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IN WITNESS WHEREOF, the parties have approved this Sole Source Procurement Agreement and agree to be bound by the terms and conditions of the Contract on the dates written below.

**PIMA COUNTY**

\_\_\_\_\_  
Chair, Board of Supervisors

\_\_\_\_\_  
Date

**MOTOROLA SOLUTIONS, INC.**



\_\_\_\_\_  
Authorized Officer Signature

Carrie Hemmen Territory Vice President  
\_\_\_\_\_  
Printed Name and Title

6/28/2023  
\_\_\_\_\_  
Date

**ATTEST**

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Date

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
Deputy County Attorney

Kyle Johnson  
\_\_\_\_\_  
Print DCA Name

**EXHIBIT A**  
**2023-2024 ESTIMATED MAINTENANCE REQUIREMENTS**

Line	Service	Description	Cost
1	SSV00S00012A-SP	CAD MAINTENANCE (ENHANCED) STANDARD	\$ 7,287.63
2	SSV00S00054A-SP	XML CITATION INTERFACE MAINTENANCE STANDARD	\$ 12,023.66
3	SSV00S00072A-SP	CAD MAPPING MAINTENANCE STANDARD	\$ 9,060.36
4	SSV00S00151A-SP	COMMISSARY MANAGEMENT MAINTENANCE STANDARD	\$ 5,243.47
5	SSV00S00178A-SP	DRIVER LICENSE SCANNING MAINTENANCE STANDARD	\$ 1,535.41
6	SSV00S00181A-SP	E9-1-1 INTERFACE MAINTENANCE STANDARD	\$ 7,287.63
7	SSV00S00190A-SP	EVIDENCE BARCODE AND AUDITING MNT. STANDARD	\$ 14,349.73
8	SSV00S00193A-SP	EVIDENCE MANAGEMENT MAINTENANCE STANDARD	\$ 4,304.66
9	SSV00S00262A-SP	IMAGING MAINTENANCE STANDARD	\$ 10,485.64
10	SSV00S00274A-SP	INMATE TRACKING MAINTENANCE STANDARD	\$ 3,548.10
11	SSV00S00280A-SP	INSIGHT MAINTENANCE STANDARD	\$ 11,276.29
12	SSV00S00015A-SP	HUB MAINTENANCE (ENHANCED) STANDARD	\$ 144,897.67
13	SSV00S00307A-SP	LIVESCAN FINGERPRINTING INTERFACE MNT. STANDARD	\$ 12,579.61
14	SSV00S00352A-SP	MOBILE STATE & NATIONAL QUERIES MNT. STANDARD	\$ 3,180.96
15	SSV00S00354A-SP	MOBILE VOICELESS CAD MAINTENANCE STANDARD	\$ 19,879.05
16	SSV00S00417A-SP	PAWNED PROPERTY MAINTENANCE STANDARD	\$ 4,304.66
17	SSV00S00438A-SP	PIN MAPPING MAINTENANCE STANDARD	\$ 12,397.35
18	SSV00S00447A-SP	PREMISES AND HAZMAT INFORMATION MNT. STANDARD	\$ 2,185.77
19	SSV00S00480A-SP	SENTRYX GIS (GEOBASE) MAINTENANCE STANDARD	Included in HUB
20	SSV00S00527A-SP	TRAFFIC INFORMATION MAINTENANCE STANDARD	\$ 7,603.63
21	SSV00S00533A-SP	VEHICLE IMPOUND MAINTENANCE STANDARD	\$ 2,816.45
22	SSV00S006026-SP	MOBILE SERVER CAD SHARE STANDARD	\$ 42,762.04
23	SSV00S00021A-SP	CIVIL PROCESS MAINTENANCE STANDARD	\$ 21,521.98

24	SSV00S00028A-SP	FLEX TOUCH MAINTENANCE STANDARD	\$ 4,097.49
25	SSV00S00031A-SP	JAIL MANAGEMENT MAINTENANCE STANDARD	\$ 31,454.28
26	SSV00S00033A-SP	LAW RECORDS MAINTENANCE STANDARD	\$ 7,172.24
27	SSV00S00036A-SP	MOBILE AVL AND MAPPING MAINTENANCE STANDARD	\$ 27,449.89
28	SSV00S00038A-SP	MOBILE RECORDS MAINTENANCE STANDARD	\$ 4,814.72
29	SSV00S00052A-SP	STATELINK MAINTENANCE STANDARD	\$ 21,521.98
30	SSV00S00024A-SP	DATA REPLICATION MAINTENANCE STANDARD	\$ 9,403.32
31	SSV00S00050A-SP	IBR MAINTENANCE STANDARD	\$ 18,847.59
32	SSV00S00334A-SP	MOBILE FIELD REPORT w/ FIELD INTERVIEW MNT. STANDARD	\$ 15,715.88
33	SSV00S00331A-SP	MOBILE ARREST FORM MAINTENANCE STANDARD	\$ 11,987.55
34	SSV00S006032-SP	ADDITIONAL SERVER SUPPORT	\$ 11,345.78
35	SSV00S00501A-SP	FLEX ANALYTICS SAAS	\$ 24,100.25
36	SSV00S00029A-SP	ACTIVE DIRECTORY INTEGRATION MAINTENANCE STANDARD	\$ -
37	SSV00S03000A-SP	TECHCARE INTERFACE MAINTENANCE STANDARD	\$ 3,745.00
38	SSV00S00136A-SP	CELL CHECK MAINTENANCE STANDARD	\$ 6,361.67

## Exhibit B

### 2023-2024 Potential Module Purchases

#### 2023 Initial Purchase Pricing

Line	Service	Description	Cost
39	Initial Cost	CAD2CAD With Tucson PD	\$ 85,470.03
40	Initial Cost	CompStat, Officer Productivity and Community Dashboards	\$ 178,123.60
41	Initial Cost	Arizona TraCs eCitation and eCrash Interfaces	\$ 78,169.58
42	Initial Cost	StateLink 2.0	\$ 7,500.00

#### 2024-2025 Maintenance Pricing

Line	Service	Description	Cost
43	Year Two Maintenance	CAD2CAD With Tucson PD	\$ 9,701.75
44	Year Two Maintenance	CompStat, Officer Productivity and Community Dashboards	\$ 26,973.44
45	Year Two Maintenance	Arizona TraCs eCitation and eCrash Interfaces	\$ 23,168.56
46	Year Two Maintenance	StateLink 2.0	\$ 5,000.00





# Pima County Sheriff's Department



## Maintenance and Support Agreement

This Maintenance and Support Agreement (the "Support Agreement"), dated effective as of the date this Support Agreement is signed by both parties below, is by and between Spillman Technologies, Inc., a wholly owned subsidiary of Motorola Solutions, Inc. ("Spillman") and Pima County, a body politic and corporate of the State of Arizona ("Customer"), on behalf of the Pima County Sheriff's Department. In connection with the Computer Software End User License Agreement between the parties (the "License Agreement"), Customer desires to purchase from Spillman certain maintenance and support Services for the Software. All capitalized terms used and not otherwise defined herein shall have the meanings set forth in the License Agreement. This Support Agreement supersedes and replaces all prior support and maintenance agreements between the parties for support of the Spillman software licensed to Customer (the "Software" or "Licensed Program").

In consideration of the mutual agreements set forth herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

### Section 1: Definitions

- 1.1 **"Coverage Hours"** 24 hour coverage, seven days a week, including holidays.
- 1.2 **"Enhancement"** means any modification or addition that, when made or added to the Software, changes its utility, efficiency, functional capability, or application, but that does not constitute solely an Error Correction. Spillman may designate Enhancements as minor or major, depending on Spillman's assessment of their value and of the function added to the preexisting Software.

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- 1.3 **"Error"** means any failure of the Software to conform in all material respects to its functional specifications as published from time to time by Spillman, subject to the exceptions set forth in Section 4.
- 1.4 **"Error Correction"** means either a software fix, modification or addition that, when made or added to the Software, establishes material conformity of the Software to the functional specifications, or a procedure or routine that, when observed in the regular operation of the Software, eliminates the practical adverse effect on Customer of such nonconformity. Error Correction Services are subject to the exceptions set forth in Section 4.
- 1.5 **"Releases"** means new and updated versions of the Software containing Error Corrections and Enhancements, where there is a change in the version number either to the left or immediately to the right of the decimal. Spillman's current numbering system is to designate Release versions by the year to the left of the decimal, and by the Release number in that year to the right of the decimal (e.g., 2018.1, 2018.2, and 2018.3). For reference, the two Releases of the Software prior to version 2017.1 are versions 6.1 and 6.2.
- 1.6 **"Response Time"** means six (6) or less Coverage Hours, from the time Customer first notifies Spillman of an Error.
- 1.7 **"Spillman Application Administrator" or "SAA"** means an agent of Customer who has been certified on the Software by Spillman pursuant to the procedures set forth in Section 6, and is able to communicate effectively with Spillman support personnel in the description and resolution of problems associated with the Software.
- 1.8 **"Support Fees"** means Spillman's annual fees for support and maintenance Services provided under this Support Agreement.
- 1.9 **"Support Term"** means the entire period during which Customer is receiving support and maintenance Services for the Software under the terms of this Support Agreement, beginning on the installation date of the Software. The July 2018 – June 2021 Support Term shall begin upon July 1, 2018 and continue for a period of thirty-six (36) months, with an optional twenty-four (24) month prepaid extension.. Thereafter, the Support Term shall automatically renew for successive periods of one year each (each a "Renewal Term"), unless and until terminated pursuant to Section 8 below.

## **Section 2: Eligibility for Support**

- 2.1 **Support Termination.** Spillman's obligation to provide the support and maintenance Services described in this Support Agreement may be terminated pursuant to Section 8.2.2 or suspended, at Spillman's discretion, if at any time during the term of this Support Agreement any of the following requirements are not met:
- 2.1.1 The License Agreement must remain valid and in effect at all times;
  - 2.1.2 The Software must be operated on a hardware platform, operating system and version approved by Spillman; and

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2.1.3 Customer must be current on payment of Support Fees.

- 2.2 **SAA Replacement.** Spillman may require Customer to appoint a new SAA in order to continue receiving support and maintenance Services or may increase Customer's Support Fees, if Spillman reasonably determines that the acting SAA does not have the training or experience necessary to communicate effectively with Spillman support personnel.

### Section 3: Scope of Services

During the Support Term, Spillman shall render the following Services in support of the Software, during Coverage Hours:

- 3.1 **Support Center.** Spillman will maintain a Support Services Control Center capable of receiving from Customer's authorized support contacts, by telephone or online through Spillman's authorized customer support portal, reports of any Software irregularities and requests for assistance in use of the Software.
- 3.2 **Services Staff.** Spillman shall maintain a trained staff capable of rendering support and maintenance Services set forth in this Support Agreement.
- 3.3 **Error Correction.** If Customer's authorized support contacts Spillman's support services department by telephone regarding any Error or material problem with the use of the Software, a Spillman representative will either answer such call or, if the caller leaves a message, will contact Customer in response to such message within the Response Time. Spillman shall use all reasonable diligence in correcting verifiable and reproducible Errors when reported to Spillman in accordance with Spillman's standard reporting procedures. Spillman shall, after verifying that the reported Error is present, promptly initiate work toward development of an Error Correction or otherwise resolving the problem. Following completion of an Error Correction, Spillman shall provide the Error Correction through a "temporary fix" consisting of sufficient programming and operating instructions to implement the Error Correction, and Spillman shall include the Error Correction in subsequent Releases of the Software as appropriate. Spillman supports two (2) versions back from the most recent release version. However, Spillman is not obligated to provide Error Corrections for any version of the Software other than the most recent Release, although Spillman may do so in its discretion.
- 3.4 **Software Maintenance Services; New Releases.** Spillman may, from time to time, issue new Releases of the Software to its Customers generally. During the term of this Support Agreement, Spillman shall provide Customer with one copy of each new Release, without additional charge, except that Spillman reserves the right to charge a separate license fee for a new Release that includes major Enhancements, or to cover the cost of any pass-through fees from third parties attributable to Third Party Software or services. Spillman may also charge license fees for optional Software modules and features that Spillman makes available to customers for separate purchase. Spillman shall provide reasonable assistance to help Customer install and operate each new Release, provided that any onsite services are subject to the supplemental charges at Spillman's then-current rates.
- 3.5 **Enhancements.** Spillman shall consider and evaluate the development of Enhancements for the specific use of Customer and shall respond to Customer's requests for additional Services pertaining to the Software (including, without limitation, data conversion and report-formatting assistance),

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provided that such assistance, if agreed to be provided, shall be subject to supplemental charges mutually agreed to in writing by Spillman and Customer.

#### **Section 4: Services Not Covered by this Support Agreement**

The services identified in this section are NOT covered by this Support Agreement. Spillman strongly recommends that Customer secure a separate support and maintenance agreement with third party vendors for all non-Spillman products. Spillman may, in its discretion, provide such services to Customer upon request, for an additional fee as the parties may agree in writing.

- 4.1 **Third Party Products.** Spillman does not provide support for any third party products, including Third Party Software or hardware, or support for hardware failure due to the use of any third party products. Spillman may in its discretion provide first-line support and maintenance for Third Party Software distributed by Spillman; if not, Spillman will refer Customer to the vendor of such software for resolution of support issues.
- 4.2 **Customized Interfaces and Software.** Spillman's annual Support Fees for any custom interfaces or other customized Software developed by Spillman or any third party for Customer are set forth in the applicable exhibit for such interface or customized Software, and are also included as part of the overall annual Support Fee set forth in Exhibit B. Spillman's support and maintenance Services include bug fixes and minor modifications to the custom interface or software. They do NOT include major revisions or rewrites, such as those required to make a custom interface work with a new or upgraded version of the applicable Third Party Software. Custom interfaces and support therefore are specific to the designated version of the applicable Third Party Software or system. Any major changes to such Third Party Software or system will require a new custom quote for Spillman to modify the custom interface to work with the new version of the third party software or system. Spillman's Support Fees may also differ for the new version of the custom interface.
- 4.3 **Network Failures.** Spillman will not provide support for any network failures or problems including, but not limited to, cabling, communication lines, routers, connectors, and network software.
- 4.4 **Data Recovery.** Spillman's standard support does not include restoration and/or recovery of data files and/or the operating system. Spillman will, upon request of Customer and subject to its then-current fees for such services, use reasonable efforts to assist Customer in recovering lost data.
- 4.5 **Unauthorized Use.** Spillman is not obligated to provide support where the problem arises out of any breach by Customer, data corruption, or support issues, security issues, or performance issues arising out of Customer's or a third party's use of the Utilities or any software not specifically licensed by Spillman to Customer for use in connection with the Software. Any assistance provided by Spillman in resolving such problems shall be charged to Customer on a time and materials basis. Additionally, any unauthorized use of other software in connection with the Software by Customer (or by a third party with Customer's knowledge) may result, at Spillman's sole option, in voidance of warranties, an increase in the annual Support Fees, and/or loss of rights to upgrades under this Support Agreement.
- 4.6 **Database Modifications.** Spillman is not obligated to provide support for any damages to or problems with the Software or its database, data corruption, support issues, security issues, or

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performance issues arising from Customer's utilization of the "write" feature of any Utility (e.g., the ODBC interface) to write to or modify the database in any way.

- 4.7 **Misuse or Damage.** Spillman is not obligated to provide support for Software problems caused by Customer misuse, alteration or damage to the Software or its database, Customer's combining or merging the Software with any hardware or software not supplied by or identified as compatible by Spillman, customizing of programs, accident, neglect, power surge or failure, lightning, operating environment not in conformance with the manufacturer's specifications (for electric power, air quality, humidity or temperature), or Third Party Software or hardware malfunction.
- 4.8 **Operating System.** Spillman is not responsible for supporting, configuring, maintaining, or upgrading the operating system, including, but not limited to, backups, restores, fixes, and patches, or for providing assistance with problems caused by operating system installation, configuration, errors, maintenance or repair, or using incorrect versions of the operating system.
- 4.9 **Onsite Visits.** Onsite service visits to Customer's facility by Spillman are subject to additional charges, as set forth in Section 7.5.
- 4.10 **Printers.** Spillman is not responsible for supporting printers connected to the back of terminals/personal computers (commonly called pass-through printing) or network printers are not supported by Spillman.

## **Section 5: Obligations of Customer**

- 5.1 **Software Connectivity.** Customer must maintain and provide, at no cost to Spillman, a CJIS-approved broadband internet connection to the server used with the Software, 24 hours per day, 7 days per week, to facilitate remote support utilities enabling Spillman support personnel to connect to and provide assistance with the server used with the Software. Third party connectivity tools, such as client VPN software, which must be installed on Spillman equipment, cannot be required by Customer.
- 5.2 **Customer Representative During Onsite Visits.** A representative of Customer's IT department must be present when any onsite support is provided. If such representative is not present when a Spillman representative arrives onsite for a previously scheduled visit, the Spillman representative shall notify an appropriate representative of Customer, if feasible, that there is no Customer IT representative present. If Customer's IT representative does not arrive within a reasonable time, no work will be performed and Customer will be charged for Spillman's expenses relating to the visit. If Spillman's onsite support person determines that changes to Customer's system (hardware or software) are required or advisable, it will inform Customer's IT representative. If such representative is not authorized to make or approve changes to Customer's system, as applicable, Customer will promptly make available such a person.
- 5.3 **English Language.** All communications between Customer and Spillman must be in the English language.
- 5.4 **SAA Assignment.** Customer is responsible for providing one or more qualified Spillman Application Administrators as described in Section 6 of this Support Agreement. At least one

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authorized SAA or support contact must be available at all times; however, after-hours availability is required only when and if Customer is requesting after-hours support from Spillman.

- 5.5 **Security.** Customer is responsible for providing all network and server security.
- 5.6 **Error Information.** Customer must provide Spillman with information sufficient for Spillman to duplicate the circumstances under which an Error in the Software became apparent.
- 5.7 **CJIS Compliance.** Customer is responsible for its own adherence to the FBI Criminal Justice Information Services (CJIS) Security Policy, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (to the extent applicable) and any other applicable security and privacy laws and regulations. Spillman will reasonably cooperate with Customer in connection therewith.

## **Section 6: SAA and Support Contact Requirements**

- 6.1 **Certification.** If a new SAA is appointed by Customer, such SAA must be certified by Spillman within one year of the appointment. Each designated SAA must meet the following requirements in order to certify at the basic level:
- 6.1.1 Attend and participate in, and successfully pass the final written and practical examinations from the following courses within one hundred twenty (120) days of installation of the Software:
    - i. System Introduction – Inquiry,
    - ii. System Introduction – Data Entry & Modification,
    - iii. Basic System Administration, and
    - iv. General training applicable to the Software used by Customer.
  - 6.1.2 Pass the Basic SAA exam within one year after the agency's Go-live date.
- 6.2 **SAA Training Costs.** Customer will be responsible for training course fees as set forth in Exhibit B (Purchased Products and Services), as well as for any related travel and lodging expenses for its personnel.
- 6.3 **SAA and Support Contact Information.** Contact information for Customer's SAA(s) and other authorized support contacts must be provided by Customer to Spillman's Technical Services department. Any changes to Customer's SAA and support contacts names and contact information must be promptly provided to Spillman's support department.
- 6.4 **Qualifications.** Each designated SAA and Customer support contact must be qualified to address, or have other support resources to address, without the aid of Spillman, all problems relating to hardware, software, or operating system not directly associated with the Software.

## **Section 7: Fees and Charges**

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- 7.1 **Support Fees.** Customer shall pay Spillman the support fee identified in the Spillman quote QUO-13338-PQBOSJ8C7 for the July 2018 – June 2021 Support Term, and any other charges or fees described herein. Spillman reserves the right to change its support fee for future Support Terms, effective upon no less than 90 days written notice to Customer prior to the end of the current annual period.
- 7.2 **Support Fee Invoices.** Spillman shall invoice Customer for annual Support Fees at the beginning of each contract year. In the event that additional billable work is performed, all billable charges and expenses will be invoiced to Customer at the beginning of the month following the month in which those charges and expenses accrued or were incurred. Customer shall pay the invoiced amounts immediately upon receipt of such invoices. Any amount not paid within thirty (30) days after the invoice date shall bear interest at the rate of eighteen (18) percent per year or the highest rate allowed by applicable law, whichever is less.
- 7.3 **Equipment Fees.** Customer shall be responsible for and agrees to pay the fees and charges incurred for procuring, installing, and maintaining all equipment, telephone lines, modems, communications interfaces, networks, and other products necessary to operate the Software.
- 7.4 **After-Hours Charges.** Customer agrees to pay additional charges at Spillman's then-current rates for all support or other Services requested by Customer to be performed outside of Coverage Hours. These charges are applicable for any work performed outside of the Coverage Hours, regardless of the cause, even if the requested work was reported and/or initiated during normal Coverage Hours, subject to Customer's approval of such work being performed outside of Coverage Hours.
- 7.5 **Onsite Support** If Customer requests onsite support Services, Customer shall reimburse Spillman for all labor, travel, and related expenses incurred by Spillman in providing such Services.
- 7.6 **Additional Fees.** Spillman may increase Support Fees if there is a significant (i.e., twenty percent or larger) increase in the size of Customer's agency that is licensed to use the Software, based upon the number of full-time employees. Payment of such additional Support Fees is due within thirty (30) days of the date of the invoice for such fees. Such fees will be prorated, based upon the date during the contract year the increase in Customer's size occurred. Additionally, Spillman may adjust Support Fees based on (1) additional licenses or modules purchased by Customer, (2) changes to Customer's hardware, (3) a change in the Coverage Hours selected by Customer, or (4) Customer's violation of the restrictions set forth in Section 4.5 of this Support Agreement.

## **Section 8: Termination**

- 8.1 **Automatic Termination.** This Support Agreement shall automatically terminate immediately upon termination of the License Agreement for any reason.
- 8.2 **Termination by a Party.** Either party may terminate this Support Agreement as follows:
- 8.2.1 If either Spillman or Customer provides a written notice to the other party, at least ninety (90) days prior to the end of the Initial Support Term or the then-current Renewal Term, of its intent to terminate this Support Agreement at the end of such term; or

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8.2.2 For a material breach of this Support Agreement, subject to thirty (30) days prior written notice and opportunity to cure such breach within the 30-day notice period.

8.3 **Final Invoicing upon Termination.** Following termination of this Support Agreement, Spillman shall immediately invoice Customer for all accrued Support Fees, charges, and reimbursable expenses; and Customer shall pay the invoiced amount immediately upon receipt of such invoice.

## **Section 9: Confidential Information**

9.1 **Confidentiality Terms.** Each party shall keep confidential all Confidential Information provided to it by the other party, and shall not use such Confidential Information for any purpose other than the proper purposes contemplated by this Support Agreement. A party may disclose Confidential Information only to its employees (including, but not limited to, employees of any affiliate company) and contractors who need to know such information, and who are also bound to keep such information confidential. A party may also disclose Confidential Information to the extent required by the open records act or other freedom of information laws or regulations, provided that it gives the other party reasonable prior notice of such disclosure and, if feasible, the opportunity to object to or seek to limit such disclosure. Each party shall give the other party's Confidential Information at least the same level of protection as it gives its own confidential information of similar nature, but not less than a reasonable level of protection. The receiving party shall promptly notify the disclosing party upon discovery of any unauthorized use or disclosure of Confidential Information by or through the receiving party or its personnel and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this Support Agreement.

9.2 **Restrictions on Disclosure.** Without limiting the foregoing, Customer acknowledges that it is not permitted to disclose the Software or its Documentation (i) to any competitor of Spillman, or (ii) to any other third party unless it has a need to know such information for the proper purposes of this Support Agreement.

9.3 **Voluntary Disclosure.** Except as required to fulfill its obligations under this Support Agreement, Spillman will have no obligation to provide Customer with access to its Confidential Information and/or proprietary information. Under no circumstances will Spillman be required to provide any data related to cost and pricing.

## **Section 10: Limitation of Liability; Indemnification**

10.1 **Limitation of Warranties.** EXCEPT AS EXPRESSLY SET FORTH IN THE LICENSE AGREEMENT, SPILLMAN AND ITS LICENSORS DISCLAIM ANY AND ALL PROMISES, REPRESENTATIONS, AND WARRANTIES WITH RESPECT TO ITS SERVICES AND THE SOFTWARE, INCLUDING CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, TITLE, NON-INFRINGEMENT, AND ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE (whether or not Spillman knows, has reason to know, has been advised, or is otherwise aware of any such purpose or use), whether arising by law, by reason of custom or usage of trade, or by course of dealing. In addition, Spillman disclaims any warranty to any person other than Customer with respect to its



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services or the Software or Documentation. Customer agrees that Spillman is not responsible, and Spillman disclaims all liability, for any claims or damages arising out of or related to any unauthorized persons hacking into or accessing Customer's database or the Software.

**10.2 Limitation of Liability.** Except for personal injury or death claims subject to indemnification under Section 10.4, Spillman's and its affiliates', agents' and licensors' total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the Support Fees paid by Customer during the twelve (12) month period preceding the incident giving rise to the claim. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT SPILLMAN, ITS AFFILIATES, AGENTS AND LICENSORS WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS, INCONVENIENCE, LOSS OF USE, OR LOST TIME, DATA, GOODWILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS SUPPORT AGREEMENT, THE LICENSE OR USE OF THE SOFTWARE, OR THE PERFORMANCE OF SERVICES BY SPILLMAN PURSUANT TO THIS SUPPORT AGREEMENT. This limitation of liability provision survives the expiration or termination of this Support Agreement, applies to all related service agreements and other contracts between the parties related to the transactions set forth in this Support Agreement, and applies notwithstanding any contrary provision. This limitation of liability is intended to apply without regard to whether other provisions of this Support Agreement have been breached or have proven ineffective. Spillman shall have no liability for the loss of data or documentation, it being understood that Customer is responsible for reasonable backup precautions. No action for contract breach or otherwise relating to the transactions contemplated by this Support Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account.

### **10.3 Patent and Copyright Infringement.**

**10.3.1** Spillman will defend at its expense any suit brought against Customer to the extent it is based on a third-party claim alleging that the Software directly infringes a United States patent or copyright ("Infringement Claim"). Spillman's duties to defend and indemnify are conditioned upon: Customer promptly notifying Spillman in writing of the Infringement Claim; Spillman having sole control of the defense of the suit and all negotiations for its settlement or compromise; and Customer providing to Spillman cooperation and, if requested by Spillman, reasonable assistance in the defense of the Infringement Claim. In addition to Spillman's obligation to defend, and subject to the same conditions, Spillman will pay all damages finally awarded against Customer by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Spillman in settlement of an Infringement Claim.

**10.3.2** If an Infringement Claim occurs, or in Spillman's opinion is likely to occur, Spillman may at its option and expense: (a) procure for Customer the right to continue using the Spillman Product; (b) replace or modify the Software so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the Software and grant Customer a credit for the Software less a reasonable charge for depreciation. The depreciation amount will be calculated based upon generally accepted accounting standards.

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10.3.3 Spillman will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the combination of the Software with any software, apparatus or device not furnished by Spillman; (b) the use of ancillary equipment or software that is attached to or used in connection with the Software; (c) Software designed or manufactured in accordance with Customer's designs, specifications, guidelines or instructions, if the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions; (d) a modification of the Software by a party other than Spillman; (e) use of the Software in a manner for which the Software was not designed or that is inconsistent with the terms of this Support Agreement; or (f) the failure by Customer to install an enhancement release to the Software that is intended to correct the claimed infringement. In no event will Spillman's liability resulting from its indemnity obligation to Customer extend in any way to royalties payable on a per use basis or Customer's revenues, or any royalty basis other than a reasonable royalty based upon revenue derived by Spillman from Customer from sales or license of the infringing Software.

10.3.4. This Section 10.3 provides Customer's sole and exclusive remedies and Spillman's entire liability in the event of an Infringement Claim. Customer has no right to recover and Spillman has no obligation to provide any other or further remedies, whether under another provision of this Support Agreement or any other legal theory or principle, in connection with an Infringement Claim. In addition, the rights and remedies provided in this Section 10.3 are subject to and limited by the restrictions set forth in Section 10.2.

10.4 **General Indemnity.** Spillman will defend Customer against any and all third party claims or lawsuits arising from any personal injuries, death, or direct damage to tangible property to the extent caused by the negligence or willful misconduct of Spillman, its subcontractors, or their agents or employees, while performing their duties under this Support Agreement, and Spillman will pay any final judgment or amounts agreed in settlement by Spillman of such claims or suits. The foregoing excludes any claims or suits arising out of or related to the functionality or use of, or bugs or errors in, the software provided by Spillman. Customer shall give Spillman prompt, written notice of any such claim or suit, grant Spillman full and complete authority and control over the defense of the claim or suit, and cooperate with Spillman in its defense or settlement of the claim or suit. Spillman will pay all costs and attorney's fees incurred in connection with the claim. Customer may, at its option and expense, participate in the defense of the claim with separate legal counsel. Spillman is not obligated to indemnify Customer to the extent any liability or damages arises out of the negligence or intentional misconduct of Customer, its employees or agents. In the case of shared fault, Spillman will be responsible for and indemnify Customer for Spillman's proportionate fault. This Section 10.4 sets forth the full extent of Spillman's general indemnification of Customer from liabilities that are in any way related to Spillman's performance under this Support Agreement. Notwithstanding, this obligation does not apply if Spillman is entitled to immunity under the NG911 Act of 2012.

## **Section 11: Disputes**

The parties will use the following procedure to address any dispute arising under this Support Agreement (a "Dispute"):

11.1 **Negotiation.** Either party may initiate the Dispute resolution procedures by sending a notice of Dispute ("Notice of Dispute"). The parties will attempt to resolve the Dispute promptly through

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good faith negotiations including 1) timely escalation of the Dispute to executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for the matter and 2) direct communication between the executives. If the Dispute has not been resolved within ten (10) days from the Notice of Dispute, the parties will proceed to mediation.

- 11.2 **Arbitration.** The parties to this Support Agreement agree to resolve all Disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41). In compliance with A.R.S. § 12-1518, the parties agree to comply in a judicial review proceeding with any applicable, mandatory arbitration requirements.
- 11.3 **Confidentiality.** All communications pursuant to Sections 11.1 and 11.2 will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality protections provided by applicable law. The use of these Dispute resolution procedures will not be construed under the doctrines of laches, waiver or estoppel to affect adversely the rights of either party.

## **Section 12: Miscellaneous**

- 12.1 **Entire Agreement; Counterparts; Signature; Amendment.** This Support Agreement, including all Exhibits and any other documents executed by both parties in connection with this Support Agreement, which are incorporated herein by reference, constitutes the entire agreement of the parties regarding the subject matter of this Support Agreement and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Support Agreement may be executed in multiple counterparts, and shall have the same legal force and effect as if the parties had executed it as a single document. The parties may sign in writing, or by electronic signature, including by email. An electronic signature, or a facsimile copy or computer image, such as a PDF or tiff image, of a signature, shall be treated as and shall have the same effect as an original signature. In addition, an electronic signature, a true and correct facsimile copy or computer image of this Support Agreement shall be treated as and shall have the same effect as an original signed copy of this document. This Support Agreement may be amended or modified only by a written instrument signed by authorized representatives of both parties. The preprinted terms and conditions found on any Customer purchase or purchase order, acknowledgment or other form will not be considered an amendment or modification of this Support Agreement, even if a representative of each party signs that document, and are of no force or effect.
- 12.2 **Assignment.** Customer may not assign or transfer this Support Agreement or any of its rights or duties hereunder, or transfer the Software or Documentation, to any third party without Spillman's prior written consent. Spillman's consent may be withheld at its discretion and may be conditioned upon the transferee paying all applicable license fees and agreeing to be bound by this Support Agreement. Spillman shall not assign in whole its rights or delegate in whole its duties under this Support Agreement without Customer's prior written consent, which consent shall not unreasonably withhold. Notwithstanding the foregoing, Spillman may, upon written notice to Customer, assign this Support Agreement to an affiliate, or to a third party in connection with a merger with the assigning party or acquisition of all or substantially all of Spillman's assets or business to which this Support Agreement relates. Spillman also shall not assign any right nor

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delegate any duty under this Support Agreement without the prior written approval of Customer, which approval shall not be unreasonably withheld.

- 12.3 Governing Law.** This Support Agreement will be governed by the laws of the State of Arizona. The terms of the U.N. Convention on Contracts for the International Sale of Goods do not apply. In the event that the Uniform Computer Information Transaction Act, any version of this Act, or a substantially similar law (collectively "UCITA") becomes applicable to a party's performance under this Support Agreement, UCITA does not govern any aspect of this Support Agreement or any license granted under this Support Agreement, or any of the parties' rights or obligations under this Support Agreement. The governing law will be that in effect prior to the applicability of UCITA.
- 12.4 No Waiver.** Failure or delay by either party to exercise a right or power under this Support Agreement will not be a waiver of the right or power. For a waiver of a right or power to be effective, it must be in a writing signed by the waiving party. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.
- 12.5 Injunctive Relief.** Customer acknowledges that Spillman has made a considerable investment of resources in the development, marketing, and distribution of the Software and Documentation and that Customer's breach of any of the confidentiality terms or scope of use restrictions in this Support Agreement will result in irreparable harm to Spillman for which monetary damages would be inadequate. Spillman shall therefore be entitled to obtain an injunction against such breach from any court of competent jurisdiction immediately upon request, without the necessity of posting bond, in addition to any other remedies that may be available at law or in equity, including termination of this Support Agreement and repossession of all Software and associated Documentation (unless Customer is a Federal agency of the United States Government).
- 12.6 Independent Contractors.** Each party will perform its duties under this Support Agreement as an independent contractor. The parties and their personnel will not be considered to be employees or agents of the other party. Nothing in this Support Agreement will be interpreted as granting either party the right or authority to make commitments of any kind for the other. This Support Agreement will not constitute, create, or be interpreted as a joint venture, partnership or formal business organization of any kind.
- 12.7 Notices.** Notices required under this Support Agreement to be given by one party to the other must be in writing and either personally delivered or sent to the address provided by the other party 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.
- 12.8 Severability.** If any term of this Support Agreement is held to be invalid or void by any court or authority of competent jurisdiction, it shall be modified by such court or authority to the minimum extent necessary to make it valid and enforceable. If it cannot be so modified, it shall be severed from this Support Agreement and all the remaining terms of this Support Agreement shall remain in full force and effect.
- 12.9 Force Majeure.** Neither party will be liable for its delays or failure to perform its duties, other than payment obligations, to the extent such delays or failures result from a Force Majeure. The parties will promptly inform and consult with each other as to any Force Majeure that in their

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judgment may or could be the cause of a substantial delay in the performance of this Support Agreement. If a Force Majeure occurs, the parties will negotiate reasonably and in good faith to execute a change order to extend the applicable performance schedule for a time period that is reasonable under the circumstances.

- 12.10 **Compliance with Export and Other Laws.** Customer acknowledges that the Software is subject to the laws and regulations of the United States and Customer will comply with all applicable laws and regulations, including export laws and regulations of the United States. Customer will not, without the prior authorization of Spillman and the appropriate governmental authority of the United States, in any form export or re-export, sell or resell, ship or reship, or divert, through direct or indirect means, any item or technical data or direct or indirect products sold or otherwise furnished to any person within any territory for which the United States Government or any of its agencies at the time of the action, requires an export license or other governmental approval. Violation of this provision is a material breach of this Support Agreement.
- 12.11 **Section Headings; Interpretation.** The section headings in this Support Agreement are inserted only for convenience and are not to be construed as part of this Support Agreement or as a limitation of the scope of the particular section to which the heading refers. This Support Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either party.
- 12.12 **Compliance with Applicable Laws.** Each party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Support Agreement or use of the Software.
- 12.13 **Authority to Execute Agreement.** Each party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Support Agreement and to perform its duties under this Support Agreement; the person executing this Support Agreement on its behalf has the authority to do so; upon execution and delivery of this Support Agreement by the parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Support Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the party.
- 12.14 **Copyright Notices.** The existence of a copyright notice on the Software will not be construed as an admission or presumption of publication of the Software or public disclosure of any trade secrets associated with the Software.
- 12.15 **Third Party Beneficiaries.** This Support Agreement is entered into solely for the benefit of Spillman and Customer. No third party has the right to make any claim or assert any right under this Support Agreement, and no third party is deemed a beneficiary of this Support Agreement. Notwithstanding the foregoing, any licensor or supplier of third party software included in the Software will be a direct and intended third party beneficiary of this Support Agreement.