

EMPHASYS SOFTWARE AGREEMENT

This Agreement is entered into on the date set forth below, by and between Emphasys Computer Solutions, Inc. having its principal place of business in Petoskey, Michigan (hereinafter Emphasys); and City of Flagstaff, dba Flagstaff Housing Authority having its principal place of business at 3481 N. Fanning Drive, Flagstaff, AZ 86004 (hereinafter Licensee).

1. LICENSED SOFTWARE

1.1. Emphasys grants to Licensee a nonexclusive, nontransferable, non-assignable license to use the software identified in Exhibit A ("Application Software") and Emphasys, as authorized agent, grants to Licensee a nonexclusive, nontransferable, non-assignable license to use the software described in Exhibit A ("Other Licensed Software"). The license is solely for Licensee's own use for its internal data processing operations and solely on the one computer system currently used by Licensee or purchased and delivered hereunder. Licensee agrees to abide by all terms and conditions as required by the manufacturers of the Other Licensed Software.

2. PROPRIETARY INFORMATION & NON-DISCLOSURE

- 2.1. Licensed Software, including source code and Support Services, and all documents related thereto, constitutes proprietary information and trade secrets to Emphasys or to the principals for whom Emphasys is the authorized agent. Title and full ownership, including any modifications or revisions thereto, shall at all times remain with Emphasys or its principal.
- 2.2. Licensee may not make copies of the Licensed Software except for backup, archival, emergency recovery purposes or to replace a worn copy. If this License Agreement is terminated or expires, all such copies must be uninstalled or destroyed and the Licensed Software returned to Emphasys as specified hereunder.
- 2.3. Licensee agrees that it will not allow others to reverse engineer, disassemble, de-compile or in any way tamper with the Licensed Software.
- 2.4. Licensee shall take all reasonable steps to ensure that all Licensed Software, in whatever form, and all documents relating thereto, are held in confidence by Licensee, its employees and consultants and are not disclosed or made available to any third party not licensed by Emphasys, without the prior written consent of Emphasys. Licensee shall instruct in writing all parties having access to the Software of their obligations under this Article.
- 2.5. In the event of Licensee's breach of this Article, as determined by Emphasys, Emphasys shall have the right to enjoin Licensee from further breach and

obtain such relief as may be determined by a court of competent jurisdiction.

3. PAYMENT TERMS

- 3.1. Licensee agrees to pay Emphasys the price of the Application Software by paying a deposit of fifty percent of the license/SaaS fees at the time of execution of this Agreement and the balance of the license fees upon initial installation of the Application Software.
- 3.2. Licensee agrees to pay Emphasys the price of the Other Licensed Software by paying a deposit of eighty-five percent of the price at the time of execution of this Agreement and the balance upon initial installation of the Other Licensed Software.
- 3.3. Licensee agrees to pay 100% of the amounts listed in this Agreement for Services upon delivery of such Services by Emphasys.
- 3.4. Licensee agrees to pay for Software Standard Support each year, in advance, prior to the anniversary of the initial due date, which shall be effective the first of the month following the date of the initial installation of the Application Software.
- 3.5. All amounts are due and payable within thirty calendar days of Emphasys' invoice, and all amounts shall be in US dollars unless otherwise noted. Emphasys accepts all major credit cards. A 3% convenience fee will be charged on processed items.
- 3.6. Emphasys shall have the right to withhold services and be held harmless in the event scheduled payments due hereunder remain outstanding for a period longer than thirty days from the due date. Emphasys shall also have the right to charge a reinstatement or collection fee equal to 10% of any amount unpaid and overdue for this period of time. In addition, Licensee shall be responsible for paying for any third party collection or legal costs incurred by Emphasys as a result of additional collection efforts. Finally, Emphasys reserves the right to cancel Licensee's license for Application Software and mandate immediate removal of Application Software, after written notice of 30 days, for any material breach by Licensee or if any charges called for herein, which are not reasonably disputable and are in excess of \$10,000, remain unpaid for a period of one hundred twenty (120) days beyond the due date. Cancellation for any reason shall not affect the sums due hereunder or any additional remedies provided by law or equity.
- 3.7. In addition to any penalties that may be charged, Emphasys reserves the right to assess and licensee agrees to pay a service charge of one and one-half percent (1.5%) per month or partial month on all past due invoices.
- 3.9 In addition to the amounts listed for Services, Licensee agrees to pay for reasonable expenses incurred by

Emphasys to fulfill its obligations to Licensee, including travel expenses such as lodging, food, airfare, ground transportation, mileage and airport parking during the term of this Agreement.

- 3.10 Any sales-related taxes, whether specifically identified in this Agreement or not, which are imposed currently or in the future, by any authority with the power of taxation in connection with this Agreement, shall be paid by Licensee. If Licensee is exempt from taxation, Licensee shall provide Emphasys with a Certificate of Exemption upon request.

4. WARRANTY

- 4.1. Emphasys warrants that it is the owner of the Application Software and Documentation and that Emphasys has the right to sublicense such Application Software or Other Licensed Software, as applicable. Emphasys further warrants that no portion of the Application Software or Documentation infringes on the intellectual property rights of any third party. Emphasys will indemnify and hold harmless Licensee, its affiliates and each of their respective officers, directors, affiliates, owners, employees and agents (“Indemnitee”) from any loss, liability, damage, or expense, including, but not limited to, costs of defense resulting from any claims, demands, or actions brought against Indemnitee based on a claim or allegation that the Application Software or Documentation infringes or misappropriates a patent, copyright, trade secret, information, or any other rights of any third party. Emphasys shall have the right to direct the defense strategy and to select their legal representation. The affected Indemnitee, however, shall give Emphasys prompt written notice of any such claim and shall cooperate in the defense of such claims, demands or actions.
- 4.2. Emphasys warrants that the Software shall substantially comply with Emphasys’ then current documentation. The warranty period of thirty (30) days commences immediately following initial Software installation.
- 4.3. These warranties will only be valid when the Software is used by Licensee in an appropriate and reasonable manner consistent with normal usage and management of such Software. The exclusive remedy of Licensee for breach of these warranties is that Emphasys shall be required to correct, repair, adjust or modify the Software if such defect in material or workmanship occurs and is reported by Licensee in writing within the appropriate warranty period. Emphasys shall not be responsible or liable for damage to the Software caused by Licensee, acts of God, the tampering with or modification of the Software by anyone other than Emphasys' authorized

personnel, or damage to the Software occurring by virtue of electrical malfunctions or external factors over which Emphasys has no control.

- 4.4. These warranties do not extend to any Software to which repairs or modifications have been performed by Licensee or persons not authorized by Emphasys, unless such repairs were performed with the prior written consent of Emphasys.
- 4.5. Emphasys warrants that all Services provided pursuant to this Agreement will be performed in a workmanlike manner in accordance with reasonable commercial standards. This warranty shall extend for thirty days following completion of the particular Service, and Emphasys shall correct all Services not so performed if brought to Emphasys' attention in writing within the warranty period.
- 4.6. Emphasys provides no warranties for hardware Equipment and related system software beyond that provided by the manufacturer.
- 4.7. THE WARRANTIES PROVIDED IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE FACE HEREOF, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

5. LIMITATION OF LIABILITY

- 5.1. Emphasys shall not be liable to Licensee or any other person for any claim or damages arising directly or indirectly from the furnishing of Software, Services, or any documentation relating to such Software or Services provided hereunder or from any other cause, except for claims arising from the negligence or willful misconduct of Emphasys or Emphasys' employees, agents or subcontractors. Liability of Emphasys shall in no event exceed the total price of the item of Software Module, or particular Service that is the subject of the claim. In no event shall Emphasys be liable to Licensee or any third party for indirect, incidental, special, consequential, or exemplary damages of any kind arising out of the existence, furnishing, functioning or the use of the Software or Services provided hereunder, even if Emphasys has been advised of the possibility of such damages.

6. AGREEMENT

- 6.1. The Agreement between Licensee and Emphasys consists of the following documents and all attachments thereto, which are hereby incorporated by reference. If there is any conflict between the documents, the following order of precedence shall govern:

6.1.1. The contents herein, as may be modified in accordance with Article 9.5, including all Exhibits.

7. **SUPPORT**

- 7.1. Emphasys shall provide Support commencing on January 1, 2025. During the first year of this Agreement, the cost of Standard Support will be \$26,417 per year, with an additional \$34,371 annually for Elite Hosting. The applicable fees, including but not limited to the standard support, and Elite Hosting, are set out in **Exhibit B** attached to this Agreement. This Agreement shall automatically renew for additional terms of one (1) year each unless either party provides the other with written notice of termination at least ninety (90) days prior to the expiration date of the initial term or of any subsequent one-year term. Fees shall be based on a five-year term. If for any reason, within the first five (5) years, the Licensee cancels any modules provided in Exhibit A below or which may be purchased later by the Licensee under this Agreement, the Licensee shall immediately owe an amount equal to 6% of the current annual Fees (excluding professional services) for each remaining month in the five-year term.
- 7.2. Emphasys shall be entitled to increase its fees for Standard Support, Hosting, Maintenance, and SaaS upon sixty (60) days prior written notice to Licensee.
- 7.3. Emphasys agrees to provide Standard Support, as defined in this Agreement, for the Application Software licensed to Licensee. Emphasys agrees to provide Standard Support to enable the Application Software to perform substantially without interruption and error, and in Substantial Compliance with the then current Documentation and the then current Mandated Changes.
- 7.4. Emphasys is to provide support to Licensee for technical issues arising from the Application Software malfunctioning relative to the functionality described in the Documentation. Any additional services to support Licensee are outside the scope of this Agreement.
- 7.5. **Audits:** During the term of this Agreement and for three (3) years after termination or expiration, Licensee will maintain complete records regarding its housing unit counts, software modules installed or purchased, or any other measure upon which Standard Support fees are based. Upon reasonable notice to Licensee, Emphasys may audit, at Emphasys' expense, Licensee's unit counts, software modules installed, and other relevant measures and supporting records to determine its compliance hereunder.
- 7.6. **Service Level Objectives.** The SLO terms are provided in **Exhibit C** attached to this Agreement.

7.7. **Standard Support** means the following services shall be provided by Emphasys to Licensee at no additional cost to Licensee:

- 7.7.1. Technical troubleshooting and assistance with Application Software in order to restore the Application Software's functionality to its operational condition prior to any known errors and to comply with related published Documentation, the current published software manuals and Mandated Changes.
- 7.7.2. Corrections of errors, interruptions, malfunctions or defects in the Application Software to enable the Application Software to substantially conform to published Documentation.
- 7.7.3. Assistance with errors caused by routine Software Fixes or Enhancements that are correctly installed, as directed in writing by Emphasys.

8. **TERMINATION**

- 8.1 **Termination for Material Breach.** Either party may terminate the Agreement upon thirty (30) days written notice of material breach of any provision of the Agreement, unless such breach is cured during such thirty (30) day period; provided. For the purposes of this section, it will be considered a material breach if Emphasys' payment or any amounts due are over thirty (30) days in arrears.
- 8.2 **Effect of termination:**
 - 8.2.1 Licensee shall, following the expiration or termination of the Agreement: (i) immediately cease using the Software and Documentation; (ii) uninstall/destroy/delete/return all copies of the Software and Documentation; and (iii) and within thirty (30) days, certify such uninstallation/destruction/deletion/return in writing to Emphasys. If certification is not received within ten (10) business days after expiration/termination, the Licensee will be charged one year of the historical lookup rate (45% of annual renewal), auto-renewing until the certificate is provided. For a Licensee to whom hosted services are being provided, the above post-termination obligations shall not apply. Upon the expiration or termination of the Agreement, Emphasys will deactivate all services from its end.
 - 8.2.2 Emphasys shall, upon prior notice, be entitled to inspect Licensee's premises where the Software was located in order to confirm Licensee's certification. If any other copies of the Software and Documentation are discovered as a result of the audit, except as authorized in writing by Emphasys, Licensee shall also uninstall/destroy such copies in compliance with this Agreement.

8.2.3 Licensee acknowledges and agrees that no expiration or termination affects Licensee's obligation to pay all fees that may have become due before such expiration or termination. Licensee further acknowledges and agrees that all amounts payable by Licensee to Emphasys of any kind under the Agreement are immediately payable and due on the effective date of the expiration or termination of the Agreement.

9. **RESPONSIBILITIES OF LICENSEE**

- 9.1. **Request for Service.** At any time, Licensee may report its request for service and its priority code by entering a ticket through the Zendesk ticketing system. If Licensee believes that the Support Event is a Priority 1, Licensee shall make every reasonable effort to determine if the event is hardware or software-related prior to requesting support from Emphasys.
- 9.2. **Standard Required Information.** When contacting Emphasys for Standard Support, Licensee shall provide the following information: Licensee name, phone and contact person, the name of the Application Software module (e.g., General Ledger, Low Income, Section 8, etc.), the menu item that was selected and the exact difficulty that was experienced. Licensee understands and agrees that its full cooperation and assistance are necessary for Emphasys to properly respond to a request for service. Licensee is responsible for notifying Emphasys of any Application Software problems and providing written documentation of Application Software problems with specific examples.
- 9.3. **Install Latest Third Party Software.** Licensee agrees to install in their live environment the latest released version of Third Party Software that is used by and compatible with the Application Software within two (2) years of general release by said third party. During such two (2) year period, Emphasys shall use its Best Efforts to continue to support the Application Software using Licensee's version of the Third Party Software. In the event a Third Party Software product or version thereof is discontinued, phased-out or no longer supported by its owner, Emphasys' obligation to support that Software shall cease.
- 9.4. **Install Latest Application Software.** Licensee agrees to install the latest released Upgrade of the Application Software in their live environment within 6 (six) months of release by Emphasys.
- 9.5. **Reasonable Access.** Licensee agrees to provide those Emphasys personnel involved with the operation and support of the Application Software reasonable access to perform activities necessary to fulfill its

obligations under this Agreement. Licensee will provide Emphasys with predefined passwords that will not change without the prior approval of Licensee. Licensee agrees to provide Emphasys appropriate access to Licensee's computer system during normal business hours via Emphasys-approved telephone modem and modem software. Licensee will also provide its own Internet access and connection. Such provision shall be operable prior to initial software installation and shall remain operable for the duration of Emphasys' obligation to Licensee for software support services.

- 9.6. **Data for Support.** Licensee will make available to Emphasys, on a reasonable basis, data necessary for the successful support of the Application Software, including all currently existing critical files. All such data shall be considered to be Licensee's Proprietary Information, and Emphasys shall retain same in strict confidence and shall not use or disclose such Proprietary Information except to the extent necessary to perform services hereunder.
- 9.7. **Backups.** Licensee shall create and keep current backups, not older than two (2) working days, of all Application Software and related data files. Licensee further agrees to make backups available for restoration purposes if needed by Emphasys. Any backup services provided by Emphasys shall result in billable time to Licensee.
- 9.8. **Modifications by Licensee.** In no event shall Emphasys be liable or responsible for correcting any errors or damage resulting from changes or modifications to the Application Software made by Licensee.
- 9.9. **Designated Licensee Contact.** It is the intent that only Licensee designated contacts or, in their absence, their assignees initiate support calls to Emphasys.
- 9.10. **Data Breach; Investigation, Reporting, And Notice.** Each Party shall comply with the terms and requirements set forth in **Exhibit D** (Data Security, Incidents, and Breaches), which is incorporated into and forms part of this Agreement.

10. **GENERAL**

- 10.1. **Site Location:** The Equipment and Software shall be located at the following address: Hosted _____ by Emphasys.
- 10.2. **Export:** The Equipment and Licensed Software furnished by Emphasys herein and any direct products thereof are presently considered licensable commodities and are regulated by the U.S. Department of Commerce. In order to either export said commodities from the United States or to re-export same from any country, a valid license from the U.S. Department of Commerce is required.

Diversion contrary to United States Law is prohibited.

- 10.3. Assignment: The rights under this Agreement shall not be assigned by Licensee without the written consent of Emphasys.
- 10.4. Complete Agreement: This Agreement, including all Exhibits, constitutes the entire agreement between the parties and supersedes all prior or contemporaneous understandings or agreements, whether written or oral, regarding the subject matter hereof.
- 10.5. Modification: This Agreement may not be modified, except by an instrument in writing signed by a duly authorized representative of each party.
- 10.6. Severability: If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
- 10.7. Waivers: Any waivers by either party of a breach of any provision to this Agreement shall not operate as, or be construed as, a waiver of any other provision of this Agreement. The failure of a party to insist upon strict adherence to any term of this Agreement on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.
- 10.8. Arbitration: All disputes, with the exception of the injunctive and other relief referred to in Article 2.5, above, arising out of or relating to this Agreement or a material breach thereof, will be submitted to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as supplemented by the Computer Guide, if then in existence. Judgment upon the award rendered by the arbitrator may be entered in any Court having jurisdiction thereof. The parties shall jointly request the American Arbitration Association to submit a panel of three arbitrators, each of which is listed on the Computer Arbitration Panel and at least one of which shall be an attorney in good standing.
- 10.9. Force Majeure: In the event of any cause beyond the control of either party, such party shall not be liable for any delay in the performance of, or failure to perform, this Agreement. Without limiting the generality of the foregoing, such causes include acts of God or the public enemy, fires, floods, storms, earthquakes, riots, strikes, lockouts, quarantines, wars or war operations or other causes which could not, with reasonable diligence, be controlled or prevented by the party affected.
- 10.10. Notices: All notices, requests, demands or other communications required or permitted to be given

hereunder shall be in writing and shall be deemed to have been duly given when mailed by certified mail or when delivered in person to the parties who have executed this Agreement.

- 10.11. Jurisdiction: The parties agree that this Agreement will be entered into in the State of Michigan, that both parties are subject to the jurisdiction of the state and federal courts in Michigan, and that such courts shall have exclusive jurisdiction over any case or controversy arising out of, or in any way relating to, this Agreement or to the relationship created hereunder. The parties further agree that the laws of the State of Michigan and of the United States shall govern the construction and interpretation of this Agreement and shall apply in any such case or controversy.
- 10.12. Headings: The paragraph headings used herein are for convenience of reference only and shall in no way be deemed to define, limit or add to any of the provisions hereof.

IN WITNESS WHEREOF the parties hereunto have caused this Agreement to be executed by their duly authorized representatives this ____ day of _____2025.

Emphasys Software

City of Flagstaff dba Flagstaff Housing Authority

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A: Licensed Modules

Licensee Name: Flagstaff Housing Authority

Application Software:

Name

Admin Suite (General Ledger, Bank Book, Account Payable/Receivable)

HCV Suite

HCV Resident Processing

HCV Financials

Rent Reasonableness

Family Self Sufficiency

LIPH Suite

LIPH Resident Processing

Tenant Accounting

Work Order

Multifamily (50059)

NSPIRE-V Inspection Scheduling

NSPIRE-V Inspections Mobile App

Elite Hosting (Shared with Premium Managed Services) 20 Named users (with 5 Excel Licenses)

Other Licensed Software:

Name

None

Hardware:

Description

None

Exhibit B: Annual Maintenance & Hosting

Product	Year 1 - 2025	Year 2 - 2026	Year 3 - 2027	Year 4 - 2028	Year 5 - 2029	Five Year Total
Total Annual Maintenance:	\$26,417	\$28,266	\$30,245	\$32,362	\$34,627	\$151,917
Elite Hosting Annual Fee Shared Environment with Standard Managed Service (20 Named Users with 5 Excel Licenses) per QUO-1000009 that follows	\$34,371	\$36,777	\$39,351	\$42,106	\$45,053	\$197,659
Elite Hosting Installation and Project Management (one time fee) per QUO-1000009 that follows	\$13,830					\$13,830
Total Maintenance and Hosting and one-time Hosting Setup Fee:	\$74,618	\$65,043	\$69,596	\$74,468	\$79,681	\$363,406



SALES QUOTE

EMPHASYS SOFTWARE
1200 SW 145th Ave Suite 310
Pembroke Pines, FL 33027

Tuesday, April 29, 2025

Prepared For:
Kurt Aldinger
kaldinger@flagstaffaz.gov

Senior Account Manager
Delia Niswonger
dniswonger@emphasys-software.com
(800) 968 - 6884 ext. 3038

Flagstaff Housing Authority
P.O Box 2098
Flagstaff, Arizona, 86004-

Description: Elite Hosted Services

Quote Number: QUO-1000009

Subscriptions

Description	Quantity	Term Total
Hosting - Elite Annual SaaS	1.00	\$34,371.00
		Total: \$34,371.00

Professional Services

Description	Quantity	Price per Hour	Total
Project Management	12.00	\$215.00	\$2,580.00
Technical Services	45.00	\$250.00	\$11,250.00
			Total: \$13,830.00

Quote Total: \$48,201.00

Description : Elite Hosted Services

Hosting - Elite

Annual hosting fee for twenty (20) named users in Azure FedRamp capable, Shared Environment with Premium Managed Services (includes 5 Named Excel Licenses). If additional users are required, costs will be refactored. Hosting includes a Live and Test Environment of Elite in hosted environment, all anti-virus software, online back-ups, server maintenance, support and updates. Login is through Azure Virtual Desktop (AVD) environment accessible from anywhere with an internet connection provided staff has the credential information to login. Internet Connection, Workstations and Printers are the responsibility of the agency. At a minimum, a stable broadband internet connection with at least 15mb going down per user, and 2mb going up per user.

Annual Hosting Fee is subject to an annual increase. Through execution of this proposal, you agree to be bound to a 5 year commitment related to Elite Hosting purchased under this proposal. You agree that if Elite Hosting is cancelled within the 5 year term, the balance of the 5 year SAAS fee is due and payable immediately.

Project Management

Remote Project Management Services for creation of Project Plan and meetings.

Technical Services

Initial Setup, review and provide direction on custom reports/letters and Go Live Cut Over of Hosted Environment for Elite.

Exhibit C: Service Level Objective

Front Line Support - Severity			SLO	
Level	Support Request Classification	Description: Any Service Error Comprising or Causing any of the Following Events or Effects	Initial Response	Incident Resolution
1	Urgent Service Error	<ul style="list-style-type: none"> • Issue affecting entire system or single critical production function; • System down or operating in materially degraded state; • Data integrity at risk; • Widespread access interruptions. 	1 Business hour	Issue will be worked on until resolution is found.
2	High Service Error	<ul style="list-style-type: none"> • Primary component failure that materially impairs its performance; or • Data entry or access is materially impaired on a limited basis. 	4 Business hours	Issue will be worked on until resolution is found.
3	Normal Service Error	<ul style="list-style-type: none"> • Hosted profile resets as requested by designated contact. • Hosted User Password Resets requested by designed contact • Hosted Service is operating with minor issues that can be addressed with an acceptable temporary work around. • Request for assistance, information, or services that are routine in nature. 	8 Business hours	Issue will be worked on until resolution is found.
4	Low Service Error	<ul style="list-style-type: none"> • An event that causes a minimal disruption to business operations and can be resolved with little to no impact on users or services. These incidents typically affect a single user or a small group, with little to no impact on service delivery or business functions. 	24 Business hours	Issue will be worked on until resolution is found.

Exhibit D: Data Security, Incidents and Breaches

1. DEFINITIONS.

As used in this Agreement, the following terms shall be defined as follows:

“A.R.S.” means Arizona Revised Statutes.

“Authorized Persons” means Contractor’s affiliates, its and its affiliates’ employees, contractors, agents, or auditors, who a party reasonably determines has a need to access Personal Information to enable Contractor to perform this Agreement.

“Encrypt” means to use a process to transform data into a form that renders the data unreadable or unusable without using a confidential process or key.

“Personal Information” means any information relating to an identified or identifiable natural person, and generally has the same definition as found in A.R.S. Section 18-551.

“Data Breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Information.

2. SAFEGUARD OF PERSONAL INFORMATION.

Contractor shall (i) keep all Personal Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use or disclosure; (ii) use Personal Information solely and exclusively for the purpose for which Customer shares or provides it to Contractor, and shall not use, transfer, sell, rent, distribute or otherwise disclose Personal Information for the Contractor’s benefit or for any other purpose without Customer’s prior written consent; (iii) not directly or indirectly disclose Personal Information to anyone other than its Authorized Persons without express written prior consent from Customer, unless and to the extent required by law.

3. INFORMATION AND DATA SECURITY.

Contractor warrants that its access, collection, storage and disposal of Personal Information shall comply with applicable federal and state statutes and regulations.

Contractor shall implement administrative, physical and technical safeguards for protection of Personal Information that are no less rigorous than acceptable industry practices and shall ensure that all such safeguards comply with applicable data protection and privacy laws, statutes and regulations.

During the term of this Agreement, Contractor shall cause Authorized Persons to abide by its obligations pursuant to this Agreement.

4. DATA BREACH; INVESTIGATION, REPORTING, AND NOTICE.

In the event of a Data Breach, Contractor shall (i) notify Customer of a Data Breach as soon as practicable, but no later than 72 hours after Contractor becomes aware of the Data Breach, (ii) describe the nature of the breach, and (iii) describe any measures taken in response.

Immediately following the Contractor's notification to Customer of a Data Breach, Contractor may assist the Customer to conduct an investigation of the Data Breach, pursuant to A.R.S. Section 18-552 to the extent applicable to the Contractor. Contractor shall reasonably cooperate with Customer's personnel, including any insurance carriers to which Customer reports the Data Breach, including, without limitation, by providing access to Customer and/or its personnel only when necessary and required, to relevant records, logs, files, data reporting or other materials requested.

Contractor will not inform any consumer reporting agencies, or affected employees or consumers, of any Data Breach without first notifying Customer, other than to inform a complainant that the Data Breach has been reported to the Customer's Information Technology Director; provided, however Contractor may immediately inform law enforcement of any Data Breach if merited. If Contractor notifies law enforcement prior to notifying Customer of a Data Breach, Contractor shall notify Customer within twenty-four (24) hours thereafter.

Customer will provide the form of notice of the Data Breach pursuant to A.R.S. Section 18-552(B), and Customer at its expense shall be responsible for issuing such notice to affected individuals and governmental agencies.

5. COMPLIANCE OVERSIGHT.

Upon written request from Customer, and not more than once a year during the term of this Agreement, Contractor shall confirm compliance with this Agreement and any applicable industry standards, and shall promptly provide to Customer a written information security questionnaire regarding Contractor's information technology resources, data security protocols and applicable policies.

6. RETURN OF PERSONAL INFORMATION.

Upon Customer's written request, Contractor shall instruct all Authorized Persons to promptly return to Customer all copies, whether in written, electronic or other form of media, of Personal Information, in its possession, custody or control, and certify in writing to the other party that such Personal Information has been returned to Customer or disposed of securely.

7. MATERIAL BREACH.

Any breach of the provisions of section 2 is a material breach of this Agreement. As such, Customer may terminate this Agreement effective immediately upon written notice to the Contractor without any further liability or obligation to Customer, in addition to all other remedies available at law

8. INTELLECTUAL PROPERTY INDEMNIFICATION.

(Not Used)

9. NETWORK SECURITY AND PRIVACY LIABILITY

Contractor shall indemnify and hold the City, and its officers, agents, employees, harmless from an against any third-party claims, actions, liabilities, and reasonable costs incurred, to the extent arising directly from Contractor's material breach of the applicable privacy law applicable to its Services under this Contract. In the event any such action or claim is brought

against the City, Contractor shall, if the City so elects and upon tender by the City: defend the same at Contractor's sole cost and expense, provided that the City: (a) notifies the Contractor promptly (and in any event within a reasonable time) of the claim, (b) permits the Contractor to assume sole control of the defense and settlement of the claim, and (c) provides reasonable cooperation at the Contractor's expense. The City shall immediately notify Contractor, , of any claim, threat of claim, or legal action to which the above indemnity may apply. This indemnification shall survive termination or expiration of the Contract.

10. EXCERPT FROM A.R.S. § 18-552: “18-552. NOTIFICATION OF SECURITY SYSTEM BREACHES; REQUIREMENTS; ENFORCEMENT; CONFIDENTIALITY; CIVIL PENALTY; PREEMPTION; EXCEPTIONS”

A. If a person that conducts business in this state and that owns, maintains or licenses unencrypted and unredacted computerized personal information becomes aware of a security incident, the person shall conduct an investigation to promptly determine whether there has been a security system breach.

B. If the investigation results in a determination that there has been a security system breach, the person that owns or licenses the computerized data, within forty-five days after the determination, shall:

1. Notify the individuals affected pursuant to subsection E of this section and subject to the needs of law enforcement as provided in subsection D of this section.

2. If the breach requires notification of more than one thousand individuals, notify both:

(a) The three largest nationwide consumer reporting agencies.

(b) The attorney general and the director of the Arizona department of homeland security, in writing, in a form prescribed by rule or order of the attorney general or the director of the Arizona department of homeland security or by providing the attorney general or the director of the Arizona department of homeland security with a copy of the notification provided pursuant to paragraph 1 of this subsection. In the absence of a common form developed by the attorney general and the Arizona department of homeland security, nothing shall prohibit a person from submitting the same notification to the attorney general and the Arizona department of homeland security to meet the requirements of this subsection.

C. A person that maintains unencrypted and unredacted computerized personal information that the person does not own or license shall notify, as soon as practicable, the owner or licensee of the information on discovering any security system breach and cooperate with the owner or the licensee of the personal information, including sharing information relevant to the breach with the owner or licensee. The person that maintains the data under an agreement with the owner or licensee is not required to provide the notifications required by subsection B of this section unless the agreement stipulates otherwise.

D. The notifications required by subsection B of this section may be delayed if a law enforcement agency advises the person that the notifications will impede a criminal investigation. On being informed by the law enforcement agency that the notifications no longer compromise the investigation, the person shall make the required notifications, as applicable, within forty-five days.

E. The notification required by subsection B, paragraph 1 of this section shall include at least the following:

1. The approximate date of the breach.
2. A brief description of the personal information included in the breach.
3. The toll-free numbers and addresses for the three largest nationwide consumer reporting agencies.
4. The toll-free number, address and website address for the federal trade commission or any federal agency that assists consumers with identity theft matters.

F. The notification required by subsection B, paragraph 1 of this section shall be provided by one of the following methods:

1. Written notice.
2. An email notice if the person has email addresses for the individuals who are subject to the notice.
3. Telephonic notice, if telephonic contact is made directly with the affected individuals and is not through a prerecorded message.
4. Substitute notice if the person demonstrates that the cost of providing notice pursuant to paragraph 1, 2 or 3 of this subsection would exceed \$50,000, that the affected class of subject individuals to be notified exceeds one hundred thousand individuals or that the person does not have sufficient contact information. Substitute notice consists of all of the following:

(a) A written letter to the attorney general that demonstrates the facts necessary for substitute notice.

(b) Conspicuous posting of the notice for at least forty-five days on the website of the person if the person maintains one.

G. If a breach involves personal information as prescribed in section 18-551, paragraph 7, subdivision (a), item (ii) for an online account and does not involve personal information as defined in section 18-551, paragraph 7, subdivision (a), item (i), the person may comply with this section by providing the notification in an electronic or other form that directs the individual whose personal information has been breached to promptly change the individual's password and security question or answer, as applicable, or to take other steps that are appropriate to protect the online account with the person and all other online accounts for which the individual whose personal information has been breached uses the same user name and email address and password or security question or answer. If the breach of personal information as prescribed in section 18-551, paragraph 7, subdivision (a), item (ii) is for login credentials of an email account furnished by the person, the person is not required to comply with this section by providing the notification to that email address, but may comply with this section by providing notification by another method described in this subsection or by providing clear and conspicuous notification delivered to the individual

online when the individual is connected to the online account from an internet protocol address or online location from which the person knows the individual customarily accesses the account. The person satisfies the notification requirement with regard to the individual's account with the person by requiring the individual to reset the individual's password or security question and answer for that account, if the person also notifies the individual to change the same password or security question and answer for all other online accounts for which the individual uses the same user name or email address and password or security question or answer.

H. A person that maintains the person's own notification procedures as part of an information security policy for the treatment of personal information and that is otherwise consistent with the requirements of this article, including the forty-five-day notification period required by subsection B of this section, is deemed to be in compliance with the notification requirements of subsection B, paragraph 1 of this section if the person notifies subject individuals in accordance with the person's policies if a security system breach occurs.

I. A person that complies with the notification requirements or security system breach procedures pursuant to the rules, regulations, procedures, guidance or guidelines established by the person's primary or functional federal regulator is deemed to be in compliance with the requirements of subsection B, paragraph 1 of this section.

J. A person is not required to make the notification required by subsection B of this section if the person, an independent third-party forensic auditor or a law enforcement agency determines after a reasonable investigation that a security system breach has not resulted in or is not reasonably likely to result in substantial economic loss to affected individuals.

K. Except for notifications provided pursuant to subsection F of this section, notifications provided to the attorney general and the director of the Arizona department of homeland security pursuant to this section are confidential pursuant to section 44-1525 and are exempt from disclosure under title 39.

L. A knowing and wilful violation of this section is an unlawful practice pursuant to section 44-1522, and only the attorney general may enforce such a violation by investigating and taking appropriate action pursuant to title 44, chapter 10, article 7. The attorney general may impose a civil penalty for a violation of this article not to exceed the lesser of \$10,000 per affected individual or the total amount of economic loss sustained by affected individuals, but the maximum civil penalty from a breach or series of related breaches may not exceed \$500,000. This section does not prevent the attorney general from recovering restitution for affected individuals.

M. The state legislature determines that security system breach notification is a matter of statewide concern. The power to regulate security system breach notification is preempted by this state, and this article supersedes and preempts all municipal and county laws

charters, ordinances and rules

relating to issues regulated by this article.

N. This article does not apply to either of the following:

1. A person that is subject to title V of the Gramm-Leach-Bliley act (P.L. 106-102; 113 Stat. 1338; 15 United States Code sections 6801 through 6809).

2. A covered entity or business associates as defined under regulations implementing the health insurance portability and accountability act of 1996, 45 Code of Federal Regulations section 160.103 (2013) or a charitable fundraising foundation or nonprofit corporation whose primary purpose is to support a specified covered entity, if the charitable fundraising foundation or nonprofit corporation complies with any applicable provision of the health insurance portability and accountability act of 1996 and its implementing regulations.

O. The department of public safety, a county sheriff's department, a municipal police department, a prosecution agency and a court shall create and maintain an information security policy that includes notification procedures for a security system breach of the department of public safety, the county sheriff's department, the municipal police department, the prosecuting agency or the court.