

**MAINTENANCE AND SUPPORT AGREEMENT  
(Premier MDC and TalkThru/RF SOFTWARE ONLY)**

This Maintenance and Support Agreement (this "Agreement") dated August 30, 2001 is between

City of Rapid City  
300 6th Street  
Rapid City, SD 57701  
("Customer")

and Motorola Inc., a Delaware corporation ("Motorola"), having a place of business at 1200 High Ridge Road, Stamford, Connecticut 06905.

**NOW THEREFORE**, the parties agree as follows:

**I. Time Period**

1. Initial maintenance term begins on 11/1/01 and extends for a period of 15 months, through 1/31/03. Initial payment, billed on receipt of the signed agreement will be for the 3-month period from 11/1/01 through 1/31/02 in the amount of \$2,345.41. The second payment will be invoiced 1/01/02 for the 12-month period covering 2/01/02 through 1/31/03 in the amount of \$9,381.65 per the annual contract amount below.
2. This Agreement will automatically renew annually for additional 12-month periods unless canceled by Customer in writing thirty (30) days prior to the renewal date.

**II. Price**

1. The annual (12 months) cost of this Maintenance and Support Agreement is \$9,381.65 for the first year based on the Software, Software Options, Server License for 1 to 25 clients, 23 Authorized Mobile Clients, and 9 Authorized In-house Client(s) in effect as described in the accompanying documents. Should additional products or services be purchased this sum will be subject to change.
2. Maintenance and Support must cover all Customer copies of Client and Server software.
3. Maintenance is billed annually in advance and must be paid within twenty (20) days of invoice date. Motorola shall have no obligation to provide services or products if Customer is in default of its payment obligations.
4. Annual maintenance charges will be based on the number of Authorized copies of Client Software, Software Options and Server License in effect at the beginning of the maintenance period.
5. Additional products and services purchased during the Maintenance and Support period will be covered under a Warranty Period until the Maintenance and Support Agreement comes up for renewal, at which time the cost of the Agreement will be revised to cover all software licenses.
6. If Customer is not under Maintenance and Support, restoration of Maintenance and Support status and receipt of any upgrades is conditioned upon payment of 100% of the amount Customer would have been charged had the Customer been on Maintenance and Support.
7. If Customer is not under Maintenance and Support and wishes to purchase additional products or services that do not require version upgrades or enhancements, they may do so at the then current list price, however, Motorola will not offer warranty or maintenance and support on those additionally purchased products or services.

8. This agreement does not include any applicable taxes levied or imposed now or hereafter by any government authority. Any such taxes shall be paid by the Customer.

### **III. Scope of Service**

1. Support for Premier MDC Software includes telephone support which is available to Customer seven (7) days a week, twenty four (24) hours a day by calling 800-323-9949 and select option 2.
2. Product Releases : Customers with active and current support agreements will not be required to pay any additional software license fees for Product Releases. Fees for additional hardware, third-party software and other services (such as training, field engineering time, development time) shall be priced separately at Motorola's sole discretion. Should Motorola determine that an on-site presence is not required for an upgrade and the customer desires that Motorola perform on-site work, such work will also be priced separately at Motorola discretion.
3. Enhancement Releases: If a customer is on a current product release of software, there may be additional license fees to get an enhancement within that release. Fees for additional hardware, third-party software and other services (such as training, field engineering time, development time) shall be priced separately at Motorola's sole discretion. Should Motorola determine that an on-site presence is not required for an upgrade and the customer desires that Motorola perform on-site work that will also be priced separately at Motorola's discretion.
4. Motorola shall not be responsible for delays or the inability to provide service if caused directly or indirectly by strikes, accidents, embargoes, acts of God, or other events beyond its control.

### **IV. Customer Responsibility**

1. Customer will assume responsibility for distribution of all upgrades and enhancements. Customer will receive electronic media containing all the modules purchased by the Customer. Only the exact number of modules previously purchased may be upgraded, and all modules purchased must be upgraded at the same time.
2. With respect to any third party software or hardware that may be delivered by Motorola as part of this Agreement, Customer will be responsible for any extended warranty, maintenance and support fees, and/or license compliance, unless otherwise stated in writing. Motorola will pass through any available manufacturer warranties.
3. Customer agrees to provide remote access to the Motorola server (message switch) for troubleshooting/testing, upgrading and auditing purposes. Additionally, the Customer agrees to assist Motorola in troubleshooting/testing, upgrading, and auditing
4. Damage, interruption or degradation caused to the system by the Customer or a 3<sup>rd</sup> party vendor is not covered by this Maintenance and Support Agreement and the cost of providing support to correct such damage, interruption or degradation will be billed to the Customer by Motorola according to the then published time and material rate schedule including reasonable travel and expenses if applicable
5. The Customer is fully responsible for backing up its data. Motorola assumes no responsibility for backing up customer data and cannot be held liable for any loss of customer data under any circumstances. Customer is encouraged to use an Uninterruptible Power Supply (UPS) system to protect against power interruptions.

### **V. Audits**

1. Motorola has equipped all of its major software components so that all services and usage levels, including both the installed features and the number of activated clients (both landline and wirelessly enabled) on the system, can be remotely reviewed and audited. It is not permissible to alter or otherwise impair this capability.

2. Motorola will periodically audit all systems. Should any such audit identify services not contracted for or activated clients in excess of Authorized Clients, then Customer will be obligated to pay for those additional services or usage at the current contract purchase and maintenance rates as if they had been contracted for at the beginning of the current maintenance period or the date of the last audit whichever is later. Motorola reserves the right to bill for such unauthorized use at 150% of the normally contracted rate if it believes such use has been deliberate and/or abusive.

**VI. Limitation of Liability**

Notwithstanding any other provision in this Agreement, except for personal injury or death, Motorola's 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 price paid or to be paid by Customer under this Agreement for maintenance services for a twelve month period. IN NO EVENT WILL MOTOROLA BE LIABLE FOR ANY LOSS OF USE, LOSS OF TIME, INCONVENIENCE, COMMERCIAL LOSS, LOST PROFITS OR SAVINGS, OR OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE PROVIDED UNDER THIS AGREEMENT, OR THE SERVICES PROVIDED PURSUANT TO THIS AGREEMENT. This Limitation of Liability provision shall survive the expiration or termination of this Agreement.

This agreement supersedes any prior written or oral understanding between the parties regarding maintenance of the system components, and may not be modified except by written agreement signed by an officer of the company. No other warranties, express or implied, including warranty of merchantability shall apply to service labor, components or parts.

**Accepted By:**

**City of Rapid City**

**Motorola Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Shirley Eis

Title: \_\_\_\_\_

Title: MCEI Vice President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM  
CITY ATTORNEY'S OFFICE**

*[Signature]*

9.28.01

**Attorney**

**Date**