



Huntsville/Madison County Emergency

Management Agency  
120B Fountain Circle

Huntsville, Alabama 35801

Attn: Director Jeff Birdwell

(256) 427-5130 - jeffrey.birdwell@huntsvilleal.gov

## COMMUNICATIONS SOFTWARE MAINTENANCE SERVICE AGREEMENT

This Agreement is entered into on 4/1/2022

between Mobile Communications America with principal offices at 3403 Governors Drive, Huntsville, AL 35805 (hereafter "MOBILE COMMUNICATIONS AMERICA") and; (the Customer) Huntsville-Madison County Emergency Management Agency (hereafter referred to as EMA)

This Agreement is an offer to purchase software maintenance service, for the systems related to siren activation. Mobile Communications America agrees to maintain the OptiWarn siren activation software on the computer equipment at EMA's Emergency Operations Center, Huntsville-Madison County Emergency Communications Center activation control points and each of the Remote Terminal Units, under the terms and conditions described in this agreement. Beginning on the effective date of this agreement, Mobile Communications America agrees to provide maintenance service to keep covered software and associated OptiWarn system in good working order.

### Payment Terms:

In consideration of the maintenance service provided, the customer agrees to pay to Mobile Communications America **\$26,621.64** annually (State/Local taxes NOT included). Per this agreement, the customer will pay on an annual basis for a term of three (3) years totaling **\$79,864.92**.

This service agreement will expire on: 3/31/2025. This agreement will not auto renew upon the expiration date.

Once the agreement is accepted, services may be added or adjusted however the services can not be reduced below the initial payment terms agreed upon when signed.

By signing this Agreement, customer agrees to accept software maintenance service for the above referenced equipment according to all specified terms and conditions of the Agreement. Customer also agrees to provide full, free and safe access to the equipment and/or systems covered by this Agreement. The amounts noted above are due and payable within thirty (30) days of the effective date of the Agreement. This Agreement is valid only if signed by an authorized representative or officer of Mobile Communications America.

There are additional terms and conditions listed on the reverse of this page. These terms and conditions are part of this Agreement. This Agreement is the complete understanding between Mobile Communications America and Customer superseding all prior proposals or agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement. Customer agrees that no other representations have been made relative to this Agreement, except that which is expressed in writing herein. The customer acknowledges that the customer has read this entire Agreement, understands it, and agrees to be bound by its terms and conditions. Both Parties, signing below, agree to honor this contract for \$26,621.64 /Yr.

By:

Customer

Title

Date

By:

Mobile Communications America

Regional Sales Manager

Title

March 14, 2022

Date

Monday, March 14, 2022

President of the City Council of the  
City of Huntsville, AL

**THESE TERMS AND CONDITIONS APPLY TO ALL TRANSACTIONS EXCEPT LEASES, AND RENTAL AGREEMENTS, WHICH CONTAIN APPLICABLE TERMS AND CONDITIONS THEREIN.**

1. **ACCEPTANCE.** This document is an offer by the Buyer, which will become a contract when acknowledged by the signature of the Mobile Communications America, Inc. & Subsidiaries (herein called "MCA") Order Editor, and the banking, negotiation or other use of the down payment shall not constitute an acceptance hereof by MCA. It is agreed that sales are made only on the terms and Seller shall not be bound by terms and conditions in Buyer's purchase order or elsewhere unless expressly agreed to in writing. In the absence of written acceptance of these terms, acceptance of or payment for purchases hereunder shall constitute an acceptance of these terms and conditions. Any contract evidenced by this document is assigned to Mobile Communications of America, Inc.

2. **DEFINITIONS.** All references to Seller herein shall mean Infinity Technology Solutions, LLC, a wholly owned subsidiary of Mobile Communications of America, Inc. and all references to Buyer shall mean the Customer named on the other side of this document.

3. **SHIPPING AND HANDLING.** Shipping and Handling charges when shown separately on the quotation or proposal include (prepaid) domestic surface and air freight which will be included on the applicable invoice. (e.g. UPS, Parcel Post, Common Carrier.) Freight charges are subject to frequent change and in consideration of Seller's agreement to hold to the charges stated, Buyer agrees to pay such amount without regard to the actual charges applicable at the time of shipment. It is understood that Seller will NOT have to provide Buyer with any copies of carrier freight bills.

4. **DELIVERY AND TITLE.** Unless otherwise stated on the other side of this document, all deliveries are FOB manufacturer's location. Shipping or delivery dates are best estimates only. Seller reserves the right to make deliveries in installments and the contract shall be severable as to such installments. Delivery delay or default of any installment shall not relieve Buyer of its obligation to accept and pay for remaining deliveries. Claims for shipment shortages shall be deemed waived unless presented to Seller in writing within forty-five (45) days of delivery of each shipment. **IN NO EVENT SHALL SELLER BE LIABLE FOR INCREASED COSTS, LOSS OR PROFITS OR GOOD WILL OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES** due to late or non-delivery of products. Title to products sold shall pass to Buyer at the FOB point. Seller shall retain a security interest and right of possession in the products until Buyer makes full payment. Buyer agrees to cooperate in whatever manner necessary to assist Seller in perfection of said security interest upon request.

5. **PACKAGING AND PACKING.** All packaging and packing shall be in accordance with good commercial practice.

6. **PAYMENT.** The Buyer shall make net payment to Seller in accordance with the terms stated in this document at Seller offices located at P.O. Box 37904, Dept #125 Charlotte, NC 28237-7904 or at such other places as the Seller may designate. Payment shall be made in no later than (30) days after the date of invoice for each product, accessory, service rendered or other charge unless stated otherwise on the other side of this document. Services rendered may include but not limited to, Coordination & Design Engineering, Completion of Staging, Percentage of Install Completion and Final Acceptance. Additional terms subject to credit limit approval and may be subject to a 2.5% surcharge. All delinquent accounts are subject to a 1.5% monthly late fee, not to exceed 18% a year.

7. **TAXES.** Except for the amount, if any, of state and local tax stated on the other side of this document, the prices set forth herein are exclusive of any amount for Federal, State and/or Local excise, sales, use, property, retailer's occupation or similar taxes. If any such excluded tax is determined to be applicable to this transaction or Seller is required to pay or bear the burden thereof, the prices set forth herein shall be increased by the amount of such tax and any interest or penalty thereon, and Buyer shall pay to Seller the full amount of any such increase no later than ten (10) days receipt of an invoice therefor.

**8. TERMINATION AND CANCELLATION**

A. Seller shall not be liable for any delay or failure to perform due to any cause beyond its control. Causes include but are not limited to strikes, acts of God, acts of the Buyer, interruptions of transportation or inability to obtain necessary labor, materials, or facilities, default of any supplier, or delays in FCC frequency, authorization or license grant. The delivery schedule shall be considered extended by a period of time equal to the time lost because of any excusable delay. In the event Seller is unable to wholly or partially perform because of any cause beyond its control, Seller may terminate any contract without any liability to Buyer.

B. Buyer may by written notice to Seller within five (5) days of the date hereof cancel any contract arising hereunder, for other than the default of Seller and at its convenience, in which event Buyer shall pay Seller twenty percent (20%) of the total price for all products and accessories listed on the other side of this document as a restocking charge.

9. **FCC MATTERS.** The Buyer is solely responsible for obtaining any licenses or other authorizations required by the Federal Communications Commission and for complying with FCC rules, and with the rules and regulations of any other Federal, state, or local regulatory agency. Neither Seller nor any of its employees is an agent or representative of the Buyer in FCC matters or otherwise. Seller, however, may assist in the preparation of the license application if contracted to do so by the Buyer.

10. **CONTROLLING LAW.** This document and the rights and duties of the parties shall be governed and interpreted according to the laws of the State of South Carolina.

11. **FINAL ACCEPTANCE.** Failure to make a claim within seven (7) days after receipt of such product covered hereby shall constitute an irrevocable acceptance thereof.

12. **LIMITATION OF LIABILITY.** Seller's total liability is limited to the total price of the products sold hereunder. Buyer's sole remedy is to request Seller at Seller's option to either refund the purchase price, repair or replace product(s) that are not as warranted. In no event will Seller be liable for incidental or consequential damages. No action shall be brought for any breach of this contract more than one (1) year after the accrual of such cause of action except for money due upon an open account.

13. **WAIVER.** The failure of Seller to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions herein or to exercise any right hereunder shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or conditions or the future exercise of such right but the obligation of the Buyer with respect to such future performance shall continue in full force and effect.

**14. GENERAL.**

A. Buyer acknowledges that it has read and understands these terms and conditions and agrees to be bound by them, that it is the complete and exclusive statement of the agreement between the parties and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter hereof.

B. No modification hereof shall be binding upon Seller unless such modification is in writing signed by a duly authorized representative of Seller.

C. If any part is contrary to, prohibited by or deemed invalid under applicable laws or regulations, provision shall be deemed omitted to the extent so contrary prohibited or invalid, but remainder shall not be invalidated and shall be given effect so far as possible.

Monday, March 14, 2022

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## *OptiWarn Priority Support*

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### Overview

The purpose of Priority Support is to ensure Mobile Communications America provides timely resolutions to mission critical systems by ensuring a 24/7 response within 1 hour of the initial call for Priority Support. MCA will provide Huntsville Madison County Emergency Management Agency the emergency telephone number for an on-call technician.

### Centralized Service Delivery

MCA will provide a Technical Services Department response as a single point of contact for all support issues, including communications between System Owner and Infinity Technology Solutions. When System Owner personnel call for support, the Technical Services Department will record, track, and update all Service Requests, Change Requests, Operator requests, and Service Incidents. The Technical Services Department is responsible for documenting inquiries, requests, concerns, and related tickets; tracking and resolving issues; and ensuring timely communications with all stakeholders based on the nature of the incident. As tickets are opened by the Technical Services Department, issues that require specific technical expertise and support will be routed to our Infinity Solutions Support Center (SSC) system technologists for Technical Support, who will provide telephone consultation and troubleshooting capabilities to diagnose and resolve infrastructure performance and operational issues. Support is provided Monday-Friday, 8am-5pm EDT. Primary support engineer will respond by phone or email within 24 hours to further clarify the issue and begin issue resolution.

### Remote Support

Our support team must be able to log into the system to diagnose and analyze the issue and ultimately resolve the ticket. System Owner will provide remote internet access upon request to allow remote support and Infinity will provide LogMeIn.com account access. This access is 24/7 via the length of the contract and can be extended to System Owner personnel for everyday remote access. Ad-Hoc internet can be provided to System Owner for additional cost. Options include Verizon external LTE modem and Cradlepoint NetCloud external LTE modem with CJS and HIPAA compliant security and include data.

### System Upgrades

Software support for a period of 3 years. Includes coverage for both control points, 2 front end processors, 1 routing unit and 130 siren control points. Also included is a onetime InTouch Wonderware upgrade including support for 3 years, OptiWarn upgrade and support including complimentary upgrades at any time to the latest release. Note: 6 hours of engineering upgrade labor has been discounted by 100%.