

## **AGREEMENT FOR MAINTENANCE OF HARDWARE AND SOFTWARE**

THIS AGREEMENT for Maintenance of Hardware and Software ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2004, by and between Sagem Morpho, Inc. ("MORPHO") and the City of Overland Park, Kansas ("CITY")

WHEREAS, the CITY has purchased from MORPHO hardware and software; and

WHEREAS, the CITY desires to enter into an agreement whereby MORPHO will provide maintenance services to the CITY for hardware and software previously purchased and installed.

NOW THEREFORE, in consideration of the compensation to be paid MORPHO and of the mutual agreements herein contained, the parties hereto have agreed, and hereby agree, the CITY for itself and its successors, and MORPHO for itself, and its successors and assigns, or its executors and administrators as follows:

### **SECTION 1. DEFINITIONS**

"Annual Fee" means Thirty Seven Thousand Six Hundred Seventy-three and 01/100 Dollars (\$37,673.01).

"Annual Fee Installment" means the total for the specific month set out in Appendix A.

"Basic Service" means the services described as Basic Service in Section 2.

"Business Days" means Monday through Friday, exclusive of CITY'S business holidays.

"Business Hours" means 8:00 a.m. to 5:00 p.m., Local Time on Business Days.

"Effective Date" means February 16, 2004.

"Confidential Information" means any trade secret, proprietary or confidential information of MORPHO disclosed to CITY that, upon or promptly after disclosure by MORPHO, is marked or otherwise identified as proprietary or confidential, or which CITY otherwise knows or has reason to know is proprietary or confidential. Without limiting the generality of the foregoing, the parties hereby specifically agree that the following items constitute Confidential Information:

- a. the Software and any Enhancements or updates thereto;
- b. the CAXI, FCP, FIP and MORPHO processor boards and image compression boards (collectively, the "Boards") along with any Enhancements to the same; and

- c. any technical information, data or documents related to the Equipment, Software or any Enhancements provided by MORPHO to CITY.

“Customer’s Site” means Overland Park Police Department, 8500 Antioch Avenue, and 12400 Foster, Overland Park, Kansas or such other location as may be agreed upon in writing by the parties.

“Enhancements” means any alterations, additions, improvements or modifications of the Equipment or Software, maintenance of which would increase the cost to MORPHO of providing the Basic Service by more than 5% of the then-current Annual Fee.

“Equipment” means the hardware and software previously installed by MORPHO to wit: full function workstation, MC100, duplex printer, (2) ILSS with pal licenses, (2) UPS, (2) duplex printers, card template, AFIS B & W printer, cardscan workstation, AIX 4.2 software, AIX windows, Morpho Hawkeye workstation software, Morpho XL software with interface to Missouri Highway Patrol as a remote workstation, SAGEM brand integrated live scan system proprietary software (with palm-print software), Morpho cardscan software (copies of purchase orders for this hardware and software is attached hereto and incorporated by reference as Exhibit A), together with any repairs, replacements or corrections furnished by MORPHO (other than Enhancements) during the Term pursuant to this Agreement or any other agreement between the parties.

“Local Time” means local time at Customer’s Site.

“MORPHO’S Standard Changes” means MORPHO’S then current standard rates and charges (including, without limitation, provisions for the reimbursement of travel, parts and other expenses).

“Software” means the computer programs and other software included in the above definition of “Equipment,” together with any corrections or updates of such computer programs (other than Enhancements) as may be furnished by MORPHO during the Term pursuant to this Agreement or any other agreement between the parties.

“Supplemental Services” means any services performed by MORPHO under this Agreement other than the Basic Service.

“Support Year” means any period of one year beginning with the Effective Date or any anniversary of the Effective Date.

“Term” means the term of this Agreement as specified in Section 6.

“User Documentation” means any user manual, instructions and other printed documentation furnished by MORPHO for CITY’S use of the Equipment or Software, as the same may be revised, updated or replaced by MORPHO from time to time during the Term.

## **SECTION 2. BASIC SERVICE**

- 2.1 Service Requests. Upon CITY’S request, MORPHO shall advise CITY of the name, telephone number and location of MORPHO personnel authorized to receive Basic Service request from CITY. MORPHO will use commercially reasonable efforts to ensure that such personnel will be available during Business Hours to provide Basic Service to CITY as set forth in this Agreement.
- 2.2 Preventive Maintenance. On a schedule, mutually agreed upon by the parties, MORPHO will provide preventive maintenance services for the Equipment in accordance with MORPHO’S maintenance manual for the Equipment.
- 2.3 Repair, Replacement and Correction. Upon CITY’S request, MORPHO will endeavor to promptly repair, replace or otherwise correct any Equipment or Software that does not operate substantially in accordance with its specifications as set forth in the applicable User Documentation. If on-site inspection or work is required to correct any Equipment or Software:
  - (a) for requests received between 8:00 a.m. and 3:00 p.m. Local Time on any Business Day, MORPHO will use commercially reasonable efforts to have an authorized representative of MORPHO at Customer’s Site within four (4) hours after receipt of CITY’S Request; and
  - (b) for requests received at any other time, MORPHO will use commercially reasonable efforts to have an authorized representative of MORPHO at Customer’s Site by 8:00 a.m. Local Time on the next Business Day. The obligations set forth in this paragraph 2.3 do not apply to any exclusion under paragraph 2.6 or to expendable items such as lamps.
- 2.4 Documentation Updates. During the Term, within sixty (60) days after receipt of CITY’S written request, MORPHO will make available to Customer any updates to the User Documentation made generally available by MORPHO to its customers (e.g., excluding any version customized for a particular customer).
- 2.5 Supplemental Services. Upon CITY’S request, in addition to Basic Service, MORPHO will make available to CITY such additional consultation,

technical assistance, training and other services as the parties may agree upon in writing from time to time during the Term.

2.6 Exclusions. Basic Service does not include any repair, replacement, correction or other support required:

- (a) with respect to any Enhancements;
- (b) with respect to any obsolete Equipment or Software that CITY fails to upgrade following reasonable notice by MORPHO that continued serviceability of CITY'S system requires suitable replacement of such discontinued items(s); or
- (c) as a result of any:
  - (i) breach of or default under this Agreement by CITY;
  - (ii) neglect, misuse or abuse of the Equipment or Software;
  - (iii) operation of the Equipment or Software in any unsuitable environment or for any unintended purpose as determined by MORPHO at its sole discretion;
  - (iv) loss, casualty damage or injury;
  - (v) alteration, addition, improvement, modification to or relocation or maintenance of the Equipment or Software not performed or authorized by MORPHO
  - (vi) use or combination of the Equipment or Software with any other products, goods, services or other items furnished by anyone other than MORPHO; or
  - (vii) failure by CITY to use the latest versions of the Equipment and Software provided to it by MORPHO.

Further, Basic Service does not include any service which is provided upon CITY'S request, either (a) on any day other than a Business Day, (b) at MORPHO'S facility after Business Hours, or (c) at Customer's Site between 5:00 p.m. and 8:00 a.m. Local Time; provided, that Basic Service shall include services provided between 5:00 p.m. and 7:00 p.m. Local Time if CITY has placed a service order between 1:00 p.m. and 3:00 p.m. Local Time pursuant to Section 2.3 above, and CITY makes its equipment and personnel available to MORPHO'S authorized representative during such hours.

2.7 Enhancements. Any maintenance services required with respect to any Enhancements shall be the subject of a separate written agreement between the parties.

## **SECTION 3. PERFORMANCE OF SERVICES**

- 3.1 Maintenance Parts. MORPHO shall provide all Equipment maintenance parts required in connection with the Basic Service at no cost to CITY. Parts removed from the Equipment in the performance of the Basic Service shall become the property of MORPHO. Parts installed in the Equipment shall become the property of CITY.
- 3.2 Replacement or Repair. In performing the Basic Service, MORPHO shall determine, at its reasonable discretion whether to repair or replace any defective Equipment parts.
- 3.3 Inventory. In order to facilitate the performance of the Basic Services, MORPHO shall use commercially reasonable efforts to maintain a reasonable inventory of Equipment spare parts at a location designated by MORPHO at its sole discretion.

#### **SECTION 4. CUSTOMER RESPONSIBILITIES**

- 4.1 Use and Operation. CITY will use the Equipment and Software (as well as any Enhancements) only for the purposes specified in the User Documentation. CITY will not use or permit the use of the Equipment or Software or any Enhancements for any other purpose. CITY will operate the Equipment, Software and any Enhancements in strict accordance with the User Documentation. Throughout the Term, CITY will provide suitable space, air conditioning (e.g., heating, cooling, circulation and filtering), utilities (e.g. electric power) and other requirements for installation and operation of the Equipment, Software and any Enhancements at Customer's Site in accordance with the User Documentation.
- 4.2 Location. MORPHO may immediately terminate this Agreement if CITY at any time during the Term does not keep the Equipment and Software in its sole possession and control at Customer's Site. CITY shall provide MORPHO with not less than ninety (90) days prior written notice of any relocation of the Software or Equipment to any location other than the one in which it is installed by MORPHO. MORPHO may immediately terminate this Agreement if the new location is determined by MORPHO, at its sole discretion, to be unsuitable for any reason (including, without limitation, due to environmental conditions, in-accessibility, legal issues, or any other reason).
- 4.3 Modifications. CITY will not make or permit any alterations, additions, improvements or modifications to the Equipment or Software without the prior written consent of MORPHO. In the event MORPHO becomes aware of any such unauthorized alterations, additions, improvements or modifications

to the Equipment or Software, MORPHO may, at its sole discretion, terminate this Agreement.

- 4.4 Risk of Loss. CITY will protect the Equipment, Software and any Enhancements from loss, casualty, damage and injury. CITY assumes all risk of loss, casualty, damage or injury relating to the Equipment Software or any Enhancements.
- 4.5 CITY Contact. Throughout the Term, CITY will provide at least one (1) contact in CITY with whom MORPHO may discuss issues related to the maintenance and support of the Equipment and Software and the rights and obligations of the parties hereunder, and who will be authorized to make decisions relating to the same on behalf of CITY.
- 4.6 Diagnostic Software. Upon MORPHO'S request, CITY will allow MORPHO to install on CITY'S system such diagnostic software as MORPHO reasonable deems necessary to perform its obligations hereunder.
- 4.7 Log Entries. CITY shall promptly notify MORPHO of any failures, malfunctions, problems or defects in the Equipment or Software. CITY shall maintain detailed logs of all Equipment and Software failures, malfunctions, problems and defects. Upon request, CITY will make such logs available to MORPHO for use in connection with performance of its obligations hereunder.
- 4.8 Facilities. CITY will provide safe and sufficient access to the Equipment and Software and Customer's Site as reasonably required for MORPHO to perform its obligations and exercise its rights under this Agreement. Further, CITY shall, at no charge to MORPHO:
  - (a) provide access to such machines, communications facilities and other equipment as are reasonably necessary to provide maintenance and support services, provided that MORPHO shall be responsible for any toll calls made by MORPHO or its representatives from Customer's Site; and
  - (b) make available to MORPHO a storage space within reasonable proximity of Customer's Site which MORPHO may use for spare parts and other items required by MORPHO in performance of maintenance and support services. Such storage space shall include adequate heat, light, ventilation, electrical supply and telephone access. CITY shall exercise reasonable care to ensure the physical security of all MORPHO property stored at such storage space, and shall provide adequate fireproof storage for all MORPHO documentation.

## **SECTION 5. COMPENSATION**

- 5.1 Annual Fee. For Basic Services rendered, CITY will pay MORPHO the Annual Fee. The Annual Fee will be paid in Annual Fee Installments on a monthly basis. MORPHO will issue its invoice for the Annual Fee Installment for each month on or about the first day of such month. CITY may prepay the Annual Fee at the beginning of the support year.
- 5.2 Supplemental Services. Unless otherwise agreed by the parties, CITY will pay MORPHO for any Supplemental Services in accordance with MORPHO'S Standard Charges. Unless otherwise agreed by the parties or provided for in MORPHO'S Standard Charges, MORPHO will issue its invoices for any Supplemental Services on a periodic basis as such Supplemental Services are provided.
- 5.3 Payment. CITY will pay each of MORPHO'S invoices within thirty (30) days after receipt. MORPHO may accept any check or payment in any amount without prejudice to MORPHO'S right to recover any balance of the amount due or to pursue any other right or remedy.
- 5.4 Taxes. MORPHO shall bear the cost of all duties and similar fees payable on any replacement parts. The parties acknowledge the CITY is a tax-exempt entity and CITY agrees to provide MORPHO with an exemption certificate.

## **SECTION 6. TERM**

- 6.1 Term. The term of this Agreement shall commence February 16, 2004 and shall continue through February 16, 2005 unless terminated earlier pursuant to Section 7.

## **SECTION 7. TERMINATION**

- 7.1 Termination by the CITY. The CITY shall have the right to terminate this Agreement by giving sixty (60) days advanced written notice to MORPHO prior to termination.

## **SECTION 8. CONFIDENTIAL INFORMATION**

- 8.1 Confidential Information. Except as otherwise authorized by MORPHO in writing, CITY shall take all necessary precautions to prevent:
- (a) disclosure of any Confidential Information (other than to its employees, agents, or representative who need to know the Confidential Information

- for law enforcement purposes and who are under an obligation to hold the Confidential Information in confidence);
- (b) duplication of any Confidential Information; and
- (c) use of any confidential information except in connection with use of the System by the CITY for law enforcement purposes.

8.2 Public Records Disclosure Laws. Nothing in this Section 8 shall be construed as prohibiting the CITY from making available, for public inspection and copying, public records required to be made available under any applicable public records disclosure law. If the CITY is required under any applicable public records disclosure law to make available any Confidential Information, the CITY shall, before disclosure, give MORPHO reasonable notice and an opportunity to challenge the disclosure before the courts to the extent permitted under applicable law.

## **SECTION 9. MISCELLANEOUS PROVISIONS**

9.1 Affirmative Action/Other laws. During the Term of this Agreement, MORPHO agrees as follows:

- (a) MORPHO shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present Agreement because of race, color, religion, age, disability, sex, ancestry, national origin or veteran status.
- (b) MORPHO shall, in all solicitations or advertisements for employees include the phrase "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission).
- (c) If MORPHO fails to comply with the manner in which MORPHO reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, MORPHO shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by CITY.
- (d) If MORPHO is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, MORPHO shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended, in whole or in part, by CITY.
- (e) MORPHO shall include the provisions of subsection (a) through (d) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.
- (f) Provisions (a) through (e) shall not apply to a contract entered into by a contractor (i) who employs fewer than four employees during the term



of such contract; or (ii) whose contracts with the CITY cumulatively total \$5,000 or less during the fiscal year of the CITY.

- (g) MORPHO shall abide by the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision in the Americans with Disabilities Act (42 U.S.C. 1201 et seq.) as well as all federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

- 9.1 Insurance. MORPHO shall maintain throughout the duration of this Agreement insurance in, at minimum, the amounts specified below. All general liability insurance shall be written on an occurrence basis unless otherwise agreed to in writing by CITY.

### **General Liability Insurance Minimum Requirements**

COMMERCIAL GENERAL LIABILITY POLICY (Complete Certificate "Form B):

Each Occurrence:	\$5,000,000.00
General Aggregate:	\$5,000,000.00
Products/Completed Operations Personal & Advertising Injury:	\$5,000,000.00

Policy must include the following:

- (a) Premises and Operations
- (b) Broad Form Contractual
- (c) Independent Contractors

### **Automobile Liability Insurance**

Policy shall protect MORPHO against claims for bodily injury and/or property damage arising from the ownership or use of all owned, hired and/or non-owned vehicles and must include protection for either:

- (a) Any Auto, or
- (b) All Owned Autos; Hired Autos; and Non-Owned Autos.

Limited of liability protection required are the SAME as the limits for the General Liability section. Policy shall insure the contractual liability assumed by MORPHO.

### **Workers' Compensation and Employers' Liability**

This insurance shall protect MORPHO against all claims under applicable state Workers' Compensation laws. MORPHO shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of the Workers' Compensation law. The certificate shall include confirmation that coverage applies in the State of Kansas and the liability limits shall not be less than the following.

Worker's Compensation:	Statutory
Employers' Liability:	
Bodily Injury by Accident	\$100,000.00 Each accident
Bodily Injury by Disease	\$500,000.00 Policy limit
Bodily Injury by Disease	\$100,000.00 Each employee

### **Industry Ratings**

CITY will only accept coverage from an insurance carrier who offers proof that it:

- (a) is licensed to do business in the State of Kansas;
  - (b) carries a Best's policy holder rating of A or better; AND
  - (c) carries at least a Class X financial rating; OR
  - (d) is a company mutually agreed upon by MORPHO and CITY.
- Certification of insurance coverage in subparagraphs a., b., and c. above shall be on one of the CITY'S standard certificate of insurance forms.

Unless otherwise specified, CITY shall be shown as an additional insured on all general and automobile liability policies of insurance.

### **Subcontractors' Insurance**

If a part of the Agreement is to be sublet, MORPHO shall either:

- (a) cover all subcontractors under its insurance policies; or
- (b) require each subcontractor not so covered to secure insurance which will protect against all applicable hazards or risks of loss as, and in the minimum amounts designated.

MORPHO shall indemnify and hold harmless the CITY as to any and all damages, claims or losses, including attorney's fees arising out of the acts or omissions of its subcontractors. The provisions of this Agreement shall not be operative until proof of insurance is submitted to CITY.

- 9.2 Dispute Resolution. CITY and MORPHO agree that disputes relative to this Agreement should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such disputes MORPHO shall proceed with the work as per this Agreement as if no dispute existed; and provided further that no dispute will be submitted to arbitration without the CITY'S express written consent.
- 9.3 Waiver. The failure by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions of this Agreement by the other party at the time designated shall not be construed as a waiver of any default or right to which the other party is entitled, nor shall it in any way affect the right of the party to enforce the provisions, covenants, provisions, or rights thereafter.
- 9.4 Assignment. This Agreement may not be assigned by either party without the express written consent of the other, which consent shall not be unreasonably withheld. MORPHO may nevertheless enter into subcontracts to perform one or more of its obligations hereunder, provided that this will not reduce MORPHO'S obligations to the CITY.
- 9.5 Entire Agreement. This Agreement constitutes the entire agreement of the parties, and supersedes all prior negotiations, representations, and agreements, on the subject matter of this Agreement. No waiver or amendment of any provision of this Agreement shall be valid unless made in writing and executed by both parties.
- 9.6 Notice of Parties. All notices and demands of any kind which either party may serve upon the other party under this Agreement shall be served by personal service, or by leaving the notice or demand at the address set forth below, or by forwarding a copy by first class mail, postage prepaid, or by telex or telecopier addressed as follows:

CITY:                      City of Overland Park, Kansas  
                                 8500 Antioch Road  
                                 Overland Park, Kansas 66212

MORPHO:                Jean-Marc Suchier, President and CEO  
                                 Sagem Morpho, Inc.

1145 Broadway Plaza, Suite 200  
Tacoma, Washington 98402

Or to such other address as may be specified from time to time by the relevant party. Service shall be deemed complete when the notice or demand is received by the party to whom it is addressed.

- 9.7 Force Majeure. MORPHO shall not be responsible for any loss, delay, or breach in delivery or performance of any obligations under this Agreement (other than an obligation to make any payment of money) caused by: third parties, governmental regulations, controls, directions, orders, or other acts; outbreak of a state of emergency, acts of God or the public enemy, war, hostilities, civil commotion, riots, freight or trade embargoes, epidemics, perils of the sea, or other natural casualties; fires, floods, explosions, or serious accidents; strikes, walk-outs, or other labor troubles causing cessation, slow-down, or other interruption of work; communication line failures; MORPHO'S inability, after due and timely diligence, to procure materials, parts, equipment, or services; or any other cause beyond MORPHO'S control or not occasioned by MORPHO'S fault or negligence.
- 9.8 Disclaimer. THIS IS A SERVICE AGREEMENT. THERE ARE NO WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 9.9 Choice of Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Kansas.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

Customer: City of Overland Park, Kansas

By: \_\_\_\_\_  
Ed Eilert, Mayor

ATTEST:

\_\_\_\_\_  
Marian Cook  
City Clerk

APPROVED AS TO FORM:

---

Tammy M. Owens  
Assistant City Attorney II

MORPHO: Sagem Morpho, Inc..

---

Jean-Marc Suchier  
President/CEO

ATTEST:

---

## CORPORATE ACKNOWLEDGMENT

State of \_\_\_\_\_)  
County of \_\_\_\_\_) ss.

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came \_\_\_\_\_, \_\_\_\_\_ of Sagem Morpho, Inc., a corporation duly organized and existing under and by virtue of the laws of Delaware and who is personally known to me to be such officer and who is personally known to me to be the same person who executed as such officer the attached instrument on behalf of said Corporation, and such person duly acknowledged the execution of the same to be that act and deed of said Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

My Commission Expires:

---