

**CITY CLERK
ORIGINAL**

**LIBRARY SYSTEMS SALES AGREEMENT
BETWEEN 3M AND THE CITY OF GLENDALE**

C-8052
05/22-2012

THIS SALES AGREEMENT ("Agreement") is made and effective as of the 22nd day of May, 2012 between 3M Company, a Delaware corporation, 3M Center, Bldg 225-4N-14, St. Paul, Minnesota 55144 ("3M"), and City of Glendale, located at 5959 West Brown Road, Glendale, Arizona 85302 ("Customer"). Customer and 3M are individually referred to herein as a "Party" and collectively referred to herein as the "Parties".

Terms and Conditions:

1. Definition. The definitions below shall have the same meaning throughout the Agreement and the attached Exhibits.
 - A. "Agreement" means this 3M Purchase Agreement and the following attachments:
 - Exhibit A – Equipment, Services and Pricing
 - Exhibit B – Software License Agreement(s):
 - Attachment B-1 – 3M SelfCheck Software License
 - Attachment B-2 – 3M Digital Library Assistant and Digital Data Manager Software License
 - Exhibit C – Sample Conversion Station Agreement
 - Exhibit D – Sample Service Agreement
 - Exhibit E – Product Warranty
 - B. "System" means all software, hardware, tags and related supplies as set forth in Exhibit A.
2. Installation. 3M will provide installation. Site preparation to be provided by the customer prior to installation to include the following: electrical power, data drop, conduit runs, hole drilling, and moving of existing fixtures that may be required.
3. Term. This Agreement shall be in effect for twelve (12) months from the date it is fully executed.
4. Software. Software included in the Equipment listed above is licensed to Customer pursuant to the applicable license agreements which are attached hereto as Exhibit B, Attachments 1 through 3. In no event will Customer permit concurrent use by more than the number of users for which applicable license fees have been paid. A breach of the applicable license agreement shall be considered a breach of this Agreement.
5. Software Ownership. The Software is and shall remain at all times the personal property of 3M (or its suppliers), irrespective of how the Software may be installed or used by Customer. 3M (or its suppliers) retains all ownership rights in the Software and Customer recognizes and agrees that it does not acquire, by this Agreement, any ownership rights, including copyright rights in the Software.
6. Support. Support obligations are as set forth in Exhibit D – Service Agreement.
7. Purchase Orders. Buyer shall place POs for all component purchases under this Agreement. The only terms in such POs that will bind 3M will be the Buyer's name and address, dates, quantities, and description of components, provided that such terms do not conflict with nor add to the terms of this Agreement.
8. Pricing. Prices include installation, a twelve (12) month Service Agreement, shipping, and Product Warranty as set forth in Exhibits D and E.
9. Payment. All payments due under the Agreement shall be made net 30 days from date on invoice. Invoice is generated at time of shipment.
10. Title and Risk of Loss. 3M retains sole ownership and Customer is solely responsible for any damage or loss, of the System until Customer makes full payment therefore or until 3M receives possession of the System. Title to the System, other than Software and the 811 Conversion Station, will transfer to Customer upon 3M's receipt of full payment therefore.
11. Taxes. Prices do not include applicable taxes which shall be paid by Customer.
12. Non-Disclosure Obligations. Except as required by public information acts, customer acknowledges that the System contains valuable trade secrets and proprietary information owned by 3M or those claiming through 3M. Proprietary

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and confidential information directly and indirectly related to the System ("3M Confidential Information") will be disclosed by 3M to Customer during the term of this Agreement. The relationship created under this Agreement and the existence of this Agreement and any of its terms and conditions, including but not limited to pricing, are also considered 3M Confidential Information. 3M acknowledges the Customer is an Arizona municipal corporation subject to Arizona Public Record Law. If Customer receives a public record request for 3M Confidential Information, Customer will promptly notify 3M about the request. If 3M objects to the request to disclose 3M Confidential Information, 3M will notify Customer within five business days of 3M's objection and 3M will assume responsibility for all aspects of the request. 3M will indemnify, defend and hold harmless the receiver from any claims, actions, lawsuits, or any other controversy or remedy, in whatever form, that arises from the non-disclosure of 3M Confidential Information. 3M will also reimburse Customer all legal fees and costs incurred by Customer and pay any penalties or judgments imposed on Customer. Confidential Information does not include information that (a) was in Customer's possession before receipt from 3M, provided that the information is not known to Customer to be subject to another confidentiality agreement with or other obligation of secrecy to 3M; (b) is or becomes generally available to the public through no fault of Customer; (c) is received in good faith by Customer from a third party and is not subject to an obligation of confidentiality owed to 3M or a third party; or (d) is independently developed by Customer without reference to 3M Confidential Information received hereunder. The obligations contained in this paragraph shall survive termination of this Agreement.

13. Credit. 3M may, at its sole discretion, change or limit the amount or duration of credit to be allowed to Customer. 3M may cancel any accepted order or delay the shipment of the order, if Customer fails to meet payment schedules or other credit or financial requirements established by 3M.
14. Force Majeure. Neither party shall be responsible for any delay or failure of performance hereunder due to, including, but not limited to, strikes, lockout, shortage of labor or other labor disturbances, riots, invasion, war, fire, explosion, sabotage, storm, flood, earthquake, inability to obtain suitable material, fuel, power, or transportation, or any other causes whatsoever beyond the reasonable control of the parties.
15. Relationship of the Parties. Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, agent, or employment relationship between the parties. Neither party shall have the authority to obligate or otherwise act as a representative of, or agent for, the other party for any purpose, and neither party shall make any representations or hold itself out as having such authority.
16. Limitation of Liability. 3M SHALL NOT BE LIABLE TO THE OTHER PARTY, ITS SUCCESSORS, OR ASSIGNS FOR INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, OR LOSS OF LABOR, OVERHEAD, BUSINESS OPPORTUNITY, DATA, INCOME, PROFIT, REVENUE OR SAVINGS OF ANY PARTY, INCLUDING THIRD PARTIES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE LEGAL THEORY ASSERTED, INCLUDING BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, INTENDED CONDUCT, STRICT LIABILITY IN TORT, EQUITY OR ANY OTHER LEGAL THEORY. IN NO EVENT SHALL 3M'S MAXIMUM LIABILITY EXCEED THE PRICE PAID TO 3M FOR THE DELIVERABLE(S) OR SERVICE(S) TO WHICH THE LIABILITY RELATES.
17. Disputes. Any questions, claims, disputes or litigation arising from or related to the making, performance or alleged breach of this Agreement, or to any available remedies (a "Dispute"), shall be governed by the laws as set forth in Sec. 18 below, and shall be resolved as follows: (i) upon written notice of Dispute (the "Notice"), by in-person negotiation between business representatives of the parties who have authority to fully resolve the Dispute; (ii) if within sixty (60) days of the Notice the Dispute has not been fully resolved, the parties shall conduct a confidential non-binding mediation using a location, mediator, and rules acceptable to both parties (with the costs of mediation shared equally); (iii) if the Dispute is not then resolved, and as a last resort only, either party may commence litigation; provided that any lawsuit must be filed and maintained in accordance with Section 18 below. Nothing herein shall preclude either party from taking whatever actions it deems necessary to prevent immediate, irreparable harm to its interests.
18. Applicable Law and Venue. This Agreement shall be governed by the laws of the State of Arizona, without regard to its principles of conflicts of law. Any lawsuit commenced by a party to this Agreement must be commenced in a federal or state court of competent jurisdiction in Maricopa County, Arizona.
19. Assignment. No party to this Agreement may assign, transfer, sublicense, or delegate this Agreement or any of its rights, duties, obligations, or interests under this Agreement without 3M's prior written approval. This Agreement will

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not be considered a transferable asset. 3M expressly reserves the right to terminate this Agreement on: (i) the sale of all or substantially all of the stock of any party to this Agreement, (ii) the sale or transfer of the entire business or substantially all the assets of any party to this Agreement, or (iii) any significant change in the management or control of any party to this Agreement. Any assignment, transfer, or delegation of this Agreement or any interest in this Agreement, without 3M's prior written consent, is voidable at 3M's option and cause for termination of this Agreement. Nothing in this Agreement will be construed to grant any person or entity not a party to this Agreement any rights or powers whatsoever. No person or entity will be a third-party beneficiary of this Agreement.

- 20. Waiver. The waiver or failure of either party to exercise in any respect any rights provided for in this Agreement shall not be deemed a waiver of any further right by such party under this Agreement.
- 21. Severability. If a court or tribunal of competent jurisdiction will for any reason, hold any provision of this Agreement invalid, illegal, or unenforceable, the provision will be deemed severable and the invalidity, illegality, or unenforceability will not affect any other provision of this Agreement which must be enforced in accordance with the intent of this Agreement, however, a party adversely affected by such holding may terminate this Agreement effective immediately, without penalty, upon notice thereof to the other party.
- 22. Acceptance. This Agreement is not binding on 3M until it has been accepted in writing by Security Systems Division at 3M Center, St. Paul, MN. This is the sole and exclusive manner of acceptance. Any other promise or act, including a promise to ship or shipment, does not constitute acceptance by 3M of this Agreement. Once signed, please deliver this Agreement to 3M by fax or mail: 3M SSD Customer Service Fax 1-800-223-5563 or 3M Company, PO Box 33682, St. Paul, MN 55113-3682. For questions, call Customer Service 1-800-328-0067. Fed ID# 41-041-7775.
- 23. Entire Agreement and Amendments. This Agreement, its Exhibits, and the Addendum are intended to be the final, complete and exclusive statement of all terms and conditions of the agreement between the parties relating to the matters covered and supersedes all prior agreements, whether written or oral, all other communications between the parties relating to the subject matter of this Agreement and any course of dealing or usage of trade. Each party agrees that it has not relied on any representation or warranty not expressly stated in this Agreement. This Agreement can be amended only by a writing signed by both parties. No oral modification is possible. A course of performance does not effect a modification or a waiver unless ratified in writing by the party to be bound.

Accepted and Agreed to:

3M Company
By: 
Print Name: Mary Zilles
Contract Administrator
Title: _____
Date: 6/8/12

Customer
Name: City of Glendale
By: 
Print Name: Horatio Skeete
Title: Assistant City Manager
Date: 5/24/12

ATTEST:

City Clerk

Approved as to form:


Craig Tindall
City Attorney

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ADDENDUM

3M further agrees as follows:

I. Immigration Law Compliance.

- A. 3M, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. f 23-214(A) which requires registration and participation with the E-Verify Program.
- B. Any breach of warranty under subsection (A) above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- C. City of Glendale ("Customer") retains the legal right to inspect the papers of 3M or subcontractor employee who performs work under this Agreement to ensure that 3M or any subcontractor is compliant with the warranty under subsection (A) above.
- D. Customer may conduct random inspections, and upon request of the Customer, 3M shall provide copies of papers and records demonstrating continued compliance with the warranty under subsection (A) above. 3M agrees to keep papers and records available for inspection by the Customer during normal business hours and will cooperate with Customer in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this Section I.
- E. 3M agrees to incorporate into any subcontracts under this Agreement the same obligations imposed u^pon itself and expressly accrue those obligations directly to the benefit of the Customer. 3M also agrees to require may subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the Customer.
- F. 3M's warranty and obligations under this Section I to the Customer are continuing throughout the term of this Agreement or until such time as the Customer determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- G. The "E-Verify Program" above means the employment verification program administered by the United States Department of. Homeland Security, the Social Security Administration, or any successor program.

II. Prohibitions. 3M certifies under A.R.S. §§ 35-391 *et seq.*, and 35-393 *et. seq.*, that it does not have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.

III. Conflicts, This Agreement is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.

NOTHING FOLLOWS

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**Exhibit A
Equipment, Services and Pricing**

Customer Name: City of Glendale

Installation Site(s): 5959 West Brown Road, Glendale, Arizona 85302

| Equipment (includes 12 months of service and installation, shipping and handling) | Quantity | Unit Price | Total |
|---|----------|-------------|---------------------|
| 3M V-Series to R-Series SelfCheck upgrade, wedge model (Note 1) | 9 | \$2,998 ea | \$26,982 |
| 3M Detection System Model 9102 buried cable/base plate | 3 | \$14,150 ea | \$42,450 |
| 3M Detection System Model 9101 direct mount | 2 | \$11,653 ea | \$23,306 |
| 3M Model 895 Pad Staff Workstation | 11 | \$2,995 ea | \$32,945 |
| 3M Model 803 Digital Library Assistant (DLA) with Digital Data Manager (DDM) | 3 | \$5,500 ea | \$16,500 |
| 3M SelfCheck C- Series with RFID | 3 | \$13,219 ea | \$39,657 |
| 3M Command Center for 9100 Gates (up to 5 gates) | 1 | \$3,499 ea | \$3,499 |
| RFID Tags | | | |
| 3M ISO RFID Tags | 384,000 | \$0.23 ea | \$88,320 |
| 3M RFID Hub Markers | 51,000 | \$0.32 ea | \$16,320 |
| Conversion Rental | | | |
| 3M Conversion System (1 month rental) | 5 | \$739 ea | \$3,695 |
| Estimated Tax on Tags and Equipment (Note 2) | | | \$23,469.66 |
| Estimated Shipping and Handling (Note 3) | | | \$1,829.00 |
| Total | | | \$318,972.66 |

Note 1: Current service agreement will continue until expiration.

Note 2: Tax is estimated and will be applied according to tax laws

Note 3: Estimated shipping and handling. Shipping and handling billed as actual at the time of shipment.

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Attachment B-1

3M SELF-CHECK SYSTEM SOFTWARE LICENSE

USE OF THE 3M™ SELF-CHECK™ SYSTEM SOFTWARE IS GOVERNED SOLELY BY THE TERMS OF THIS LICENSE. THE SOFTWARE MAY BE USED BY CUSTOMER AND ITS EMPLOYEES AND AGENTS ONLY FOR CUSTOMER'S BENEFIT AND IN ACCORDANCE WITH THE LICENSE SET FORTH BELOW:

1. 3M SelfCheck System Software. As used in this License, "Software" means the proprietary 3M SelfCheck System Software licensed to Customer (initial below):

3M SelfCheck System "R Series" Software

3M SelfCheck System "C Series" Software

3M Intelligent Return and Sorter Software

3M SelfCheck System PAD Staff Workstation "Model 895/896" Software

including but not limited to any updates (e.g., maintenance releases, modifications to existing functionality or new functionality) that may be provided to Customer by 3M, at 3M's option, during the term of this License. 3M is under no obligation to issue updates.

2. License. During the term of this License, 3M grants Customer the nonexclusive, nontransferable right to use the Software solely for Customer's internal business purposes, and only in combination with 3M Self-Check system hardware, with the exception of the Model 895 Software which may be installed on a single personal computer at the Customer's location. Except as provided above, Customer may not use the Software with scanning equipment or similar hardware supplied by any other party. The parties acknowledge that the Software is the sole and exclusive property of 3M or its licensors. Portions of the Software provided by 3M's licensors may be subject to additional license terms made available to Customer either as part of the license terms below or referenced by 3M and contained in a separate attachment, and Customer hereby assents to those terms in consideration for its use of the Software. Certain features of the Software may be provided on a time limited basis or subject to other conditions, as referred to in the exhibits to the Sales Agreement between 3M and the Customer, or other addendum to this License. 3M's grant of a license is expressly conditioned upon Licensee's use of the Software pursuant to this License; any other use shall be considered unlicensed and shall subject Licensee to any and all remedies available to 3M at law or equity, including but not limited to claims of copyright infringement.

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4. Operating Results. Customer is solely responsible for the use it makes of the Software, including, but not limited to, monitoring and verifying the input to and output from the Software. 3M makes no warranties whatsoever about the results to be obtained by Customer's use of the Software.

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6. Limitation of Liability. 3M and its licensors will not be liable to Customer for any loss or damage resulting from lost data or information. Further, except for personal injury, 3M and its licensors will not be liable for any indirect, special, incidental or consequential damages or economic loss based upon breach of warranty, breach of contract, negligence, strict liability in tort or any other legal theory, even if 3M has been advised of the possibility of such damages. THE PARTIES AGREE THAT 3M'S AND ITS LICENSORS' MAXIMUM CUMULATIVE LIABILITY FOR ACTUAL DAMAGES FOR ALL MATTERS ARISING OUT OF OR RELATING TO THIS LICENSE SHALL NOT EXCEED TEN THOUSAND DOLLARS (\$10,000) IN THE AGGREGATE. Some states or countries may have laws that require liability rights different from those stated above. In such states or countries, the minimum required liability terms shall apply.

7. Term and Termination. This License will terminate if (i) a party materially breaches a provision of this License and fails to cure such breach within thirty (30) days after receiving a written notice of breach from the nonbreaching party; or (ii) Customer discontinues use of the Software. Upon termination of this License for any reason, Customer shall cease all further use of the Software and, at 3M's option, destroy or return to 3M all copies then in Customer's possession or control. At 3M's request, Customer will certify to 3M in writing that it is in full compliance with the requirements of this paragraph.

8. U.S. Government End Users. This provision applies to all acquisitions of this Software by or for the Federal Government or by any prime contractor or subcontractor (at any tier) for the Federal Government under any contract, grant, cooperative agreement, other transaction, or other agreement with the Federal Government. By accepting delivery of this Software, the Federal Government hereby agrees that this Software qualifies as "commercial" computer software within the meaning of the acquisition or financial assistance regulations applicable to this procurement. The terms and conditions of this License shall apply to the Government's use and disclosure of this Software and shall supersede any conflicting contract terms and conditions. If this License fails to meet the Government's needs or is inconsistent with federal law, the Federal Government agrees to return this Software, unused, to 3M. The following additional statement applies only to acquisitions governed by DFARS Subpart 227.4 (October 1988): "Restricted Rights—Use, duplication and disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 (OCT. 1988)."

9. Export Law Assurances. The laws and regulations of the United States restrict the export and re-export of commodities and technical data of United States origin, including the Software. Customer agrees that it will not export or re-export the Software in any form without the appropriate United States Government and foreign government licenses. Customer agrees that its obligations under this paragraph survive and continue after any termination or expiration of rights under this License.

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"Legal Entity" shall mean the union of the acting entity and all other entities that control, are controlled by, or are under common control with that entity. For the purposes of this definition, "control" means (i) the power, direct or indirect, to cause the direction or management of such entity, whether by contract or otherwise, or (ii) ownership of fifty percent (50%) or more of the outstanding shares, or (iii) beneficial ownership of such entity.

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"Object" form shall mean any form resulting from mechanical transformation or translation of a Source form, including but not limited to compiled object code, generated documentation, and conversions to other media types.

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END OF TERMS AND CONDITIONS

3M 936469v1

**LIBRARY SYSTEMS SALES AGREEMENT
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Attachment B-2

3M Digital Library Assistant Software License

Use of the 3M Digital Library Assistant Software ("DLA Software"), is governed by the terms of the license between 3M and Customer. The Software may be used by Customer and its employees and agents only for Customer's benefit and in accordance with the license between 3M and Customer, as set forth below.

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4. Operating Results. Customer is solely responsible for the use it makes of the Software, including, but not limited to, monitoring and verifying the input to and output from the Software.

5. LIMITED WARRANTY AND DISCLAIMER 3M warrants to Customer that, for a ninety (90) day period following delivery of the Software, the then-current version of the Software will perform in substantial accordance with the corresponding documentation when used as instructed. If the Software fails to meet this warranty, 3M's sole obligation and Customer's sole remedy will be, at 3M's option, correction of the Software to perform as warranted or refund of the applicable separate license fee paid. This warranty is void if the Software is modified or used with software or equipment for which it was not intended. **EXCEPT FOR THIS LIMITED WARRANTY, 3M DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE AND THOSE ALLEGEDLY ARISING FROM TRADE USAGE OR COURSE OF DEALING. 3M DOES NOT WARRANT THAT THE SOFTWARE IS FREE FROM ALL BUGS, ERRORS OR OMISSIONS.**

6. Limitation of Liability. 3M will not be liable to Customer for any loss or damage resulting from lost data or information. Further, except for personal injury, 3M will not be liable for any indirect, special, incidental or consequential damages or economic loss based upon breach of warranty, breach of contract, negligence, strict liability in tort or any other legal theory, even if 3M has been advised of the possibility of such damages. **THE PARTIES AGREE THAT 3M'S MAXIMUM CUMULATIVE LIABILITY FOR ACTUAL DAMAGES FOR ALL MATTERS ARISING OUT OF OR RELATING TO THIS LICENSE SHALL NOT EXCEED TEN THOUSAND DOLLARS (\$10,000).**

7. Term and Termination. This License will terminate (i) if either party materially breaches a provision of this License and fails to cure such breach within thirty (30) days after receiving a written notice of breach from the nonbreaching party; or (ii) if Customer discontinues use of the Software. Upon termination of this License for any reason, Customer shall cease all further use of the Software and destroy or return to 3M all copies then in its possession or under its control. At 3M's request, Customer will certify to 3M in writing that it is in full compliance with the requirements of this paragraph.

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1. Software. As used in this License, "Software" means the DDM Software is licensed to Customer, including any updates (e.g., maintenance releases, modifications to existing functionality or new functionality) that may be provided to Customer by 3M during the term of this License. 3M is under no obligation to issue updates.

2. Software License. During the term of this License, 3M grants Customer the nonexclusive, nontransferable right to install the Software on a single computer at a single Customer location ("Site") and to use the Software solely for the purpose of creating an interface to other 3M Library Systems Software.

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4. Operating Results. Customer is solely responsible for the use it makes of the Software, including, but not limited to, monitoring and verifying the input to and output from the Software.

5. LIMITED WARRANTY AND DISCLAIMER 3M warrants to Customer that, for a ninety (90) day period following delivery of the Software, the then-current version of the Software will perform in substantial accordance with the corresponding documentation when used as instructed. If the Software fails to meet this warranty, 3M's sole obligation and Customer's sole remedy will be, at 3M's option, correction of the Software to perform as warranted or refund of the applicable separate license fee paid. This warranty is void if the Software is modified or used with software or equipment for which it was not intended. **EXCEPT FOR THIS LIMITED WARRANTY, 3M DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE AND THOSE ALLEGEDLY ARISING FROM TRADE USAGE OR COURSE OF DEALING. 3M DOES NOT WARRANT THAT THE SOFTWARE IS FREE FROM ALL BUGS, ERRORS OR OMISSIONS.**

6. Limitation of Liability. 3M will not be liable to Customer for any loss or damage resulting from lost data or information. Further, except for personal injury, 3M will not be liable for any indirect, special, incidental or consequential damages or economic loss based upon breach of warranty, breach of contract, negligence, strict liability in tort or any other legal theory, even if 3M has been advised of the possibility of such damages. **THE PARTIES AGREE THAT 3M'S MAXIMUM CUMULATIVE LIABILITY FOR ACTUAL DAMAGES FOR ALL MATTERS ARISING OUT OF OR RELATING TO THIS LICENSE SHALL NOT EXCEED TEN THOUSAND DOLLARS (\$10,000).**

7. Term and Termination. This License will terminate (i) if either party materially breaches a provision of this License and fails to cure such breach within thirty (30) days after receiving a written notice of breach from the nonbreaching party; or (ii) if

**LIBRARY SYSTEMS SALES AGREEMENT
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Customer discontinues use of the Software. Upon termination of this License for any reason, Customer shall cease all further use of the Software and destroy or return to 3M all copies then in its possession or under its control. At 3M's request, Customer will certify to 3M in writing that it is in full compliance with the requirements of this paragraph.

8. U.S. Government End Users. This provision applies to all acquisitions of this Software by or for the Federal Government or by any prime contractor or subcontractor (at any tier) for the Federal Government under any contract, grant, cooperative agreement, other transaction, or other agreement with the Federal Government. By accepting delivery of this Software, the Federal Government hereby agrees that this Software qualifies as "commercial" computer software within the meaning of the acquisition or financial assistance regulations applicable to this procurement. The terms and conditions of this License shall apply to the Government's use and disclosure of this Software and shall supersede any conflicting contract terms and conditions. If this License fails to meet the Government's needs or is inconsistent with federal law, the Federal Government agrees to return this Software, unused, to 3M. The following additional statement applies only to acquisitions governed by DFARS Subpart 227.4 (October 1988): "Restricted Rights—Use, duplication and disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 (OCT. 1988)."

9. General Provisions. This License constitutes the entire agreement between 3M and Customer with respect to use of the Software. This License is governed by and construed under Minnesota law, excluding its conflicts of law provisions. This License may not be amended, assigned, sublicensed or transferred by Customer without 3M's prior written consent. Failure of 3M to enforce any provision will not constitute a waiver of such provision or of the right to enforce such provision. If any provision of this License is held to be unenforceable by a court, the validity and enforceability of the other provisions will not be affected.

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Exhibit C

Sample Conversion Station Agreement

This Equipment Loan Agreement is made between 3M Company, Track & Trace Solutions, a corporation having its principal business place at 3M Center, St. Paul, Minnesota, 55144-1000; and the Customer as identified below, subject to the following terms and conditions.

1. Scope and Purpose

3M has designed and developed a new 3M™ RFID Conversion Station (the "System") to enable application of 3M RFID Tags on to library materials. 3M agrees to supply one or more Systems (as identified in the attached description of the System), for Customer's exclusive use and possession, during the term of this Agreement. For its part, Customer agrees to purchase 3M RFID Tags for use with the System and not use the System with like products offered through persons other than 3M.

2. Bailment of the System

A. 3M has delivered, or will as soon as reasonably possible upon signature of this Agreement deliver, to Customer the System(s) for use only by Customer. If the System(s) does not perform as represented, 3M will replace the System as soon as reasonably possible with a like unit. 3M represents that it is the owner of the System, but makes no other warranties, express or implied, including any implied warranty of **merchantability** concerning use, operation, or performance of the System(s).

B. Throughout the term of this Agreement, 3M shall allow Customer to use and operate the System. Customer shall provide such normal and ordinary maintenance and repair to the System as may be necessary or recommended by 3M in the accompanying operator's manual, video training tape, and the like.

C. To defray 3M's cost of the accessory kit, telephone support, parts for equipment repair, customer training, maintenance tips, product updates, and product trade-out (if needed), Customer agrees to pay 3M an Equipment Support Fee. The Support Fee shall be invoiced by 3M upon shipment of the system, and will be paid by Customer in accordance with Section 10 of the Agreement. The Equipment Support Fee is based on the estimated application time of the D8 Tags. No refund shall be made if application is completed earlier than anticipated. A separate Shipping and Handling Fee will cover the cost of freight in and out.

Customer Information

| | | | |
|---------------------------------|--------------------|------------------|------|
| Customer Name | Customer Address | City, State, Zip | |
| Customer Representative (print) | Customer Signature | Title | Date |

**LIBRARY SYSTEMS SALES AGREEMENT
BETWEEN 3M AND THE CITY OF GLENDALE**

**3M Conversion Station
Equipment Support Fee**

| No. of Units | Estimated Application Time | Start Date | Finish Date | Price |
|---|-----------------------------------|-------------------|------------------------|----------------------------|
| 1 st Unit | 1 Month (as per agreement) | | | \$739 |
| 2 nd Unit | 1 Month (as per agreement) | | | \$739 |
| 3 rd Unit | 1 Month (as per agreement) | | | \$739 |
| 4 th Unit | 1 Month (as per agreement) | | | \$739 |
| 5 th Unit | 1 Month (as per agreement) | | | \$739 |
| Shipping & Handling (\$660 per Unit) | | | | included |
| Total | | | | Pricing per contract above |
| 3M Sales Representative | | Date | St. Paul Approval Date | |

All terms and conditions as continued on reverse side of the Agreement are a part thereof.

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3. Obligations of Customer

A. Throughout the term of this Agreement, Customer shall use the Equipment exclusively with 3M RFID Tags. Customer shall not, without 3M's prior written approval, lend nor permit the use of the System by any other person, or for any other of Customer's customers.

B. The equipment shall, at all times, be kept at Customer's facility. When the Equipment is not in use, Customer shall ensure that it is maintained properly in a separate area of its facility.

C. Customer shall not directly or indirectly assist others to design, build, copy or create the Equipment.

D. Customer shall be responsible for the cost to repair or, if necessary, replace the Equipment due to any damage, injury or loss to the Equipment to the extent caused by the negligent or wrongful conduct of Customer or any of its employees, contractors, agents, or other persons for whom it is responsible. However, Customer shall not be responsible or liable for ordinary and expected wear and tear to the Equipment. If necessary, the Support Agreement may be renewed at applicable prices in effect at the same time order is received. Orders may be placed by calling 1-800-328-0067 (press 2).

4. Nontransfer of Title

Full and undivided title to the System and all components thereof (except for RFID Tags purchased by Customer) shall at all times remain exclusively with 3M. This Agreement is not intended in any way to state or imply any right or obligation to purchase or sell the System. Customer shall not create, or permit to arise, any lien, encumbrance, security interest, or other possessory or nonpossessory interest in the System. Customer agrees not to remove or cover any marks on the System which identify it as the property of 3M. Customer shall not misrepresent ownership of the System and shall not attempt to sell transfer it to another or pledge the System as collateral for a loan or otherwise encumber the System; and (3) Customer agrees to execute any documents 3M may reasonably request which memorialize or record 3M's ownership of the System.

5. Software License

A. 3M grants to Customer a non-exclusive, non-transferable license to use the software listed above, related documentation and the System Operating Manual (the Software) solely in connection with the System on the terms and conditions set forth in this agreement. The Software contains copyrighted materials, trade secrets and other proprietary materials and remains the property of 3M, or other companies which have licensed their Software to 3M. Customer agrees to keep the Software confidential and agrees that it will not disclose the contents of the Software to anyone.

B. Customer shall not decompile, reverse engineer, disassembly or otherwise reduce the Software to a human-perceivable form, or allow any third party to do so. Customer shall not modify, distribute or create any derivative work based upon the Software in whole or in part. Customer also agrees not to copy the Software or provide copies of the Software to any third party, or allow any third party to use the Software without prior written consent.

C. The Software provided under this Bailment shall perform the functions as described in the Product Manual(s). 3M's sole liability and Customer's exclusive remedy for deficiencies in the Software that cause failures of the described functions will be to correct the efficiencies with revised software to be provided free of charge. New Releases of the Software, especially when improved or enhanced functions are added are NOT provided as free upgrades.

6. Term and Termination

A. This Agreement begins upon approval by an authorized representative of both parties (the "effective date") and shall continue for the period as defined on the first page of this Agreement.

B. Either 3M or Customer may terminate this Agreement and cause the return of the System at any time upon five (5) business days notice for any reason the notifying party deems sufficient, with or without good cause. Upon termination of the Agreement, the parties shall cooperate in returning the System to 3M.

7. Mutual Limitation of Liability

Neither party shall under any circumstances be liable to the other for any damages, loss or liability of any kind (including without limitation any incidental, special or consequential damages) related to the making, performance, nonperformance, expiration

**LIBRARY SYSTEMS SALES AGREEMENT
BETWEEN 3M AND THE CITY OF GLENDALE**

or termination of this Agreement, or in any way related to the products and services supplied by either party in connection with this Agreement. The parties understand and agree that Customer shall be responsible to its employees and others for the safe operation and use of the System and all component parts thereof. Accordingly Customer assumes all responsibility and any liability for any and all liabilities, claims, demands, actions, losses, costs and expenses, including legal expenses and attorneys' fees in any way relating to or arising out of the possession, use, operation, location, maintenance or modification of the System.

8. General Terms

This Agreement, and all matters concerning its making, performance, breach, or any remedies available hereunder are governed by Arizona law. It may not be modified except by a writing signed by an authorized officer or employee of each party. Any lawsuits in any way related to either party's performance in connection with this Agreement may be venued only in Arizona. This document contains the parties' entire agreement and replaces any prior oral or written agreements or understandings.

**LIBRARY SYSTEMS SALES AGREEMENT
BETWEEN 3M AND THE CITY OF GLENDALE**

Exhibit D

Sample Service Agreement

**3M
Service
Agreement**
Library Systems

Agreement Issued To:

This Service Agreement covers the Equipment listed below for the period shown.
(Please see reverse side for important terms and conditions.)

| Model Number | Serial Number | Annual Fee | Zone Fee |
|---------------------|----------------------|-------------------|-----------------|
|---------------------|----------------------|-------------------|-----------------|

When You Need Service: Call 1-800-328-0067 and select option #1 to place a service call. You'll need to give your Model and Serial Number when requesting service.

Service Agreement Number: _____

Service Agreement Effective Period: Begins: _____ Ends: _____

OUR PLEDGE

We are a worldwide team of professional men and women committed to providing innovative products and services that exceed customer expectations. By constantly consulting our customers, and our competitors' customers, we seek to be the business partner that inspires confidence and trust through market-directed research and product development.

**LIBRARY SYSTEMS SALES AGREEMENT
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Service Agreement Terms and Conditions

WHAT WE WILL DO:

HARDWARE: In consideration of payment of the agreement price, 3M will furnish labor and replacement parts necessary to maintain the Equipment specified in this agreement in proper operating condition during the term of this agreement, provided that the Equipment is installed by an authorized 3M Service Provider and used as directed. This Service Agreement covers Equipment failure during normal usage. 3M agrees to provide:

- On-site remedial maintenance during On-Site Coverage Hours When 3M is notified that the Equipment is not in good working order. 3M will provide a toll-free telephone number for Customer to place, and 3M will receive, Equipment maintenance service calls twenty-four (24) hours per day, seven (7) days per Week.
- All labor, service parts and Equipment modifications 3M deems necessary to maintain the Equipment in good working order. All service parts will be furnished on an exchange basis and will be new parts or parts of equal quality. For certain Equipment, 3M reserves the right to replace the entire unit with new equipment or equipment of equal quality when 3M determines that replacement is more economical than on-site repair. All Equipment and service parts removed for replacement become the property of 3M.

SOFTWARE: In consideration of payment of the agreement price, 3M will furnish over-the-phone software support and remote troubleshooting of the 3M Software specified in this agreement as well as updates necessary to maintain the 3M Software specified in this agreement in proper operating condition during the term of this agreement, provided that the 3M Software is installed and used as directed. 3M agrees to provide:

- All software configuration modifications 3M deems necessary to maintain the 3M Software in good working order
 - 3M Software updates
 - Internet Filter list updates (as applicable)
- A toll-free telephone number for Customer to place, and 3M to receive, software support calls. Over-the-phone software support calls may be placed twenty-four (24) hours per day, seven (7) days per week. Calls will be addressed during 3M Software Support Coverage Hours in the order they were received.

WHAT IS NOT COVERED: The basic maintenance fee does not include, and 3M is not obligated to provide or perform repair of damage or increase in service time caused by (i) failure of Customer to provide continually a proper operating environment and supply of power as prescribed by the Equipment manufacturer; (ii) accident; (iii) Acts of God, including but not limited to fire, flood, water, wind and lightning; (iv) neglect, abuse or misuse; (v) failure of Customer to follow 3M's published operating instructions; (vi) modification, service or repair of the Equipment by other than 3M authorized personnel; (vii) use of Equipment for purposes other than for which designed; (viii) painting or refinishing the equipment; (ix) relocation of the equipment; (x) replacement of broken or damaged cabinetry; to include items such as lattices, base covers, book check covers, etc.; (xi) electrical work external to the Equipment; (xii) cosmetic restoration (e.g., filling of holes in floor or walls, plugging or wire run openings, removal of tape residue, etc.) after removal or relocation of equipment for any reason; (xiii) restoration of Equipment performance when it has been degraded by placement of unauthorized interference sources within the affected range of said equipment; (xiv) service requests related to use of markers (strips) other than those manufactured by 3M or its authorized distributor(s), (xv) modification, or repair of the 3M Software by other than 3M authorized personnel; (xvi) use of the 3M Software for purposes other than for which designed; (xvii) virus / hacker activity; (xviii) Non-3M Software related updates and upgrades including, but not limited to, Operation System, Anti-Virus, Intrusion Detection

RENEWAL: This agreement is NOT automatically renewable. If a renewal agreement is offered by 3M, the agreement price quoted will reflect the age of the product and the service costs at the time of renewal.

ENTIRE AGREEMENT: This instrument and attached Addendum sets forth the entire agreement between the parties, and no representation, promise or condition not contained herein shall modify these terms whether made prior to or subsequent to the execution of this agreement.

**LIBRARY SYSTEMS SALES AGREEMENT
BETWEEN 3M AND THE CITY OF GLENDALE**

Exhibit E

T&TS – Library Systems Product Performance Guarantee and Standard Warranty

One Year Library Systems Product Performance Guarantee: Subject to the Limitation of Liability below, 3M guarantees your satisfaction with the performance of any 3M Library System Product for 12 months from the date of installation provided that a) you are the original purchaser; b) you have executed a one (1) year 3M Service Agreement for maintenance of the Library System product; and c) the product has not been subjected to abuse, misuse, accident or neglect. Performance means the product meets 3M published product specifications. If you are not completely satisfied with the performance of your Library System Product, you may return the Library System product for a prompt refund. 3M will pay all reasonable de-installation and shipping charges to return the product to 3M. Note that all claims under this guarantee must be submitted to 3M within 12 months from the date of installation of the 3M Library Systems Product. Failure to submit a claim within this time frame will invalidate this guarantee. **IMPORTANT:** Consumables and non-3M branded products are excluded from this Guarantee.

Warranty and Limited Remedy for Non-Software Library Systems Products Not Covered by Performance Guarantee: Unless stated otherwise in 3M product literature or packaging, 3M warrants that each 3M Library Systems Product meets the applicable specifications for a period of ninety (90) days from the date of shipment (or, in the case of hardware installed by 3M, from the date of installation). Any warranties related to 3M software are contained in separate 3M software licenses. Consumables and non-3M branded products are excluded from this Warranty and Limited Remedy.

3M MAKES NO OTHER GUARANTEES, WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY OR CONDITION ARISING OUT OF A COURSE OF DEALING, CUSTOM OR USAGE OF TRADE. You are responsible for determining whether the 3M product is fit for a particular purpose and suitable for your application. If the 3M product is defective within the warranty period and provided that a) the product has not been subjected to abuse, misuse, accident or neglect and b) you have notified 3M within thirty (30) days after the defect was discovered, your exclusive remedy and 3M's and seller's sole obligation will be, at 3M's option, to replace or repair the defective 3M product.

Limitation of Liability: EXCEPT WHERE PROHIBITED BY LAW, 3M AND SELLER WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE ARISING FROM 3M LIBRARY SYSTEM, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL, REGARDLESS OF THE LEGAL THEORY ASSERTED, INCLUDING WARRANTY, CONTRACT, NEGLIGENCE OR STRICT LIABILITY.

Guarantee and Warranty Claims: For guarantee and warranty claims, and for service, call 1-800-328-0067.

T&TS – 3M™ RFID Tag Guarantee and Limitation of Liability

3M™ RFID Tag Guarantee and Limited Remedy: 3M guarantees that each RFID Tag will be free from defects in materials and manufacture for the life time of the books and/or digital media to which the tag is directly applied provided that a) you are the original purchaser; b) the tags have been applied to the books and/or digital media in accordance with instructions within two (2) years from the date of manufacture; and c) the product has not been subjected to abuse, misuse, accident or neglect.

3M MAKES NO OTHER GUARANTEES, WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY OR CONDITION ARISING OUT OF A COURSE OF DEALING, CUSTOM OR USAGE OF TRADE. You are responsible for determining whether the 3M product is fit for a particular purpose and suitable for your application. If the 3M product is proven to be defective within the guarantee period and provided that you have notified 3M within thirty (30) days after the defect was discovered, your exclusive remedy and 3M's and seller's sole obligation will be to replace the defective 3M product.

Limitation of Liability: EXCEPT WHERE PROHIBITED BY LAW, 3M AND SELLER WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE ARISING FROM 3M™ RFID TAGS, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL, REGARDLESS OF THE LEGAL THEORY ASSERTED, INCLUDING WARRANTY, CONTRACT, NEGLIGENCE OR STRICT LIABILITY.

Guarantee Claims: For guarantee claims, and for service, call 1-800-328-0067