

UMATILLA MORROW RADIO & DATA DISTRICT
USER AGREEMENT FOR SCHOOL DISTRICTS

1. PURPOSE AND INTRODUCTION

The purpose of this Agreement is to define the rights and obligations of the Umatilla Morrow Radio & Data District (“DISTRICT”) and the _____ School District (“USER”) with respect to the use of portable, mobile, and desktop radios by the USER on the Bi-County 450 MHz Radio System (“System”).

The System is a multi-site general purpose wireless communications system designed to provide, among other things, 97% area coverage reliability for portable radio operations above ground level out-of-doors through a large portion of the Umatilla/Morrow County, Oregon regions. USER benefits and services include access to a wide area first responder radio communications system, multiple system redundancies with backup power, use of talk groups, electronic identification of all radios on all transmissions, system security, radio interoperability, 24 hour a day system repair response, access to a pool of special event radios and end user radio user training assistance and materials. USER will be provided DISTRICT owned radio units under this agreement. The DISTRICT is not making any representation or warranties with regard to the System.

2. DUTIES AND RESPONSIBILITIES OF USER

2.1 Conformance to DISTRICT Standards

USER agrees to be aware of and conform to all applicable standards, policies, procedures and protocols established or amended by the DISTRICT related to user of the System including but not limited to use of District approved subscriber units, radio user training requirements, radio operating guidelines, audit, monitoring and compliance.

2.2 Conformance to Federal Laws and Regulations

USER agrees to be aware of and conform to all applicable Federal Rules, Regulation and Laws pertaining to use of the System including but not limited to the Communications Act of 1934 as Amended and Part 90 of the Federal Communications Commission Rules and Regulations.

2.3 Use of the System

The radios may be used for everyday communications within the USER’s agency. USER agrees to use their radios for public safety interoperability purposes where applicable.

2.4 Response to Improper Use

In the event the DISTRICT informs USER that statistical analysis of System usage or other information indicates that USER personnel may have inappropriately used the System, or may have violated standards, policies, procedures, rules, regulations or laws regarding proper operation of the System, or may have violated the provisions of this Agreement, USER agrees to take immediate and appropriate investigative and correction action to stop the violation and eliminate any reoccurrence.

2.5 Subscriber Unit Code Plug Programming Files and System Key Files

All radio code plug programming files and system key files are the sole property of the DISTRICT, and consist of or contain information that is classified as security information and non-public data. Unless specifically authorized by the DISTRICT in writing on an individual radio by radio basis, USER may not directly or indirectly, or permit any third person to: view, read, print, extract, copy, transmit, archive, edit, create, clone, transfer, release, tamper with, reverse engineer or otherwise compromise the security of any radio code plug programming file or system key file for any radio on the System. In the event USER learns that any person has improperly or fraudulently obtained radio code plug programming file information or system key file, USER will immediately notify the DISTRICT of the security breach.

2.6 De-certification and Disposition of Obsolete Subscriber Units

The DISTRICT may de-certify radios and/or radio operating software versions which become obsolete for reasons including but not limited to: become unsafe to use, impair System performance, are no longer supported by the radio Manufacturer, are no longer support by the DISTRICT, exhibit substantial defects, exhibit performance deficiencies, impair implementation of System upgrades, become unreliable, become economically unfeasible to maintain, etc. Except in those cases affecting safety or performance impacts to the System, the DISTRICT will make reasonable efforts to avoid de-certification of radios leased to USER which have not been fully depreciated and to provide USER with at least one (1) year of advance notice prior to the effective date of radio or software version de-certification. De-certified radios or radio operating with de-certified software versions will not be allowed to access or use the System.

2.7 Notification to the DISTRICT of Lost, Stolen, Damaged, or Destroyed Subscriber Units

The USER will immediately provide the serial number and system alias of any lost or stolen radio so the radio can be deactivated on the System.

The USER is ultimately responsible for maintenance and care of all issued System equipment. The USER will report to the DISTRICT any System equipment malfunction or any other equipment operation issue. The USER agrees to replace destroyed DISTRICT equipment while under USER care, custody, and control and will be held responsible for replacement costs if the damage or loss is a result of negligence. Negligence will be determined by the DISTRICT.

The DISTRICT's office telephone number is 541-966-3774.

2.8 Fees and Charges

USER agrees to pay a fee of \$30/month/radio for the first two radios issued per school. Additional issued radios will be assessed a \$43/month/radio fee for the services provided in this agreement. Fees may be paid annually on July 1st or on July 1st and January 1st. The DISTRICT will consult with and accept input from the USER before increasing any

fees or charges. The DISTRICT will notify the USER by March 1st of a given year if the user fee will increase for the next fiscal year.

Payment will be send to: Umatilla Morrow Radio & Data District
 4700 NW Pioneer Place
 Pendleton, OR 97801

DUTIES AND RESPONSIBILITIES OF THE DISTRICT

3.1 Allocation of System Resources

The DISTRICT will allocate to USER, on a fair and non-discriminatory basis, sufficient System resources including Talk Groups, Radio Unit Ids, Alias Ids, etc. in order to provider USER with an equivalent grade of service afforded to other comparable System users. The USER's access to System resources will be limited by System settings to ensure that USER traffic does not unduly constrict public safety user System access. The DISTRICT will program the USER's subscriber radios. The DISTRICT is not making any representations or warranties with regard to the service or System resources.

3.2 Monitoring of USER Talk Groups

The DISTRICT may periodically monitor talk groups allocated to USER for USER's internal use for system management purposes including but not limited to maintenance, troubleshooting, system performance assessments, unusual traffic patterns (sudden jump in usage), policy and procedure compliance checks, etc. DISTRICT monitoring of USER's talk groups may occur at any time, for any duration, may be without notice and is subject to recording.

3.3 Radio Operator Training

The DISTRICT will provide USER with access to end user radio training, instructional materials, and train the trainer services provided by the DISTRICT. The DISTRICT is not making any representations or warranties with regard to the training.

3.4 Database Administration

The DISTRICT will manage and administer the System database records containing the information related to inventory, configuration, programming history, software version control, subscriber unit IDs, service levels, statistical usage analysis, etc. for USER's subscriber radios used on the System. The DISTRICT is not making any representations or warranties with regard to the database administration.

3.5 Radio Station Licenses

DISTRICT shall hold and administer all FCC licenses on behalf of all users of the System. This does not revoke assignment of FCC frequencies held by the USER. USER shall operate as authorized mobile, portable and control station units under the applicable FCC radio station licenses.

4. TERM AND CANCELLATION

4.1 Term of Agreement

This open-ended Agreement shall be in effect as of the date of its execution and shall continue in force until terminated as set forth in the following paragraph:

Either party may terminate this Agreement upon giving written notice of termination to the other party not less than 90 days prior to the date of cancellation which shall be set forth in the notice.

5. MERGER AND MODIFICATION

5.1 Entire Agreement

It is understood and agreed that the entire Agreement between the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. All items referred to in this Agreement are incorporated or attached and are deemed to be part of this Agreement.

5.2 Amendments to Agreement

Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the parties hereto.

6. DEFAULT

6.1 If the USER fails to perform any of the provisions of this Agreement, this shall constitute a default. Unless the USER's default is excused by the DISTRICT, the DISTRICT may upon written notice immediately cancel this Agreement in its entirety.

6.2 Notwithstanding any provision of this Agreement to the contrary, the USER shall not be relieved of liability to the DISTRICT for damages sustained by the DISTRICT by virtue of any breach of this Agreement by the USER.

6.3 The above remedies shall be in addition to any other right or remedy available to the DISTRICT under this contract, law, statute, rule, and/or equity.

6.4 The DISTRICT's failure to insist upon strict performance of any provision or to exercise any right under this Agreement shall not be deemed a relinquishment or waiver of the same, unless consented to in writing. Such consent shall not constitute a general waiver or relinquishment throughout the entire term of this Agreement.

7. MISCELLANEOUS PROVISIONS

7.1 Independent Parties

It is mutually understood that this Agreement does not create an employment relationship between the parties, nor does it create a partnership or joint venture, nor does it constitute a cooperative agreement or joint powers agreement.

7.2 Data Privacy

USER, its officers, agents, owners, partners, employees, volunteers or subcontractors agreed to abide by all applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality, and as any of the same may be amended. To the extent that Oregon law is in conflict with Federal law, Federal law shall control.

7.3 Records – Availability/Access

USER agrees that the DISTRICT, the State Auditor, the Legislative Auditor or any of their duly authorized representatives at any time during normal business hours, and as often as they may reasonable deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are both pertinent to the accounting practices and procedures of the USER under this agreement and directly involve transactions relating to this Agreement. Such materials shall be maintained and such access and rights shall be in force and effect during the period of the contract and for six (6) years after its termination or cancellation.

7.4 Contract Administration

In order to coordinate the services of the USER with the activities of the DISTRICT so as to accomplish the purposes of this Agreement, the District Administrator shall manage this contract on behalf of the USER and serve as liaison between the DISTRICT and the USER.

7.5 Notices

Any notice or demand which must be given or made by a party hereto under the terms of this Agreement or any statute or ordinance shall be in writing, and shall be sent registered or certified mail. Notices to the DISTRICT shall be sent to the District Administrator at the address given below. Notice to the USER shall be sent to the address stated below.

TO DISTRICT: 4700NW Pioneer Place, Pendleton, OR 97801

TO USER: _____

7.6 Oregon and Federal Laws Govern

The laws of the State of Oregon and Federal laws shall govern all questions and interpretations concerning the validity and construction of this contract and the legal relations between the herein parties and performance under it. The appropriate venue and jurisdiction for any litigation hereunder will be those courts located with the County of Umatilla, State of Oregon. Litigation, however, in the federal courts involving the herein parties will be in the appropriate federal court within the State of Oregon. The parties agree to initiate any litigation relating to this Subscriber Agreement in the appropriate

state or federal court in Oregon. If any provision of this contract is held invalid, illegal or unenforceable, the remaining provisions will not be affected.

7.7 Coverage

USER acknowledges that one hundred percent (100%) coverage of any area at all times is improbable. There may be adverse transmission conditions such as short-term unpredictable meteorological effects and sky wave interference from distant stations that can interrupt the Radio System. Likewise, there are other causes beyond reasonable control of the DISTRICT, including but not limited to, motor ignition and electrical noises that may be minimized by corrective devices at the USER's expense. The DISTRICT will ensure system coverage represented by the February 25, 2011 450MHz system coverage maps provided by Motorola Solutions Inc. Any surveys, studies, research or other measure taken to ensure the adequacy of coverage provided to the USER under this Agreement are the sole responsibility and expense of the USER.

IN TESTIMONY WHEREOF, the Umatilla Morrow Radio & Data District (DISTRICT), and _____ (USER) hereto have caused this Agreement to be executed by their respective duly authorized representatives.

(DISTRICT)

By: _____

Its: _____

Date: _____

(USER)

By: _____

Its: _____

Date: _____