



**The Need For Xpeed (TNFX)
Software Hosting Agreement**

THIS SERVICE AGREEMENT is entered into this 2nd day of February, 2012 between The Need For Xpeed, INC. (hereafter referred to as "TNFX"), having its principal place of business at 2344 E. Gelding, Phx, AZ . P. O. BOX 54578 Phoenix, AZ 85078-4578 and Gila County Juvenile Detention (Medical) (hereafter referred to as the "Client") located at, 1425 E. South Street, Globe, AZ 85501 WHEREAS TNFX and CLIENT entered into a month to month Software Hosting Agreement provided for Client to access Clients software known as Altapoint, a licensed, and approved software. (hereafter referred to as "software")

WHEREAS TNFX, and the parties hereby agree as follows:

1. The "Software" is to physically reside at the "Secure TNFX Data Center". The CLIENT will receive a unique login/password for each seat(s)/workstation(s) for access to the Secure TNFX Data Center. The CLIENT will have access to a secured and exclusive Data Base. The CLIENT can access their Data Base from any computer, or location with modem connection, utilizing their exclusive login/password provided by TNFX. This "Secured Facility" features; HIPAA Compliant Software, Data Backup and Storage, Data Disposal, Redundancy of Physical Environment, Disaster Recovery, Trained, Authorized and Knowledgeable Personnel.
2. Upkeep of all data pertinent to maintaining their business status for and on behalf of CLIENT is a TNFX responsibility and shall include maintenance and updating of clients software. The "CLIENT" will also have the responsibility of backing up their data and is ultimately responsible for the safe keeping in a HIPAA compliant manner of their Healthcare provider's data.
3. The CLIENT shall submit, via Credit Card on file, or Business Check, all fees due and payable monthly to TNFX, in order to maintain access to the Secure TNFX Data Center.
4. TNFX will provide at the Secure TNFX Data Center, data backups and all software updates. The updates will be performed at the Secure TNFX Data Center at scheduled and designated times.
5. TNFX grants to CLIENT a non-exclusive agreement to access the "software". If CLIENT wishes to add additional seats/workstations with concurrent access to the software, CLIENT shall acquire additional "seats" from TNFX at the then applicable per seat price.
6. CLIENT will be required to pay One hundred twenty- nine (\$129.00) per seat/workstation per month, payable to TNFX. The CLIENT may purchase additional seats/workstations for one hundred twenty - nine dollars and zero cents (\$129.00) per seat/workstation per month. (This is AltaPoint current subscription rate) This price will be held for one (1) year from the origination of this contract.

This will provide the Client the opportunity to be HIPAA compliant as to ANSI transmission format and Data Security. This monthly fee includes software updates, Data Center Support, as well as 24 hour access to the TNFX Internet support site for updates, software tips and on-line newsletters. HIPAA is the acronym for "Health Insurance Portability and Accountability Act" of 1996. (Public law 104-191) HIPAA requires that virtually all-healthcare organizations adhere to new standards for security, privacy and health information management.

7. There are no other agreements, promises, representations or warranties of any kind that induced the parties into entering into this Agreement that are not contained in this Agreement. Any modifications to this Agreement must be in writing and signed by both parties or will not be recognized or legally binding. Any portions of the Software Hosting Agreement between the parties that are not expressly modified by this Agreement shall remain in full force and effect.

8. The software residing at the secure TNFX Data Center is the property of CLIENT. CLIENT reserves the right to at anytime transfer their data to their own secure site. In the event CLIENT desires to store data at CLIENTS own secure site CLIENT agrees to give TNFX a 30 day written notice.

Attachment "A" by mention is made a binding part of this agreement as set for herein.

IN WITNESS WHEREOF, the signatures below testify to parties agreement to the terms of this Software Hosting Agreement.

Signature _____ (digital)
THE NEED FOR XPEED, INC.

Name Barry Schofield

Signature _____

Name Don E. McDaniel Jr., Gila County Manager

1400 E. Ash Street

Street Address

Globe, Arizona 85501

City, State & Zip Code

Date 2/15/12

Please fax completed agreement back to 602-788-2622.

APPROVED AS TO FORM:

Bryan B. Chambers
Bryan B. Chambers, Chief Deputy County Attorney

ATTACHMENT "A"

Gila County Contractor Standard Terms and Conditions Addendum

A. Addendum Applicability: Contractor and Gila County agree that the terms and conditions of this Addendum shall apply to and govern the contractual relationship between Contractor and Gila County and shall supplement any other contract or agreement entered into between the parties. In the event that the terms and conditions in this Addendum conflict with any provision of any other agreement entered into between the Contractor and Gila County (including a superiority provision similar to this provision), the terms and conditions of this Addendum shall control the contractual relationship between the parties and shall supersede any conflicting provisions found in any other contract or agreement. Contractor understands that acceptance of the terms and conditions contained in this Addendum are a condition precedent to entering into a contractual relationship with Gila County.

B. Contract Defined: As used in this Addendum, the term "Contract" shall refer to any written agreement between Gila County and a person, organization, corporation, company or other entity that provides supplies or services to Gila County regardless of the title or other name applied to that written agreement. The term includes by this reference all the terms and conditions of this Addendum.

C. Contractor Defined: As used in this Addendum, the term "Contractor" shall refer to a person, provider, organization, corporation, company or other entity providing supplies or services to Gila County pursuant to a written agreement regardless of the title or other name applied to "Contractor" in that written agreement.

D. Relationship of the Parties: Contractor is an independent contractor of the County. Contractor represents that he has or will secure, at his own expense, all personnel required in performing the services under this contract. Such personnel shall not be employees of or have any contractual relationship with the County. All personnel engaged in work under this contract shall be fully qualified and shall be authorized or permitted under State and local law to perform such services. Contractor warrants that he has obtained or will obtain Worker's Compensation Insurance for his employees working on this contract and that any subcontractors will likewise obtain Worker's Compensation Insurance for of their employees working on this contract. It is further agreed by Contractor that he shall obey all state and federal statutes, rules, and regulations which are applicable to provisions of the services called for herein. Neither Contractor nor any employee of the Contractor shall be deemed an officer, employee, or agent of the County.

E. Non-Appropriations Clause: Contractor acknowledges that the County is a governmental entity, and the contract validity is based upon the availability of public funding under its authority. In the event that public funds are unavailable and not appropriated for the performance of County's obligations under this contract, then this contract shall automatically expire without penalty to County after written notice to Contractor of the unavailability and non-appropriation of public funds. It is expressly agreed that the County shall only activate this non-appropriation provision as an emergency fiscal measure. The County shall not activate this non-appropriation provision for its convenience, to circumvent the requirements of this contract, or to enable the County to contract with another Contractor for the same supplies or services covered under this Addendum.

F. Hold Harmless/Indemnification Clause: Contractor shall indemnify, defend, save and hold harmless the County of Gila and its officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all claims. It is agreed that the Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all

rights of subrogation against the County, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the County.

G. Entire Contract Clause: The Contractor and the County have read this Contract and agree to be bound by all of its terms, and further agree that it constitutes the entire contract between the two parties and may only be modified by a written mutual contract signed by the parties. No oral agreement or oral provision outside this Contract shall have any force or effect.

H. Non-Waiver of Enforceability: Failure of the County to enforce, at any time, any of the provisions of this Contract, or to request at any time performance by Contractor of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this contract or any part thereof, or the right of the County to enforce each and every provision.

I. Severability: If any provision of this Agreement is held unenforceable, all remaining provisions of this Contract shall remain in full force and effect.

J. Governing Law: Both parties agree that this Contract shall be governed by the laws of the state of Arizona. The parties further agree that the jurisdiction for any legal disputes arising out of this Contract shall be the Superior Court of the State of Arizona. The parties agree that even if this Contract does not specifically reference any provision required by state or federal law, those state and federally required provisions are incorporated into this Contract by this reference as though they were specifically listed herein.

K. Cancellation: This contract is subject to the cancellation provisions of A.R.S. §38-511.

L. Anti-Terrorism Warranty: Pursuant to A.R.S. §§ 35-393.06(B) and 35-391.06(A) the Contractor certifies that it does not have scrutinized business operations in Iran or Sudan and that they are in compliance with the Export Administration Act and not on the Excluded Parties List.

M. Legal Arizona Workers Act Compliance: Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Contractor's employment of its employees, and with the requirements of A.R.S. §§ 41-4401 and 23-214(A) (together the "State and Federal Immigration Laws"). Contractor shall further ensure that each subcontractor who performs any work for Contractor under this contract likewise complies with the State and Federal Immigration Laws.

County shall have the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of Contractor's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor as soon as possible so as not to delay project completion.

Contractor shall advise each subcontractor of County's rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form: "Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."