

# SOFTWARE LICENSE SUBSCRIPTION AGREEMENT

“LICENSEE”

Name: Hidalgo County Public Defender’s Office

Address: 100 N. Closner – 5<sup>th</sup> Fl, Edinburg, TX 78539

“LICENSOR”

Name: Justice Works, LLC

Address: 1148 Legacy Crossing Blvd Ste 330  
Centerville, UT 84014

**EFFECTIVE DATE: February 10, 2017**

**1. Grant of License.** Justice Works, LLC (“Licensor”) hereby grants to Licensee, and Licensee accepts from Justice Works, a limited, personal, nonexclusive, nontransferable, nonassignable license to use the Licensor’s defender Data Software Program and related documentation (hereinafter the “Licensed Software,” as defined in Exhibit A attached hereto and made a part of this Agreement), in machine-readable source and object code formats, at a single designated CPU, or at a designated number of Workstations, or designated Site(s), as the case may be and as set forth in the attached Exhibit A, subject to and in accordance with the terms, conditions and limitations of this Agreement.

**2. Scope of License.** Licensee agrees that it will use the Licensed Software hereunder only in connection with its own firm and, it will not, without the express written permission of Justice Works, sell, lease, or otherwise provide or make available the Licensed Software to any third party. For purposes of the foregoing, Licensee’s “own firm” shall include Licensee’s affiliates as identified in the attached Exhibit A.

**3. Payment Terms.**

(a) License Fees. License fees will be based on the monthly subscription fees (the “Monthly Subscription Fees”) and the license initiation fee (the “Initiation Fee”) as provided in Exhibit A.

(b) Term Commitment. Licensee commits to and agrees to pay the Monthly Subscription Fees described in the attached Exhibit A (“Term Commitment”).

(c) Justice Works shall invoice Licensee monthly for the License Subscription Fees. All invoiced fees are due net 30 days from the date of Justice Works’ invoice and are non-refundable. If Justice Works does not receive the full invoiced amount within thirty (30) days of the invoice date, an additional one-point-five percent (1.5%) (or the highest amount allowed by law, whichever is lower) per month will be added to the unpaid balance of the Licensee and

shall be immediately due and payable to Justice Works. Licensee shall also be liable for any and all reasonable attorneys’ fees and costs of collection arising from Justice Works’ efforts to collect any unpaid balance of Licensee’s account.

**4. License Activation Date.** The License Activation Date shall be the date that Licensee receives the Licensed Software or the Effective Date of this Agreement, whichever is later.

**5. Duration and Termination**

(a) Duration. Unless terminated earlier as provided elsewhere in this Agreement, Justice Works will continue to provide the Licensed Software for as long as the Licensee continues to pay the Monthly Subscription Fees during the Term defined in Exhibit A (“Term”). In the event that Licensee continues to license the Licensed Software past the Term, it shall continue only on a month to month basis, with either party having the right to terminate the Agreement at any time upon thirty (30) days prior written notice to the other party, unless terminated earlier as provided elsewhere in this Agreement. During any such extended period of this Agreement, Justice Works, at its option, may invoice Licensee at the fee rates contained in this Agreement or at fee rates being charged other licensees for the Licensed Software at that time.

(b) Voluntary Termination. Effective at any time after the Term Commitment, this Agreement may be terminated by Licensee for any reason upon thirty (30) days prior written notice. Should Licensee terminate this Agreement before the completion of the Term Commitment for any reason other than material breach of this Agreement by Justice Works, Licensee shall be responsible for the payments specified in Section 5(e).

(c) For Breach. Either party may terminate this Agreement if the other party is in material breach of any term of this Agreement and fails to remedy such breach upon thirty (30) days after written notice of such breach. Without limiting the generality of the

foregoing, failure to make any payment to Justice Works when due is a material breach of this Agreement on the part of Licensee. Should Justice Works, as a result of Licensee's material breach of this Agreement, terminate this Agreement before the completion of the Term Commitment, Licensee shall be responsible for the payments specified in Section 5(e).

(d) Effect of Termination. Within ten (10) days after termination of this Agreement, Licensee shall uninstall the Licensed Software and return the Licensed Software with all copies and all documentation to Justice Works.

(e) Early Termination Charges. The fees, rates and discounts set forth in this Agreement are based on Licensee's commitment to license the Licensed Software for the entire Term Commitment. Licensee understands and agrees that it is impossible to calculate Justice Works' loss if the Agreement is terminated prior to the end of the Term Commitment. Therefore, to compensate Justice Works for such loss, and not as penalty, Licensee shall -- in the case of voluntary termination pursuant to Section 5(b) or Justice Works' termination pursuant to Section 5(c) -- pay an early termination charge. The early termination charge shall equal the average of the Monthly Subscription Fees incurred to date multiplied by the number of months remaining in the Term Commitment. The early termination charge shall be paid by Licensee within thirty (30) days after the date of Justice Works' invoice therefore.

(f) Other Charges. Nothing in this Agreement shall relieve Licensee from its liability for payment for services rendered by Justice Works prior to the termination of this Agreement, as the case may be.

**6. License Not a Sale.** The license pursuant to this Agreement does not constitute a sale, nor does it pass to Licensee any title to or any proprietary rights in the Licensed Software, all of the same being expressly reserved to and vested in Justice Works. Nor shall Licensee acquire any right or interest in the Licensed Software as a result of any changes to, modifications of or additions to the Licensed Software made by Licensee.

**7. Software Maintenance** Justice Works shall have no obligation to provide modifications or enhancements to the Licensed Software except as may be provided in a separate maintenance agreement. Defects encountered in the software or data will be remedied by Justice Works. Failure to remedy critical defects within 30 days of the defect

report is a material breach of this Agreement on the part of Justice Works.

**8. User Registration.** Each qualified "user" of the Licensed Software will be assigned a separate login name by Justice Works or Licensee. It is Licensee's responsibility to keep all login names and passwords secret. Licensee agrees that each registered user account will be used by one person at a time. Licensee agrees that its registered users may not use another registered user's account without the specific consent of that registered user.

**9. Warranties.** For so long as Licensee licenses the Licensed Software from Justice Works, Justice Works warrants that the Licensed Software will substantially conform to its documentation; provided, however, that Justice Works may void this warranty if Licensee (i) augments or alters the Licensed Software or causes or allows any other person to do so; (ii) fails to install any upgrade, enhancement, fix or release of the Licensed Software made available by Justice Works; or (iii) fails to keep its payments to Justice Works current.

## **10. DISCLAIMERS.**

(a) DISCLAIMER OF WARRANTIES; LIMITATIONS OF LIABILITY. LICENSEE EXPRESSLY AGREES THAT USE OF THE LICENSED SOFTWARE IS AT ITS SOLE RISK. THE LICENSED SOFTWARE IS MADE AVAILABLE ON AN "AS IS" BASIS. NEITHER JUSTICE WORKS NOR ANY SUPPLIER, LICENSOR, EMPLOYEE, AGENT, OR CONTRACTOR MAKES ANY WARRANTY WHATSOEVER REGARDING THE LICENSED SOFTWARE, ANY INFORMATION, SERVICES OR PRODUCTS PROVIDED THROUGH OR IN CONNECTION WITH THE LICENSED SOFTWARE, OR ANY RESULTS TO BE OBTAINED THROUGH THE USE THEREOF, AND JUSTICE WORKS HEREBY EXPRESSLY DISCLAIMS ON BEHALF OF ITSELF AND ALL SUPPLIERS ANY AND ALL WARRANTIES, INCLUDING WITHOUT LIMITATION: ANY EXPRESS OR IMPLIED WARRANTIES OF: 1) MERCHANTABILITY; 2) FITNESS FOR A PARTICULAR PURPOSE; 3) EFFORT TO ACHIEVE PURPOSE; 4) QUALITY; 5) ACCURACY; 6) NON-INFRINGEMENT; AND 7) TITLE. LICENSEE FURTHER AGREES THAT JUSTICE WORKS SHALL NOT BE LIABLE TO LICENSEE, OR ANY THIRD PARTY, FOR ANY LOSS OF PROFITS, LOSS OF USE, INTERRUPTION OF BUSINESS, ERROR,

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(b) LICENSEE REMEDIES. LICENSEE'S REMEDIES SHALL BE STRICTLY LIMITED TO THE AMOUNT PAID TO JUSTICE WORKS BY OR ON BEHALF OF LICENSEE FOR LICENSING THE LICENSED SOFTWARE IN THE 12 MONTHS PRIOR TO THE CLAIMED INJURY OR DAMAGE. JUSTICE WORKS IS NOT LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHETHER UNDER THIS AGREEMENT OR OTHERWISE, EVEN IF JUSTICE WORKS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MODIFICATIONS MADE TO THE LICENSED SOFTWARE BY LICENSEE OR ANY THIRD PARTY VOIDS ANY REMAINING EXPRESS OR IMPLIED WARRANTIES.

(c) Alternative. Some jurisdictions do not permit the exclusion or limitation of liability for consequential or incidental damages and, as such, some portion of the above limitation may not apply to Licensee. In such jurisdictions, Justice Works' liability is limited to the greatest extent permitted by law.

#### **11. Proprietary property of Justice Works.**

(a) Licensee acknowledges that the Licensed Software, including all documentation, all screens and formats used in connection therewith, are the exclusive proprietary property of Justice Works, and Licensee shall not publish, disclose, display, provide access to or otherwise make available any Licensed Software or documentation thereof, or any screens, formats, reports or printouts used, provided, produced or supplied from or in connection therewith, to any person or entity other than an employee or agent of Licensee without the prior written consent of, and on terms acceptable to, Justice Works, which consent shall not be unreasonably withheld; provided, however, that Licensee may disclose to a governmental or regulatory agency or to customers of Licensee any information expressly prepared for disclosure to such governmental or regulatory agency or to such customers of Licensee. Except as required by law, Licensee shall not disclose Licensee's use of Licensed Software in any advertising or promotional

materials without the prior written consent to disclose such use, and approval of such materials, by Justice Works.

(b) Licensee acknowledges that the Licensed Software is highly confidential proprietary information and trade secrets of Justice Works, the unauthorized disclosure of any part of which would result in serious injury to Justice Works. Licensee shall take reasonable precautions to maintain the security and confidentiality of the Licensed Software, which precautions shall not be less stringent than those employed, or those that reasonably should be employed, by Licensee to protect its own most proprietary information.

(c) This License Agreement and the terms hereof are confidential, and no information concerning the same shall be disclosed without written consent of the parties, except as may be necessary to conform to generally accepted accounting principles and to comply with applicable laws and regulations.

(d) The obligations of this Paragraph 11 shall survive termination of this Agreement. Licensee understands that the unauthorized publication or disclosure of any Licensed Software or copies thereof, or the unauthorized use of the Licensed Software, would cause irreparable harm to Justice Works for which there is no adequate remedy at law. Licensee therefore agrees that in the event of such unauthorized disclosure or use, Justice Works may, at its discretion and at Licensee's expense, terminate this Agreement, obtain immediate injunctive relief in a court of competent jurisdiction, or take such other steps as it deems necessary to protect its rights. If Justice Works, in its reasonable, good faith judgment, determines that there is a material risk of such unauthorized disclosure or use, it may demand immediate assurances, satisfactory to Justice Works, that there will be no such unauthorized disclosure or use. In the absence of such assurance, Justice Works may take such steps as it deems necessary and may, in addition, terminate this Agreement, but only after submitting the controversy to mediation pursuant to paragraph 12(a). The rights of Justice Works hereunder are in addition to any other remedies provided by law.

(e) In the event Licensee intentionally and willfully engages in any unauthorized use, disclosure or application of the Licensed Software, or willfully and intentionally permits or causes the unauthorized use, disclosure or application of the Licensed Software, Licensee shall forfeit its rights to use the Licensed Software under this Agreement or any other

agreement between Licensee and Justice Works, together with all payments made under this Agreement or any other agreement, cease all use of the Licensed Software, and return all copies of the Licensed Software, and all documentation, in any form, to Justice Works or its successor. Justice Works may, at Licensee's expense, take such lawful steps as it deems necessary to preserve the security of the Licensed Software and prevent Licensee's further use thereof.

(f) The rights of Justice Works under this Agreement supplement and are not in lieu of any other remedies provided by law or in equity. In addition, Licensee shall be liable for all of Justice Works' costs and attorneys' fees in connection with the pursuit by Justice Works of any remedy provided or permitted by this Agreement, unless otherwise specified.

## 12. General

(a) Waiver of Breach. The fact that one party excuses or overlooks a breach of any provision of this Agreement by the other party does not mean that such party excuses any other breach or waives its right to remedy any other breach by the other party.

(b) Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and permitted assigns. Licensee may not assign this Agreement without the prior written consent of Justice Works or its assigns or successors.

(c) Governing Law. This Agreement shall be applied and construed according to the laws of the State of Texas without regard to conflicts of laws provisions thereof.

(d) Severability. If any provision of this Agreement is found to be illegal or unenforceable, then, notwithstanding such finding, this Agreement shall remain in full force and effect and such provision shall be deemed stricken.

(e) Costs and Attorneys' Fees. In any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover costs and attorneys' fees, unless otherwise specified herein.

(f) Jurisdiction. By entering this Agreement, Licensee agrees to and does hereby submit to the personal jurisdiction of the courts in or for the State of Texas in the event any legal action is commenced by Justice Works or its successors or assigns to enforce any rights arising hereunder.

(g) Headings. The headings in this Agreement are for convenience only and shall not be used to alter or limit the interpretation of any provision hereof.

(h) Entire Agreement. This Agreement, together with all schedules, exhibits and amendments hereto, constitutes the entire agreement of the parties and supersedes all prior discussion and correspondence between them with respect to the subject matter hereof. No modification of this Agreement shall be effective unless the same is in writing and signed by both parties.

(i) Joint and Several Obligations. All Licensee payment obligations shall be made on the basis of joint and several liability for such obligations. Licensee agrees that it has received adequate consideration in connection with the respective obligations hereunder.

(j) Notices. All legal notices between the parties shall be in writing and shall be sent by certified or registered mail or commercial overnight delivery service, with provisions for a receipt, to the address of the other party listed above (or to such other address as a party may furnish to the other in writing).

**13. Indemnify.** Licensor shall indemnify and hold harmless Licensee, its elected officials, employees and agents from any and all claims, damages, losses, and expenses including attorney's fees for the defense of any action against Licensee arising out of, resulting from, or connected with the provision of the service by Licensor under this agreement. Said indemnity shall cover any act or failure to act by the Licensor, its agents or employees.

**14. Commitment of Current Revenues Only.** In the event that, during any term hereof, the governing body of Licensee does not appropriate sufficient funds to meet the obligations of Licensee under this Agreement, Licensee may terminate this Agreement upon ninety (90) days written notice to Licensor. Licensee agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of Licensee pursuant to the provisions of Tex. Loc. Govt. Code Ann. ' 271.903 (Vernon Supp. 1996).

IN WITNESS WHEREOF we have set our hand as of the date first noted above.

LICENSEE: \_\_\_\_\_

LICENSOR: Justice Works, LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVE AS TO FORM:  
Atlas, Hall & Rodriguez, LLP

By: \_\_\_\_\_  
Stephen L. Crain

