

TracNet Corporation Software Product License Agreement

This is a Software Product License Agreement between TracNet Corporation, a California Corporation with its principal place of business at 1277 Adobe Lane, Pacific Grove, CA. 93950 (called "LICENSOR") and the Monterey County Sheriff's Office in Salinas, CA. 93906, ("LICENSEE").

1. DEFINITIONS OF TERMS USED

1.1 "Computer System" is the specific combination of a computer central processing unit (or units), computer terminals, and other related devices listed in Attachment A, Section 2, to this License in the configuration described. LICENSEE is only licensed to use this Licensed Program on that system. Use on any other system or configuration requires a supplementary license.

1.2 "Licensed Program" is the set of copyrighted, computer programs listed in Attachment A, Section 1, and any additions or enhancements to the programs that LICENSOR may provide from time to time regardless of the form in which LICENSEE may subsequently use them.

1.3 "Documentation" means LICENSOR's Licensed Program manual and any written or printed technical material provided by LICENSOR with the Licensed Program to explain the operation of the Licensed Program and aid in its use.

1.4 "License" means this License Agreement and the rights and obligations which, it creates under the United States Copyright law and other applicable state or federal law.

1.5 "Derivative" means any computer software program which may be developed containing any part of the Licensed Program, regardless of the form of the resulting code, the media it is carried on, or its intended use.

1.6 "Trade Secret" means the program structure, logic, data structures, design, processes, procedures, formula and algorithms contained in the ordered set of instructions which together constitute the Licensed Program.

2. GRANT OF LICENSE AND LICENSEE'S AGREEMENTS

2.1 In consideration of LICENSEE's payment of the license fee for this License and of LICENSEE's agreement to abide by the terms and conditions of this License, LICENSOR grants LICENSEE a nonexclusive nontransferable right to use and display the Licensed Program on the computer system identified in Attachment A, so long as LICENSEE complies with the terms of this License. LICENSOR reserves all rights not expressly granted to LICENSEE.

2.2 LICENSEE agrees to pay LICENSOR the additional license fees due if LICENSEE uses the Licensed Program on any additional computer systems. Such additional license fees shall be due and payable within thirty (30) days of the commencement of LICENSEE's use of the Licensed Program on any additional computer systems.

2.3 LICENSEE agrees to take reasonable steps to protect the Licensed Program from theft or from use by others contrary to the terms of this License. Only those persons in LICENSEE's organization having a need to use the Licensed Program in the normal course of their employment are authorized to use the Licensed Program. LICENSEE agrees to take reasonable steps not to disclose or use any Trade Secrets which are provided to LICENSEE except in accordance with the terms of this License. In addition, LICENSEE agrees not to disassemble, decompile or otherwise reverse engineer the Licensed Program. LICENSEE agrees to notify LICENSOR of any misuse and assist in ensuring provisions of this agreement are not violated.

TracNet Corporation Software Product License Agreement

2.4 LICENSEE agrees either to destroy (with written notification to LICENSOR) or return, at the option of LICENSEE, the original and all existing copies of the Licensed Program and Documentation within fifteen (15) days after the effective date of any termination.

3. OWNERSHIP OF LICENSED PROGRAM

LICENSEE may be deemed to own the magnetic or other physical media on which the Licensed Program is originally or subsequently recorded or fixed, but an express condition of this License is that copyright owner shall retain ownership of all copies of the Licensed Program recorded on any media. This License is not a sale of the Licensed Program data content recorded on the copies delivered to LICENSEE or any subsequent copy.

4. POSSESSION AND COPYING OF THE LICENSED PROGRAM

LICENSEE agrees to make no more than three (3) copies of the Licensed Program for archival or backup purposes only, all of which copies (together with the original) shall be kept in the possession or direct control of LICENSEE. LICENSEE shall label each backup copy of the Licensed Program with the serial number, program name, version number and the copyright notice, in the same form as they appear on the original licensed copy. In addition, LICENSEE shall maintain a record of the location of all such copies and shall make such records available to LICENSOR upon request. LICENSEE shall erase or otherwise destroy any copy of the Licensed Program contained on any media before the media is reused or discarded.

5. TRANSFER OR REPRODUCTION OF LICENSED PROGRAM

5.1 LICENSEE is NOT licensed to reproduce the Licensed Program except to the extent necessary to use it as authorized by this License Agreement. LICENSEE may not rent, lease, transfer, network, or distribute the Licensed Program to another agency, except as specifically provided in this agreement.

5.2 The Licensed Program may only be used on the Computer System(s) listed on "Attachment A", Section 2, and any subsequent amendments thereto.

6. DERIVATIVES OR MODIFICATIONS TO THE LICENSED PROGRAM

LICENSEE is prohibited from making any modifications to the Licensed Program and from creating any Derivative of the Licensed Program except as described herein.

7. LIMITED WARRANTY

TracNet warrants the version of software which is initially delivered is sufficient to operate as described in the written Proposal, Software Product License Agreement and Maintenance Service Plan, if applicable, and to be free of software "bugs" for a period of 30 days from the date of software installation on the Licensee's CPU. To evoke this warranty, the LICENSEE must, within the warranty period, notify TracNet in writing of the problems encountered. TracNet will, within a reasonable time after notification by the LICENSEE, affect change in the software. The sole remedy for LICENSEE, should LICENSEE determine the software is not sufficient to operate as described in the written proposal or a "bug" is not fixed in LICENSEE's opinion, is to return the software to TracNet within 30 days of installation. In case of any conflict between this Agreement

TracNet Corporation Software Product License Agreement

and this Section and any other contract document or contract section, this Agreement and Section shall take precedence. In no event will Licensor be liable for any damages caused by Licensee's failure to perform their responsibilities. In no case shall LICENSOR's liability exceed the license fees paid for the right to use the Licensed Program.

THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY OTHER WARRANTIES WHETHER ORAL OR IMPLIED. THE AGENTS AND EMPLOYEES OF TracNet ARE NOT AUTHORIZED TO WARRANT THE SOFTWARE AND TECHNICAL INFORMATION LICENSED HEREWITH. ACCORDINGLY, ANY SUCH STATEMENTS WHETHER ORAL OR WRITTEN SHOULD NOT BE RELIED UPON. THIS WARRANTY IS NULL AND VOID IF THE VERSION OF THE CODE HAS BEEN MODIFIED BY THE LICENSEE OR ANY OF HIS AGENTS IN ANY MANNER FROM ITS ORIGINAL CONTENT, OR, IF ANY HARDWARE OR THIRD PARTY SOFTWARE OTHER THAN RECOMMENDED AND APPROVED IN WRITING BY TracNet ARE USED IN CONJUNCTION WITH THE LICENSED SOFTWARE.

8. FITNESS FOR PURPOSE AND SOFTWARE PERFORMANCE

LICENSEE agrees to assume the entire responsibility for the evaluation of the Licensed Program and LICENSEE's determination that the Licensed Program is suited to LICENSEE's needs and performs to LICENSEE's satisfaction. LICENSOR MAKES NO WARRANTIES, (OTHER THAN STATED IN SECTION 7 - LIMITED WARRANTY) EITHER EXPRESS OR IMPLIED, WITH RESPECT TO LICENSED SOFTWARE, IT MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. The entire risk as to quality and performance of Licensed Software is with LICENSEE, and LICENSEE assumes the cost of any and all incidental or consequential damages. LICENSEE assumes the entire cost of all necessary servicing, repairs or corrections, except as provided under Section 7 - Limited Warranty, or as may be covered in a separate Maintenance Service Plan, if purchased.

9. LIMITATION OF LIABILITY AND INDEMNIFICATION

LICENSEE shall defend, indemnify and hold harmless TracNet Corporation and its officers, agents and employees from and against any and all claims, liabilities, suits, damages, liability for damages of every kind and description and any losses whatsoever, (including damages to property and injuries to or death of persons, court costs, and reasonable attorney fees and costs) occurring or resulting to any and all persons, firms or corporations on account of damages, injuries to or death of any person, including but not limited to workers, employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with LICENSEE'S use or non-use of Licensed Software Programs or any derivative under this agreement, regardless of the existence or degree of fault or negligence on the part of TracNet Officers, subcontractor(s) and employee(s) of any of these, except for the active negligence of the TracNet Corporation, its officers and employees.

In no event will LICENSOR be liable for any special, indirect or consequential damages or any damages whatsoever resulting from loss of use, data or profits, whether in an action of contract, negligence, or other tort action arising out of or in connection with the use or performance of the Licensed Software Programs, whether or not its use is under this Software License. LICENSEE forever discharges and releases LICENSOR, its successors and assigns from any losses that may result from its use. Except as provided under Section 7 - Limited Warranty 30 day period, LICENSEE forever discharges and releases LICENSOR, its successors and assigns from any obligation or responsibility to correct problems or errors in the Licensed Program, except as may be provided for under the Maintenance Service Plan. In no case shall LICENSOR's liability exceed the license fees paid for the right to use the Licensed Program.

TracNet Corporation
Software Product License Agreement

10. MAINTENANCE AND SUPPORT OF THE LICENSED PROGRAM.

Should LICENSEE desire any maintenance, support, or modifications to the Licensed Program not covered under a current MSP agreement with TracNet Corporation, LICENSEE may request such services from LICENSOR, and LICENSOR may, but need not, provide the requested services. Any such services will be provided at LICENSOR's then prevailing rates, currently \$125.00 per hour, for the desired services or as otherwise agreed in writing between the parties. Any additions or modifications to the Licensed Program that may be provided by LICENSOR to LICENSEE shall be subject to the same terms, conditions and restrictions as the original copy of the Licensed Program delivered under this Agreement.

11. TERM AND TERMINATION.

11.1 This License shall last as long as LICENSEE continues to use the Licensed Program.

11.2 LICENSOR, its successors, or assigns may terminate this License Agreement on thirty (30) day's written notice should LICENSEE violate any of the provisions of this License and fail to cure them. Prior to issuance of the termination notice, Licensor shall provide ten (10) days written notice of intent to terminate, enumerating the reasons for termination. LICENSEE shall have sixty (60) days to cure the enumerated violations. Such termination shall be effective upon receipt by LICENSEE of a final notice of termination following the expiration of the cure period.

11.3 LICENSEE may terminate this License Agreement at any time for its convenience by giving thirty (30) days written notice of termination to LICENSOR, its successors, or assigns and destroying (with written certification of destruction) or returning all copies of the Licensed Program and Documentation.

11.4 The parties to this agreement recognize and acknowledge that LICENSEE is a political subdivision of the State of California. As such, LICENSEE is subject to the provisions of Article XVI, Section 18, of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of business, LICENSEE will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year. Notwithstanding any other provisions of this agreement to the contrary, LICENSEE shall give notice of cancellation of this agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this agreement. Upon the effective date of such notice, this agreement shall be automatically terminated and LICENSEE released from any further liability hereunder. In addition to the above, should the Governing Board, during the course of a given year for financial reasons, reduce or order a reduction in the budget for any Department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the Board, this agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

12. TAXES

LICENSEE shall pay all taxes relating to the transfer of Licensed Program from LICENSOR to LICENSEE. The prices stated are exclusive of any federal, state, municipal or other governmental taxes, duties, excise taxes or tariffs now or hereinafter imposed on the licensing, production, storage, sale, transportation, import, export or use of the Licensed Program. Such charges shall be paid by LICENSEE, or in lieu thereof, LICENSEE shall provide an exemption certificate acceptable to LICENSOR and the applicable taxing authority. Should an audit of either party by governmental authorities result in a claim that any such charges are due, LICENSEE shall pay such charges, together with interest, penalties and other costs, on demand

TracNet Corporation
Software Product License Agreement

by LICENSOR.

13. DISPUTE RESOLUTION

13.1 Both parties agree to meet and attempt to resolve any controversy or claim arising out of, relating to, or connected with this Agreement, or the breach thereof, prior to pursuing legal action. Should resolution not be achieved and legal action required, both parties agree to discuss and explore various legal remedies to determine the best procedure to settle the controversy.

13.2 Should resolution not be achieved and legal action required, both parties agree to discuss and explore other various remedies, including mediation and arbitration or other various legal remedies, prior to filing a lawsuit to determine the best procedure to settle the controversy.

13.3 Venue – Should legal proceedings be required, both parties agree litigation will occur in the Monterey County, California, venue.

14. GENERAL PROVISIONS

14.1 This Agreement shall in all respects be interpreted, construed in accordance with, and governed by the internal laws of the State of California, without regard to the rules on conflict of laws. The place of making and the place of performance for all purposes shall be Pacific Grove, California, regardless of the actual place of execution or performance. In the event of any litigation between the parties, the parties stipulate that the sole and exclusive jurisdiction for such action shall be in the Municipal or Superior Courts for the County of Monterey, California or the United States District Court for Monterey, District of California. Both parties agree that the above referenced courts shall have personal and exclusive jurisdiction over the parties for any dispute arising out of this Agreement that is not covered by the Arbitration provision.

14.2 This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and merges all prior discussions between them. LICENSEE acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing and signed by both parties to this Agreement.

14.3 Any notice required or permitted by this Agreement shall be in writing and shall be hand delivered, sent by prepaid, registered air mail, or by courier, addressed to the other party at the address shown at the beginning of this Agreement or at such other address for which such party gives notice hereunder. Such notice shall be deemed to have been given on the earlier of the date of actual delivery or five (5) days after deposit in the mail.

14.4 Nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.

14.5 If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

14.6 Paragraph headings are for convenience only and shall not be considered in the interpretation of this Agreement.

14.7 LICENSOR and LICENSEE are not representatives or agents of the other and neither party shall have any power to assume any obligations on behalf of the other.

TracNet Corporation
Software Product License Agreement

14.8 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

14.9 All the referenced Attachments are included by reference in this Agreement.