

# SOFTWARE LICENSE AND MAINTENANCE AGREEMENT

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This Agreement ("Agreement") is made and entered into and effective **July 1st, 2018** by and between Homeland Justice Systems, Inc, ("Contractor"), of Riverside, California, and the County of Monterey, Probation Department ("County").

WHEREAS, Contractor has provided to County certain software, Smart Probation ("Software"), as Case Management System (CMS) licensed to the Probation Department ("Probation"). The term "Software" as used in this agreement means the current version of the Smart Probation case management system, for the allotted 350 perpetual licenses.

WHEREAS, County wishes to have Contractor provide maintenance, and support services, pursuant to the terms and conditions of this Agreement; and

WHEREAS, County wishes to have Contractor provide additional project management, consulting, training and software development pursuant to the terms and conditions of this Agreement;

NOW, THEREFORE, the parties agree as follows:

## **1. GENERAL DESCRIPTION**

The County hereby engages the Contractor to perform, and Contractor hereby agrees to perform, the services described in Exhibit A in conformity with the term of this agreement. The services are generally described as follows: **Provide maintenance and support services, as well as project management and software development for the case management system, Smart Probation.**

## **2. PAYMENT PROVISIONS**

County shall pay the Contractor in accordance with payment provisions set for the in **Exhibit A** subject to the limitations set forth in this agreement the total amount payable by County to Contractor shall not exceed the sum of **\$474,938**.

## **3. TERM OF AGREEMENT**

The term of this Agreement is for three years, **from July 1, 2018 to June 30, 2021**, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both Contractor and County and with County signing last, and Contractor may not commence work before County signs this Agreement.

This Agreement may be terminated for non-payment or material breach. Fees paid are non-refundable unless Contractor has materially breached this agreement and has failed to cure the breach after 30 days written notice.

## **4. SCOPE OF SERVICES AND ADDITIONAL PROVISIONS**

The following attached exhibits are incorporated herein by reference and constitute part of this Agreement:

**Exhibit A - Scope of Services/ Payment Provisions**

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### 5. ACCESS

Software support, maintenance and development services are conditioned upon provision by County to Contractor of reasonable appropriate access to the system(s) running the covered Software, including, but not limited to, passwords, system data, file transfer capabilities, and remote log-in-capabilities. Contractor will maintain security of the system and use such access only for the purposes of this Agreement and will comply with County's standard security procedures. Information accessed by Contractor agents or employees as a result of accessing Client's system shall be deemed confidential information pursuant to the terms of the Software License Agreement executed concurrently between the parties hereto.

County shall also use commercially reasonable efforts to provide an active voice telephone line at each site which is available continuously when required for support access.

### 6. WARRANTY

Contractor will undertake all reasonable efforts to provide technical assistance under this agreement and to rectify or provide solutions to problems where the Software does not function as described in the Software documentation, but Contractor does not guarantee that the problems will be solved or that any item will be error-free. This agreement is only applicable to Contractor Software running under the certified environments specified in the release notes for that product. Contractor will provide the County with substantially the same level of service throughout the term of this agreement. Contractor may from time to time, however, discontinue Software products or versions and stop supporting Software products or versions one year after discontinuance, or otherwise discontinue any support service, but will offer alternative support software to keep the contracted services in the same working order as when initially installed.

Contractor is not liable for incidental, special or consequential damages for any reason (including loss of data or other business or property damage), even if foreseeable or if County has advised of such a claim. Contractor's liability shall not exceed the aggregate limits of the insurance under this agreement. County agrees that the pricing for the services would be substantially higher but for these limitations.

### 7. PAYMENT CONDITIONS

For the services described in this Agreement, the maximum obligation of the County will be **\$474,938**. Contractor shall submit to the Contract Administrator an invoice on a form acceptable to County. If not otherwise specified, the Contractor may submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services.

Invoices shall set forth the amounts claimed by Contractor for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice as the County may require.

The Contract Administrator or his or her designee shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

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In the event that the Agreement is terminated prior to completion of the services, the amount paid shall be prorated over the length of the Agreement and should the County determine a reimbursement is owed, the Contractor shall reimburse the County within thirty (30) days of the termination.

Invoices shall be mailed to:

Monterey County Probation Department  
Finance Office - Attn: Accounts Payable  
20 East Alisal Street  
Salinas, CA 93901

### 6. INDEMNIFICATION

Contractor shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the Contractor's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. "Contractor's performance" includes Contractor's action or inaction and the action or inaction of Contractor's officers, employees, agents and subcontractors.

#### 6.01 Limitation of Liability

**Exclusion of incidental, consequential, and certain other damages.** To the maximum extent permitted by applicable law, in no event shall Contractor or its suppliers be liable for any special, incidental, indirect or consequential damages whatsoever (including, but not limited to, damages for: loss of profits, loss of confidential or other information, business interruption, personal injury, loss of privacy, failure to meet any duty (including of good faith or reasonable care), negligence, and any other pecuniary or other loss whatsoever) arising out of or in any way related to the use of or inability to use the software and services provided in this Agreement or the support services, or the provision of or failure to provide support services, or otherwise under or in connection with any provision of this Agreement, even if Contractor or any supplier has been advised of the possibility of such damages.

**Limitation of liability and remedies.** Notwithstanding any damages that County might incur for any reason whatsoever (including, without limitation, all damages referenced above and all direct or general damages), the entire liability of Contractor and any of its suppliers under any provision of this agreement and County's exclusive remedy for all of the foregoing shall be limited to the aggregate limits of the insurance for the services provided in this Agreement. The foregoing limitations, exclusions and disclaimers shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.

In the event Contractor provide on-site services on Monterey County premises, Contractor agrees to have the requisite levels of commercial general liability insurance, business automobile liability insurance, professional liability insurance, if applicable, and worker's compensation

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insurance, if applicable, in place prior to coming on-site, naming the County of Monterey as an additional insured. Prior to Contractor coming on-site, Contractor will provide County with the necessary insurance required as applicable and listed below:

1. A Certificate of Workers' Compensation Insurance (if applicable)
2. A Certificate of Professional Liability Insurance (if applicable)
3. A Certificate of General Liability Insurance **and** Auto Insurance (typically on an ACORD form) with accompanying "Additional Insured" Endorsement documents. All endorsements shall clearly state policy number.

The following is a guideline of general insurance amount requirements:

1. General Liability: One million dollars (\$1,000,000.00) per occurrence (Minimum \$2,000,000 aggregate)
2. Auto Liability: One million dollars (\$1,000,000.00) per occurrence
3. Worker's Compensation Insurance (required only if vendor has employees):  
One million dollars (\$1,000,000.00) per person,  
One million dollars (\$1,000,000.00) each accident,  
One million dollars (\$1,000,000.00) each disease
4. ONLY if applicable: Professional Liability Insurance for the professional services (eg; doctor, architect, engineer, etc.): One million dollars (\$1,000,000.00) per claim and two million dollars (\$2,000,000.00) in the aggregate

The following language requirements are mandatory:

Commercial General Liability and Auto Liability policies shall include endorsements naming "The County of Monterey, Its Officers, Agents and Employees" as additional insureds. Endorsements for General Liability and Auto Liability policies shall state that the Contractor's insurance is "primary" and the County of Monterey is "non-contributory", or copies of the complete policy which state the equivalent may be submitted in their entirety. Also acceptable is a copy of the policy (with policy number printed on it) which states that if required by written contract, the insurance shall be "primary" and the Additional Insured shall be "non-contributory".

### 7. CONTACTS

Designated Contacts, full names followed by telephone number and e-mail address.

#### **Monterey County Probation Department**

Name: David Graham, DISM  
Telephone #: (831) 784-5753  
E-mail Address:  
[Grahamdg@co.monterey.ca.us](mailto:Grahamdg@co.monterey.ca.us)

Name: Marisa Fiori, MA III  
Telephone #: (831) 796-1100  
E-mail Address: [fiorim@co.monterey.ca.us](mailto:fiorim@co.monterey.ca.us)

#### **Homeland Justice Systems**

Name: Joe Atalla  
Telephone #: (951) 515-4921  
Email Address: [jatalla@HomelandJustice.com](mailto:jatalla@HomelandJustice.com)

Name: George Hawat  
Telephone #: (951) 850-8705  
Email Address: [ghawat@HomelandJustice.com](mailto:ghawat@HomelandJustice.com)

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### 8. GENERAL

(a) Each party acknowledges that it has read this Agreement; they understand the agreement and agree to be bound by its terms. Further, both parties agree that this is the complete and exclusive statement of the Agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to this Agreement. This Agreement may not be modified or altered except by written instrument duly executed by both parties. The Software and the use thereof is subject to the license agreement related to the Software.

(b) Times by which Contractor will perform under this agreement shall be postponed automatically to the extent that Contractor is prevented from meeting them by causes beyond reasonable control.

(c) This agreement and performance hereunder shall be governed by the laws of the State of California.

(d) No action, regardless of form, arising out of this Agreement may be brought by County more than two (2) years after the cause of action has arisen.

(e) If any provision of this Agreement is invalid under any applicable statute or rule of law, it is to that extent, deemed to be omitted.

(f) County may not assign or sub-license without the prior written consent of Contractor, County's rights, duties or obligations under this Agreement to any person or entity, in whole or in part. A sale of substantially all of Licensee's assets to a third party or any transfer of more than 50% of the voting stock of Licensee to a third party shall not constitute an assignment under this license.

g. The Contractor shall not assign, sell or otherwise transfer its interest of obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, Contractor shall continue to be liable for the performance of all requirements of this Agreement.

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IN WITNESS WHEREOF, County and Contractor have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY	CONTRACTOR
By: _____ Purchasing Manager Date: _____	Homeland Justice Systems Inc. By: <u>Joe Atalla</u> Joe Atalla, President/ CEO Date: <u>6/6/2018</u>
Approved as to Content By: <u>Marcia Pavaas</u> Department Head Date: <u>6-12-18</u>	By: <u>George Hanna</u> Nate Hanna, COO/ Treasurer GEORGE HAWAT Date: <u>6-6-18</u>
Approved as to Form By: <u>CRB</u> County Counsel Date: <u>6-11-18</u>	
Approved as to Fiscal Provisions By: <u>A. Kelly</u> Auditor/ Controller <u>6/12/18</u>	

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### Exhibit A - Scope of Services/ Payment Provisions

Scope of Services include: a) Upgrade, Maintenance and Support, b) Software Development and Project Management and c) On-Site Daily Rate and Travel Reimbursement. Contractor hereby grants to County, for the term of this Agreement, a non-exclusive, non-assignable, non-transferable right and license to use the Software for no more than 350 users.

#### a) Maintenance and Support

Contractor shall provide to County Maintenance and Support for Smart Probation software (Software) licensed to the County at the cost of **\$75,000** for FY 2018-19. The maintenance and support costs shall increase annually at a rate not exceeding the Consumer Price Index (CPI) for the prior year or 5%, whichever is less.

Fiscal Year	Max Amount	
18-19	\$75,000.00	
19-20	\$78,750.00	To Be Determined (TBD), not to exceed the CPI for the prior year or 5%, whichever is less
20-21	\$82,688.00	TBD, not to exceed the CPI for the prior year or 5%, whichever is less
<b>TOTAL</b>	<b>\$236,438.00</b>	

#### b) Software Development and Project Management

Hourly rate for services, included but not limited to, project management, consulting, training and software development is guaranteed at \$150.00 per hour for the duration of the agreement for a maximum of **\$225,000**.

#### c) On-Site Daily Rate and Travel Reimbursement

Daily rate for on-site services will be billed at \$2,000.00 per day, not to exceed a maximum of **\$12,000** for the duration of the agreement. Travel expenses including lodging, mileage, and per diem to be reimbursed pursuant to the County travel policy.

[http://www.co.monterey.ca.us/auditor/pdfs/county\\_travel\\_business\\_expense\\_policy\\_12-5-12.pdf](http://www.co.monterey.ca.us/auditor/pdfs/county_travel_business_expense_policy_12-5-12.pdf)

#### d) Supporting (3rd-party) Software Licensing Fee Reimbursement

Not to exceed a maximum of: **\$1,500.00** (for the duration of the agreement)

Contractor will charge eligible expenses as allocated by line item. However, funding could be reallocated between line items upon request and justification by the Contractor and written approval by the Office of the Chief (or designee), providing that the total contract amount remains unchanged. All fees and costs stated herein shall include all applicable tax.

#### Support

Contractor will establish and maintain an organization and process to provide support for the Software to County. Support shall include:

- Diagnosis of problems or performance deficiencies of the Software; and
- Resolution of the problem or performance deficiencies of the Software

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Contractor will provide telephone software support on a business day basis. Business day is defined as 9:00 AM through 6:00 PM Pacific Standard Time (PST), including holidays and excluding weekends. Any support outside the business day shall be billed as time and material for an hourly rate of \$150.00, to include after hours, weekends and holidays.

Contractor will use its best efforts to cure, as described below, reported and reproducible errors in the Software. Contractor utilizes the following four (4) severity levels to categorize reported problems:

### SEVERITY 1 – CRITICAL BUSINESS IMPACT

The impact of the reported deficiency is such that the County is unable to either use the Software or reasonably continue work using the Software. Contractor will commence work on resolving the deficiency within one (1) hour of notification and will engage staff during business hours until an acceptable resolution is achieved.

### SEVERITY 2 – SIGNIFICANT BUSINESS IMPACT

Important features of the Software are not working properly and there are no acceptable, alternative solutions. While other areas of the Software are not impacted, the reported deficiency has created a significant, negative impact on the County's productivity or service level. Contractor will commence work on resolving the deficiency within two (2) hours of notification and will engage staff during business hours until an acceptable resolution is achieved.

### SEVERITY 3 – SOME BUSINESS IMPACT

Important features of the Software are unavailable, but an alternative solution is available or non-essential features of the Software are unavailable with no alternative solution. The County impact, regardless of product usage, is minimal loss of operational functionality or implementation resources. Contractor will commence work on resolving the deficiency within one (1) business day of notification and will engage staff during business hours until an acceptable resolution is achieved.

### SEVERITY 4 – MINIMAL BUSINESS IMPACT

County submits a Software information request, software enhancement or documentation clarification which has no operational impact. The implementation or use of the Software by the County is continuing and there is no negative impact on productivity. Contractor will provide an initial response regarding the request within one (1) business week.

With respect to Severity One (1) reported deficiencies, Contractor may, with the concurrence of the County, elect to send senior support or development staff to the County location to accelerate problem resolution. Contractor will be responsible for the costs associated with this escalated problem resolution if the problem is determined to be related to the supported Software. If it is determined that the problem was not related to the supported Software, the County agrees to pay reasonable travel and lodging expenses in addition to Contractor's standard consulting rates.

Contractor agrees to abide to the County travel policy

[http://www.co.monterey.ca.us/auditor/pdfs/county\\_travel\\_business\\_expense\\_policy\\_12-5-12.pdf](http://www.co.monterey.ca.us/auditor/pdfs/county_travel_business_expense_policy_12-5-12.pdf)

### **Ownership of the Software**

The entire right, title and interest in the Software and all materials relating to the Software belong to the Contractor, subject to the license grant set forth in this Agreement. In the unlikely



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event that the Contractor ceases to exist and no longer operates a business and no services can be provided for the support and maintenance of the Software, County shall have access to source code to modify and use the Software for County's internal purpose only. This does not include the sale or transfer of the business to another entity that will provide reasonable support and maintenance to Software.

### **Maintenance**

During the term of this agreement, Contractor will provide the County with copyrighted patches, updates, releases and new versions of the Software along with other generally available technical material. These maintenance materials may not be used to increase the licensed number of versions or copies of the Software. All patches, updates, release and new versions shall be subject to the license agreement related to the Software.

### **Inclusions**

The items listed below are included in the yearly cost of software support and maintenance:

- Unlimited Email support for Probation's technical staff (Monday through Friday, from 9AM to 6PM PST including Holidays)
- Unlimited Phone support for Probation's technical staff (Monday through Friday, from 9AM to 6PM PST including Holidays)
- Software issue resolution
- Unlimited Framework upgrades
- Unlimited Framework updates
- On a regular basis, the Contractor will enhance the Software and publish updates including new functionality required by state and federal mandates for all Probation Departments in California. The Contractor will promptly notify the County who will have the right to acquire the updated material at no cost and as a part of the maintenance and support agreement.

### **Software Development and Additional Services**

Additional services, including but not limited to, project management, consulting, training and software development, at the cost of **\$150.00** per hour, will require County's approval prior to commencing any work.

Contractor will establish and maintain an organization and process to provide software development to County. Contractor shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below. Services include, but are not limited to:

- Development of Configurations, Enhancements, Reports Writing, and Template Creation for the Software, and supporting applications.
- Development of Interfaces with other systems for sharing of data and information, including but not limited to, the automation of data exchanges for participation in the State's Smart Justice initiative and Juvenile Court and Probation and Statistical System, (JCPSS).

### **Standards**

- Services will be provided based on operational priorities established by Probation.

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- Probation will provide business requirements and utilize Contractor's feedback and expertise in the development of projects and work orders.
- Contractor will provide an assessment of each project cost and estimated hours for approval by Probation prior to commencing work, and track billable hours for work orders.

### **Deliverables and Acceptance**

- System changes and enhancements will include design, development, testing, and final approval by Probation prior to implementation.
- Probation will approve deliverables with acceptance of the completed work order, as completion of the original stated request and/or change order(s), if applicable.

### **Change Order(s)**

Change order on existing or initiated work orders will require a re-evaluation of the time/cost estimate, and generate new or updated deliverables. Change orders will also require County's approval prior to commencing the new revised work.