State of Washington

Administrative Office of the Courts

DATA TRANSFER SUBSCRIPTION

AND

LICENSING AGREEMENT

FOR

PUBLIC SCOMIS CRIMINAL INDEX

State of Washington
Administrative Office of the Courts

DATA TRANSFER SUBSCRIPTION AND LICENSING AGREEMENT

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State of Washington
Administrative Office of the Courts
1206 Quince Street SE
PO Box 41170
Olympia, Washington 98504-1170

DATA TRANSFER SUBSCRIPTION AND LICENSING AGREEMENT
Public SCOMIS Criminal Index

This Agreement is entered into by and between the Administrative Office of the Courts, an office of the Judicial Branch of the Washington State government, hereinafter referred to as the "AOC" and _____ or "Licensee." The Licensee's address is _____.

IN CONSIDERATION of the mutual promises made to each other, as hereinafter set forth, the AOC and the Licensee agree as follows:

1. PURPOSE: The purpose of this Agreement is to establish the terms and conditions under which the AOC agrees to transfer to the Licensee, on a subscription basis, data files containing the Public SCOMIS Criminal Index in print image format ("Index") and to grant the Licensee a license for use of the Index.

2. DEFINITIONS: As used throughout this Agreement, the following terms shall have the meanings set forth below:

2.1 "AOC" shall mean the Administrative Office of the Courts of the State of Washington, any division, section, office, unit, or other entity of the AOC, or any of the officers, other officials, employees, volunteers, or others acting as representatives lawfully representing the AOC.
2.2 "Court" shall mean the Washington State Supreme Court, any division, section, office, unit, or other entity of the Court, or any of the officers, other officials, employees, volunteers, or others acting as representatives lawfully representing the Court.
2.3 "Licensee" shall include all officers, employees, and agents of the Licensee.
2.4 "Data" shall include any computer readable copies of the Index and any computer readable copies of any data provided to the Licensee.
2.5 "Information" shall mean material provided by the AOC in any format, including reports.
2.6 "Subscriber" shall mean a client of Licensee to whom information and/or data is given on a case-by-case basis.

3. APPLICATION FOR SUBSCRIPTION: The Licensee has submitted a written Subscription Application (application) to the AOC, a copy of which is attached as Exhibit A and is incorporated by reference as part of this Agreement. The Licensee warrants the information in the application is correct and the Licensee will use the Index solely for the purposes set forth in the application.

4. GRANT OF LICENSE: The AOC hereby grants a non-exclusive license to the Licensee for the use of the Index and the data contained in it and to distribute such data to its subscribers subject to said terms and conditions contained herein.

5. SUBSCRIPTION: The AOC will provide the Licensee with the Index on a subscription basis. As long as this Agreement remains in effect the AOC will provide the Index according to the following schedule:

Five year FTP file updated quarterly (January, April, July, and October)

6. TERM AND EFFECTIVE DATE OF AGREEMENT:

6.1 The initial term of this Agreement is from the date of its execution by the AOC through December 31 of the current year, unless sooner terminated as provided herein.

6.2 This Agreement automatically extends for successive six-month periods unless either of the parties notifies the other in writing, electronic mail being sufficient, at least 30 days prior to the automatic renewal date that they wish to terminate the Agreement.

6.3 The Agreement may be terminated in accordance with the provisions of Subsections 25.16.1, 25.16.2, and 25.16.3 below.

7. BASIC TRANSACTION: This Agreement sets forth the responsibilities of the parties, costs, and the terms and conditions under which the Index will be provided.

7.1 RESPONSIBILITIES OF THE AOC: The AOC shall:

7.1.1 Provide the Licensee with access to an FTP server containing the five-year Public SCOMIS Criminal Index file.

7.1.2 The FTP file will be updated on a quarterly basis (January, April, July, and October).

7.2 RESPONSIBILITIES OF THE LICENSEE: The Licensee shall:

7.2.1 Comply with the provisions of this Agreement and all of the terms and conditions contained herein or attached hereto.

7.2.2 Make payments to the AOC pursuant to the provisions of Subsections 8.1 and 8.2 below.

7.2.3 Establish written procedures which shall describe the process the Licensee uses to meet the terms and conditions of this section of the Agreement.

7.2.4 Recognize and hereby acknowledge that the user identifiers and passwords, if any, supplied by the AOC to the Licensee are the confidential property of the AOC, subject to the proprietary rights of the AOC, and agrees to hold such user identifiers and passwords, if any, in the strictest confidence. The Licensee further agrees to exercise at all times the same care with respect to the user identifiers and passwords, if any, or any other materials or information provided hereunder by the AOC as the Licensee would exercise in the protection of the Licensee's own confidential information or property and to not release or disclose it to any other party except with the written consent of the AOC.

7.2.5 Provide the AOC with access at no charge to any database created using information from the FTP file provided hereunder for the purpose of monitoring and auditing contract compliance.

7.2.6 Replace, whenever a quarterly update becomes available, any automated files it maintains which contain Index information with the information from most recent quarterly FTP files.

7.2.7 Return to the AOC or destroy any information and data provided by the AOC under this Agreement in any form, held by the Licensee or any officer, employee or agent of the Licensee on the date and to the extent specified in the notice of termination or at the expiration of the Agreement.

8. COSTS:

8.1 The Licensee shall make a non-refundable advance semi-annual payment within 30 days of invoice receipt.

8.2 Rate Schedule:

Semi-annual fee:	$900.00

9. ONGOING DATA SCRUBBING AND UPDATE REQUIREMENTS:

9.1 Sealed and otherwise restricted cases: The Licensee agrees to remove from its files cases sealed (or otherwise restricted) after their appearance in data files provided to the Licensee. The data provided to the Licensee will contain transactions identifying the cases that are to be removed.

9.2 Dispositions: The Licensee agrees to update promptly all cases when disposition information is received.

9.3 Cases amendments: The Licensee agrees to update in its files cases where the charge is amended after their first appearance in data files provided to the Licensee. The data provided to the Licensee will contain transactions identifying the cases that are to be amended. The Licensee agrees that its

files will contain only the most current charges.

10. RESTRICTIONS ON THE USE OF INFORMATION AND DATA PROVIDED UNDER THIS AGREEMENT:

10.1 The information and data provided to the Licensee under this Agreement is subject to the restrictions contained in Subsection 7.2.6 and Section 9 above relating to data scrubbing and update requirements.

10.2 The Licensee is responsible for ensuring that access and use of the data by its subscribers is conducted in a proper and legal manner and that access is available only to authorized subscribers.

10.3 To the extent that the data being accessed is covered by other laws, statutes, court rules, and administrative rules and regulations which restrict access to and use of such information and data, the restrictions contained in such laws, statutes, court rules, and administrative rules and regulations shall apply to the data accessed under this Agreement.

10.4 Any exceptions, revisions, or waivers to these limitations requested by the Licensee must be approved in writing by the AOC and received by the Licensee prior to the requested use or dissemination of the information and data received under this Agreement.

11. LICENSEE SUBSCRIBER PROVISIONS:

11.1 Licensee shall establish procedures for screening and qualifying potential subscribers.

11.2 The Licensee shall verify the identification of its potential subscribers to the Licensee's satisfaction, obtain proof from each potential subscriber sufficient to demonstrate to the Licensee's satisfaction that the potential subscriber is the type of entity the potential subscriber claims to be, and obtain a certification from the potential subscriber stating that the potential subscriber will use the information only for those purposes allowed by law and under the subscriber agreement. The Licensee shall maintain a record of these facts for a period of not less than six years from the latest date the Licensee disclosed information to the subscriber and shall provide such record to the AOC upon request.

11.3 Licensee will enter a written subscriber agreement with each of its subscribers. Such agreements shall specifically detail the access that the subscriber will have to the Licensee's database, detail authorized uses of the data accessed, condition access to authorized use, and include a provision for immediate termination of the agreement in the event of improper use by the subscriber of the data which the subscriber has been authorized to access.

11.4 The Licensee agrees to provide a list of the Licensee's subscribers to the AOC upon request by the AOC.

12. DISCLOSURE REQUIREMENTS: When the information and data covered by this Agreement is provided in any form by the Licensee to a subscriber, customer, client, or other third party, the Licensee hereby agrees to provide each such subscriber, customer, client, or other third party with the information contained in the DISCLAIMER OF WARRANTIES and LIMITATION OF LIABILITY sections of this Agreement. At a minimum, the Licensee will ensure that a statement is displayed or provided to each such subscriber, customer, client, or other third party at the time of each transaction which states:

The information or data provided is based on information obtained from the courts as of the period of time covered by the quarterly update. The Administrative Office of the Courts and the Washington Courts: 1) do not warrant that the information is accurate or complete except for court purposes; 2) make no representations regarding the identity of any persons whose names appear in the Index; and 3) deny liability for any damages resulting from the release or use of the data. To verify the information, the user should personally consult the "official" record reposing at the court of record.

13. AUDITS:

13.1 The AOC may, at its discretion, perform audits of the Licensee to verify compliance with the terms and conditions of this Agreement and the appropriate use of the data provided by the AOC.

13.2 The Licensee shall include provisions in the agreements that the Licensee enters with its subscribers that the Licensee may perform an audit of the subscriber to verify appropriate use of the data provided by the AOC. Such provisions shall authorize the Licensee to: i) conduct random audits of subscribers; (ii) conduct audits of specific customers at any time the Licensee has reason to believe

that the subscriber is violating any of the terms of the subscriber agreement; or (iii) if the AOC requests an audit for any reason.

13.3 Failure of the Licensee: to include audit provisions in its subscriber agreements, to conduct random audits, to conduct specific audits when there is evidence of a violation of the terms of the subscriber agreement, or when requested by the AOC may result in the immediate termination, without notice, of this Agreement.

14. COOPERATION WITH AOC AND PROSECUTORIAL AUTHORITIES:

14.1 The Licensee agrees to cooperate with the AOC and other authorities authorized by law in any audit that is conducted of the Licensee or any of the Licensee's subscribers.

14.2 The Licensee agrees to cooperate fully with prosecutorial authorities in any action brought against the Licensee or any of the Licensee's subscribers relating to the reproduction, distribution, dissemination, or other use of the information and data provided by the AOC under this Agreement. PROVIDED, that nothing in this provision limits or abridges the Licensee's constitutional rights against self-incrimination.

14.3 Failure to cooperate with prosecutorial authorities may result in the immediate termination, without notice, of this Agreement.

15. CONTRACT COMPLIANCE MONITORING AND AUDITING: The Licensee agrees that the AOC may include "control" or "salted" data as a portion of the provided information as a means to ensure that any personally-identifiable information is not used for commercial solicitation purposes or in an indiscriminate and reckless manner. Furthermore the Licensee agrees to allow the AOC to perform audits, at its discretion, to detect the unauthorized removal of control data or the warehousing of stale-dated information subsequently expunged, restricted, or amended by the AOC.

16. COMPLIANCE WITH AUTHORITIES:

16.1 During the term of this Agreement, the Licensee shall comply with all current, or as subsequently amended state and federal laws, court rules, administrative regulations and policies governing, regulating, and/or relating to the dissemination of information and data, to privacy, and to the confidentiality of the information and data provided by the AOC under this Agreement.

16.2 In the event of the Licensee's noncompliance or refusal to comply with any such state and federal laws, court rules, administrative regulations and policies, this Agreement may be rescinded, canceled or terminated in whole or in part, and the Licensee may be declared ineligible for further agreements with the AOC.

17. RESALE OF DATA: The Licensee shall not reproduce or distribute or disseminate the transferred database files in bulk but only in response to an individual record inquiry. "In bulk" shall include, but is not limited to, via multiple record or on CD-ROM or other electronic or optical media.

18. RIGHTS AND INTEREST: The Licensee shall not gain any proprietary right to or interest in any information and data provided by the AOC as a result of this Agreement. Any rights or interest, or any portion thereof, derived by the Licensee under this Agreement are personal to it and may not be transferred, assigned, or sold for any purpose whatsoever to any person, corporation, partnership, association, or organization of any kind.

19. CHANGES RELATING TO INFORMATION AND DATA: The AOC specifically reserves the right, at its sole discretion, to make any changes it deems appropriate relating to the information and data provided under this Agreement at any time and without prior notice. Such changes include, but are not limited to: altering the character and format of the information and data, changing the production media, and/or modifying the production schedule. If such changes are made, the AOC will notify the Licensee as soon as is practical.

20. SUPPORT/ASSISTANCE: The Licensee acknowledges and accepts that all information and data provided under this Agreement is provided on an AS IS basis and that the AOC shall not be responsible for providing support or assistance of any nature to the Licensee or to any third party on behalf of the Licensee.

21. DISCLAIMER OF WARRANTIES:

21.1 THE AOC PROVIDES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO INFORMATION OR DATA PROVIDED UNDER THIS AGREEMENT.

21.2 THE AOC PROVIDES NO WARRANTIES, EXPRESS OR IMPLIED, THAT THE INFORMATION OR DATA PROVIDED IS ACCURATE, CURRENT, CORRECT, OR COMPLETE. IT IS EXPRESSLY UNDERSTOOD BY THE PARTIES THAT IT IS THE RESPONSIBILITY OF THE LICENSEE AND/OR ITS CUSTOMERS, CLIENTS, OR OTHER THIRD PARTIES TO WHOM THE INFORMATION AND DATA WAS SUPPLIED TO VERIFY INFORMATION OR DATA OBTAINED UNDER THIS AGREEMENT WITH OFFICIAL COURT INFORMATION REPOSING AT THE COURT OF RECORD.

22. LIMITATION OF LIABILITY: THE LICENSEE ACKNOWLEDGES AND ACCEPTS THAT ALL INFORMATION AND DATA PROVIDED UNDER THIS AGREEMENT IS PROVIDED ON AN AS IS BASIS AND THAT THE INFORMATION AND DATA MAY BE SUBJECT TO ERROR OR OMISSION AND THEREFORE AGREES THAT AOC SHALL NOT BE RESPONSIBLE NOR LIABLE IN ANY WAY WHATSOEVER FOR THE VALIDITY OF ANY DATA PROVIDED OR FOR THE USE OF THE INFORMATION AND DATA PROVIDED. SPECIFICALLY:

22.1 THE AOC SHALL NOT BE LIABLE FOR ANY DEMAND OR CLAIM, REGARDLESS OF FORM OF ACTION, FOR ANY DAMAGES RESULTING FROM THE USE BY THE LICENSEE OF ANY INFORMATION OR DATA PROVIDED UNDER THIS AGREEMENT.

22.2 THE AOC SHALL NOT BE LIABLE FOR ANY DEMAND OR CLAIM, REGARDLESS OF FORM OF ACTION, FOR ANY DAMAGES ARISING FROM INCORRECT OR INCOMPLETE INFORMATION OR DATA PROVIDED UNDER THIS AGREEMENT.

22.3 THE AOC SHALL NOT BE LIABLE TO THE LICENSEE OR ANY OTHER PARTY FOR ANY LOSS, INCLUDING REVENUE, PROFITS, TIME, GOODWILL, COMPUTER TIME, DESTRUCTION, DAMAGE OR LOSS OF DATA, OR ANY OTHER INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGE WHICH MAY ARISE FROM THE USE, OPERATION, OR MODIFICATION OF DATA PROVIDED UNDER THIS AGREEMENT.

23. INDEMNIFICATION: The Licensee hereby agrees to defend, indemnify, and hold harmless the AOC, its employees, and the State of Washington from all loss, risk of loss, and damages (including expenses, costs, and attorney fees) sustained or incurred because of or by reason of any claims, demands, suits, actions, judgments, or executions for damages of any and every kind and by whomever and whenever made or obtained, allegedly caused by, arising out of, or relating in any manner to any use made of the information or data obtained under this Agreement.

24. INSURANCE: The Licensee shall, at his or her own expense, maintain, for the duration of this Agreement, liability insurance sufficient to fulfill its responsibilities under Section 23 above.

24.1 Such insurance must have limits of not less than one million dollars each occurrence and two million dollars general aggregate. The insurance shall cover liability arising out of any use made by the Licensee of the information or data obtained under this Agreement and shall contain separation of insured's (cross liability) provisions.

24.2 The State of Washington, the AOC, its elected and appointed officials, agents, and employees shall be named as additional insured on said policy.

24.3 The Licensee shall furnish evidence in the form of a Certificate of Insurance satisfactory to the AOC that insurance has been secured. Failure to provide proof of insurance as required or the lapsing or cancellation of such insurance coverage will result in termination of the Agreement.

25. GENERAL TERMS AND CONDITIONS:

25.1 ALTERATIONS AND AMENDMENTS: This Agreement may be amended by the AOC at any time

by sending notice to Licensee.

25.2 ASSIGNMENT: The Licensee may not transfer or assign: (i) this Agreement or any portion thereof; (ii) any right or benefit accruing to the Licensee under this Agreement; nor (iii) any claim arising under this Agreement.

25.3 DISPUTES: Except as otherwise provided in this Agreement, when a bona fide dispute concerning a question of fact arises between the AOC and the Licensee, and it cannot be resolved, either party may take the dispute to the Judicial Information System Data Dissemination Subcommittee. The initiating party shall reduce its description of the dispute to writing and deliver it to the other party. The other shall write a response, and the matter shall be scheduled to be heard by the Data Dissemination Subcommittee. Both parties agree to exercise good faith in dispute resolution and to avoid litigation whenever possible.

25.4 ENTIRE AGREEMENT: This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous discussions and agreements. Understandings, representations, or warranties not contained in this Agreement or a written amendment hereto shall not be binding on either party.

25.5 GOVERNING LAW: This Agreement shall be governed in all respects by the laws and statutes of the State of Washington. The jurisdiction for any action hereunder shall be the Superior Court for the State of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington. The Licensee, by execution of this Agreement, acknowledges and agrees to the jurisdiction of the courts of the State of Washington in all matters relating to this Agreement.

25.6 HEADINGS: The headings and table of contents used herein are for reference and convenience only and shall not enter into the interpretation hereof unless otherwise specified herein. In the interpretation of this Agreement, the terms and conditions shall be construed to be complementary.

25.7 CONFLICTS OF AUTHORITY: If any provision of this Agreement shall be deemed in conflict with any statute or rule of law, such provision shall be deemed modified to conform to said statute or rule of law.

25.8 INDEPENDENT STATUS OF PARTIES: The parties to this Agreement will be acting in their individual capacities and not as agents, employees, partners, joint venturers, or associates of one another. The employees or agents of one party shall not be considered or construed to be the employees or agents of the other party for any purpose whatsoever.

25.9 NON-EXCLUSIVITY: This Agreement is non-exclusive. During the term of this Agreement, the AOC reserves the right to enter into agreements with other parties as it deems fit. Nothing contained in this Agreement shall be construed to limit in any way the AOC's right to enter a like or similar agreement or grant a like or similar license to any other entity or party on such terms as the AOC may in its sole discretion deem appropriate.

25.10 NOTICES: Any notice required or permitted to be given under this Agreement shall be effective if and only if it is in writing. Notice must be given by personal delivery or sent by United States mail; mail to the Licensee must be sent to Licensee's address as set forth in this Agreement and mail to the AOC must be sent to the Data Dissemination Administrator, Administrative Office of the Courts, 1206 Quince Street SE, PO Box 41170, Olympia, WA 98504-1170, or to such other address as each party has notified the other in writing.

25.11 RECORDS MAINTENANCE: The Licensee will retain all books, records, documents, and other materials relevant to this Agreement, including records of all recipients of information obtained from the Licensee, for six years after termination of this Agreement and make them available at all reasonable times to inspection, review, or audit by personnel authorized by the AOC, the Office of the State Auditor, federal officials and other officials so authorized by law.

25.12 SAVINGS: In the event that after the effective date of this Agreement and prior to normal completion, funding from state, federal, or other sources is withdrawn, reduced, or limited in any way, the AOC may terminate the Agreement without cause upon 30 days written notice subject to renegotiation under those new funding or project limitations and conditions.

25.13 SEVERABILITY: If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

25.14 SUBCONTRACTING: The Licensee shall not enter into subcontracts relating to this Agreement without obtaining prior written approval from the AOC.

25.15 SURVIVAL:

25.15.1 For as long as the Licensee continues to use any portion of the data provided under this Agreement, the Licensee must comply with the terms of this Agreement.

25.15.2 In addition, the provisions of Sections 21, 22, and 23 of this Agreement shall survive the termination of the Agreement.

25.16 TERMINATION:

25.16.1 General: This Agreement may be terminated without cause by either the AOC or the Licensee upon thirty (30) days written notice.

25.16.2 Termination for Cause: The Licensee accepts full responsibility and liability for any violations of this Agreement by the Licensee or any officer, employee, or agent of the Licensee and any such violation shall result in immediate termination by the AOC of all data and information provided to the Licensee or any officer, employee, or agent of the Licensee in any form and immediate forfeiture to the AOC of any AOC-provided data and information in any form held by the Licensee or any officer, employee, or agent of the Licensee. In such event, the Licensee shall be liable for damages as authorized by law.

25.16.3 Termination For Nonpayment: The AOC may immediately, without notice, terminate this Agreement for failure of the Licensee to pay an invoice outstanding longer than 30 days.

25.17 TERMINATION PROCEDURE: After receipt of notice of termination for failure to pay an invoice timely, and except as otherwise directed by the AOC, the Licensee shall:

25.17.1 Stop dissemination of any information and data provided by the AOC under this Agreement on the date and to the extent specified in the notice.

25.17.2 Return or destroy all information and data provided by the AOC as stated in Subsection 7.2.7.

25.18 WAIVER: No term or condition of this Agreement shall be held to be waived, modified, or deleted, and no breach excused, except by a written instrument signed by the parties hereto. Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach.

26. SIGNATURES: The parties hereto, having read this Agreement in its entirety, do agree thereto in each and every particular.

ADMINISTRATIVE OFFICE OF THE COURTS	LICENSEE
_____	_____
Callie Dietz, Administrator	Signature/Title
DATE: _____	DATE: _____