

## **Exhibit A**

### **Software License and Professional Services Agreement**

This Software License and Professional Services Agreement ("License Agreement") is part of and subject to the terms of the Master Software License Agreement and Professional Services Agreement ("Third Master") as executed by and between Integrated Software Specialists, Inc. ("ISS"), and the City of Toledo, ("Customer") on \_\_\_\_\_ pursuant to Ord. \_\_\_\_\_.

#### **1. DEFINITIONS**

- 1.1. "License Agreement" means this Software License and Professional Services Agreement.
- 1.2. "Confidential and Proprietary Information" means all information in any form relating to, used in, or arising out of a Party (hereinafter defined) operations and held by, owned, licensed, or otherwise possessed by such Party (the "Owner") whether held by, owned, licensed, possessed, or otherwise existing in, on, or about the Owner's premises or the other Party's offices, residence, or facilities and regardless of who created, generated, or gathered the information, including, without limitation, all information contained in, embodied in, or related to the Owners inventions, ideas, creations, works of authorship, business documents, licenses, operations, manuals, , projections, bulletins, customer lists, sales or pricing data, operating data cost data, profit data, financial statements, strategic planning or financial planning data, designs, logos, proposed trademarks or service marks, test results, product or service literature, product or service concepts or plans, specification data, know-how, software, databases, database layouts, design documents, release notes, algorithms, source code, screen shots, and other research and development information and data. Notwithstanding the foregoing, Confidential and Proprietary Information does not include information that: (a) becomes public other than as a result of a disclosure by the other Party in breach thereof; (b) becomes available to the other Party on a non-confidential basis from a source other than the Owner; (c) is known by the other Party prior to its receipt from the Owner without any obligation of confidentiality with respect thereto; or (d) is developed by the other Party independently of any disclosures made by the Owner; or (e) is information in the possession of the City that does not constitute a "trade secret" as defined in the Ohio Revised Code and by Ohio law and therefore may be subject to disclosure under Ohio's public records law; provided that any disclosure by City of Confidential and Proprietary Information is subject to Third Master indemnification and hold harmless provisions so that city is immune from any liability that may result as a result of an unlawful, negligent, or unauthorized release of Confidential and Proprietary Information.
- 1.3. "Custom Software" means customized or modified versions of the Licensed Property.
- 1.4. "Customer Materials" means all content provided by or on behalf of Customer for use in the performance of the Services, including without limitation all including all Customer data stored in the Licensed Property.
- 1.5. "Documentation" means the user's manuals and any other materials in any form or media provided by ISS for the users of the Licensed Property.

- 1.6. "License Fee" means the "Total License Fees" as set forth on the Schedule A which is due and payable as set forth in Section 4.
- 1.7. "Licensed Property" means the Licensed Software and the Documentation.
- 1.8. "Licensed Software" means: machine- readable object code of (a) the current software version of the software listed or as otherwise indicated on Schedule A hereto and as amended or added from time- to-time; (b) refinements, enhancements, or other customization of the software to be developed by ISS in conjunction with this License Agreement.
- 1.9. "Maintenance and Support Fees" means the "Annual Maintenance and Support Fees" as set forth on the Schedule A which is due and payable as set forth in Section 4 and in accordance with Exhibit B – Software Maintenance and Support Agreement.
- 1.10. "Open Source Software" means computer software that is available for public access and use with source code normally reserved for copyright holders that are provided under an open-source license that permits users to study, copy, change, improve and at times also to distribute the software.
- 1.11. "Party" means, individually, ISS and Customer.
- 1.12. "Project" means the delivery and license of the Licensed Property and the performance of the services to be provided by ISS in accordance with the provisions of this License Agreement.
- 1.13. "Services" means the services to be provided by ISS hereunder or under the M&S Agreement or any SOW (hereinafter defined).
- 1.14. "Software Maintenance and Support Agreement or M&S Agreement" means the maintenance and support services agreement attached as Exhibit B – Software Maintenance and Support Agreement.
- 1.15. "SOW" means any statement of work or similar document between ISS and Customer.
- 1.16. "Support" shall have the meaning given such term in the M&S Agreement entered into between Customer and ISS.
- 1.17. "Use" means to host, load, use, install, execute, view, employ, utilize, store, display, or access the Licensed Property.
- 1.18. "User" means an individual who is associated with Customer or affiliate as a full or part time employee, or subcontractor of Customer or affiliate employed by or providing Services, or a third party requiring access to the Licensed Property in order to conduct business with Customer who, in each case, is assigned and authorized by Customer to Use the Licensed Property as permitted hereunder.

## **2. LICENSES AND RESTRICTIONS**

- 2.1. Rights Granted. ISS hereby grants to Customer the following rights ("License"):

- (a) For any new Enterprise Licensed Software as defined and itemized on Schedule A, incorporated by reference, ISS grants to Customer a non-exclusive, royalty-free, revocable license to use the Licensed Property for Customer's business purposes in adherence to Permitted Use (hereinafter defined). Upon Customer's payment of a License Fee in full, those licenses shall become irrevocable, subject to the restrictions on use set forth herein; notwithstanding the foregoing it is acknowledged and agreed by the Parties that Customer has purchased the following Enterprise Licensed Software, which are irrevocable subject to certain Permitted Use restrictions:
- i. iJustice® Enterprise Probation Case Management Suite;
    - 1. iJustice® Integrated Justice Enterprise Exchange Broker;
    - 2. iJustice® Letter and Notice Template Generation and Management Module;
    - 3. iJustice® Automated Alert and eNotification Subscription and Management Module;
    - 4. iJustice® AdHoc reporting and Dashboards Module.
- (b) For Subscription Licensed Software defined and itemized on Schedule A incorporated by reference labeled as "Subscription Licensed Software", ISS reserves the right to grant to Customer a limited, non-exclusive, royalty-free, revocable license to Use the Licensed Property for Customer's business purposes in adherence to Permitted Use. Subscription licensed software will be limited to the period and terms defined in the Software and Services Fee Schedule on Schedule A. Upon Customer's payment of the License Fee in full, the foregoing licenses shall become irrevocable for the paid subscription period, subject to the restrictions on use set forth herein.
- (b) This License permits the Use of the Licensed Property exclusively by Customer for its purposes to support its operations and related services for its agents or employees and its customers to the extent such parties require access to the Licensed Property, as well as the representatives of such parties ("Permitted Use").
- (c) Except as specifically set forth herein, ISS grants Customer the right to use the Licensed Property without limitation as to (i) the number of Users, servers, workstations, and/or personal computers (including, but not limited to portable computers) upon which the Licensed Property may be operated from; and (ii) the location of such users, servers, processors, workstations, and/or personal computers.
- (d) Use any Updates (as defined in the M&S Agreement) provided pursuant to the M&S Agreement and subject to all of the provisions of this License Agreement.
- (e) Customer may use the Licensed Property for its purposes only, and will not sublicense, transfer, rent, or lease the Licensed Property or its use; or copy, redistribute, or otherwise allow third parties to use the Licensed Property, whether on a time sharing, stand-alone, remote access, hosted shared services, or service bureau arrangement.
- (f) All rights and licenses granted under or pursuant to this License Agreement by ISS to Customer are, and shall otherwise be deemed to be, licenses to rights to "intellectual property".

- 2.2. Copies. Customer may make and maintain copies of the Licensed Property as are reasonably appropriate for archival, and back-up purposes; provided however, that Customer shall retain all proprietary notices, logos, copyright notices and similar markings on such copies.
- 2.3. Restrictions.
- (a) To the extent that Customer employs contractors, subcontractors, or other third parties to assist in any project, Customer shall obtain from such parties an executed ISS Confidentiality Agreement, which shall be provided to City and subject to City's prior written approval to form and content, prior to such parties being permitted access to ISS Confidential and Proprietary Information.
  - (b) Customer shall not reverse-engineer, de-compile, disassemble, modify, or prepare derivative works of the Licensed Property, in whole or in part.
- 2.4. Customer Modifications. ISS shall have no liability pursuant to the Master Agreement, License Agreement or the M&S Agreement for any damages or defects to the Licensed Software caused, directly or indirectly, by Customer or User as a consequence of modifications or other changes to the Licensed Software.
- 2.5. Title
- (a) ISS represents and warrants that it is the owner of all right, title, and interest in and to the Licensed Property and all components and copies thereof. Nothing in this License Agreement shall be deemed to vest in Customer any ownership or intellectual property rights in and to ISS intellectual property (including, without limitation, ISS Confidential and Proprietary Information), any components and copies thereof, or any derivative works based thereon.
  - (b) All training materials developed solely by either Party shall be the sole property of such Party. Any training materials developed jointly by the Parties shall be owned jointly by the Parties, and each Party shall be entitled to exercise all rights of ownership of such materials without any duty to account to the other.
  - (c) All Customer data shall remain the property of Customer. ISS shall not use Customer data other than in connection with providing the services pursuant to this License Agreement.
- 2.6. Intellectual Property. Customer acknowledges and agrees that the Licensed Property, Custom Software, and all related source code, documentation and any and all materials relating thereto, and any and all associated trademarks, service marks, copyrights, patent rights, trade secrets and other proprietary rights in or related to the Licensed Property or Custom Software without limitation, are proprietary to ISS and shall remain at all times the sole, exclusive property of ISS or its licensors, whether or not specifically recognized or perfected under applicable law. Customer agrees to take reasonable care to comply with all copyright, trademark, trade secret, patent and other laws necessary to protect the Licensed Property and related marks, including any and all proprietary information contained therein, and agrees not to remove, conceal, or obliterate any copyright, legend, credit line, date line or other proprietary notice included in the Licensed Property.

### **3. ADDITIONAL SERVICES.**

- 3.1. At Customer's request, ISS shall provide professional services (not otherwise constituting Support) as requested by Customer, as may be more particularly described in any applicable SOW executed by Customer and ISS or in a writing between the parties ( "Consulting Services"). Such Consulting Services will be provided as indicated in Schedule A. Each SOW or other writing will incorporate by this reference all the terms and conditions of this License Agreement and will set forth, as applicable: (i) the scope of Consulting Services to be performed under such SOW or other writing; (ii) the estimated hours such Consulting Services are to be provided; (iii) any tangible item to be delivered to Customer by ISS under such SOW or other writing (a "Deliverable"); (iv) any costs or expenses that will be reimbursed to ISS above the applicable hourly rate or fixed price set forth in the SOW or other writing; and (v) such other details as the parties deem reasonably necessary.

### **4. FEES AND INVOICING**

- 4.1. License Fee. Customer shall pay the License Fee in accordance with the following payment plan: Invoices shall be sent to Customer upon each Payment Event, which shall be paid in accordance with this Section.
- 4.2. Customer's fees for License shall be as set forth in Schedule A hereto, its' associated Change Orders entered by the Parties, and any subsequent Statements of Work.
- 4.3. Professional Services Charges. Time and materials charges for all professional services to be performed hereunder shall be invoiced and paid in accordance with Section 4.4.
- 4.4. Invoice and Payment of Fees.
- (a) ISS shall invoice the Customer for License Fees and Maintenance and Support Fees in accordance with Schedule A. All fees are in U.S. Dollars.
  - (b) All other fees and payments are due within forty-five (45) days of the invoice date, unless otherwise provided in the applicable Statement of Work.
  - (c) Customer may withhold amounts due hereunder if those amounts are subject to a good faith dispute between the Parties; provided that ISS reserves the right to cease work without prejudice if undisputed amounts are not paid within forty-five (45) days of the date that such amounts are due.

### **5. ESCROW**

ISS maintains an escrow agreement with an escrow agent under which ISS places source code of each major release. At Customer's written request and expense, ISS will continue to add Customer as a beneficiary on its Escrow Agreement upon payment of the escrow setup fee. Customer will be invoiced the annual beneficiary fee by ISS and is solely responsible for maintaining Customer status as a beneficiary. Release of the escrowed material shall be governed by the terms of the Escrow Agreement, which shall not be amended without the prior written consent of Customer. Notwithstanding the foregoing, Parties acknowledge and agree by

execution of License Agreement that Escrow Agreement shall be restricted by the terms of this License Agreement.

6. **MAINTENANCE AND SUPPORT SERVICES**

ISS will provide Support for the Licensed Property pursuant to the terms and conditions of the M&S Agreement.

7. **REPRESENTATIONS AND WARRANTIES**

7.1. **Project Personnel.** All ISS personnel utilized in connection with fulfilling its obligations pursuant to or arising from this License Agreement shall be employees of ISS or, if applicable, ISS subcontractor(s) or agent(s), shall be qualified to perform the tasks assigned them, and shall be in compliance with all applicable laws relating to employees generally.

7.2. **Pass-Through of Warranties.** ISS hereby passes through the benefits of any third party warranties that it receives in connection with any product provided to Customer.

7.3. **Illicit Code.** The Licensed Software, when delivered and installed by ISS, does not contain, and ISS has not knowingly introduced through any media, any virus, worm, trap door, back door, bomb, bug, or other contaminant or disabling device, including, without limitation, any timer, clock, counter or other limiting routines, codes, commands, or instructions that may have the effect or be used to access, alter, delete, limit, control, damage, or disable any User property.

8. **REPRESENTATIONS, WARRANTIES, COVENANTS.**

8.1. ISS represents and warrants that it is the owner of the Licensed Property or an authorized licensee thereof with full right to license such Licensed Property to Customer as provided in this License Agreement, and that neither such Licensed Property or any part thereof, nor Customer's Use thereof, infringes or misappropriates any copyright, patent, trade secret, mask work or other proprietary right of any third party. ISS, at its expense, will indemnify, defend and hold harmless Customer from and against any third party claims or actions that the Licensed Property or Customer's Use thereof within the scope of this License Agreement infringes or unlawfully misappropriates such party's patent, copyright, trademark, or trade secret, provided that: (i) Customer notifies ISS in writing promptly upon becoming aware of such a claim; (ii) ISS has control of the defense and all related settlement negotiations; and (iii) Customer provides ISS with the reasonable assistance, information and authority necessary to perform the obligations of ISS under this paragraph. ISS shall have no liability under this Section for any claim to the extent based, in whole or in part, on: (i) use of the Licensed Property outside the scope of this Agreement; (ii) use of a superseded or altered (other than by ISS) release of the Licensed Property; (iii) any infringement that may have been avoided by the use of a current release of the Licensed Property made available by ISS; (iv) the combination, operation, or use of the Licensed Property with software, hardware, or other materials not furnished or recommended by ISS; or (v) any modification of the Licensed Property not made by ISS. In the event any such claim is made and ISS is proven liable, ISS shall take one of the following actions at its sole cost and expense: (i) modify the Licensed Property to be non-infringing; (ii) obtain for Customer a license to continue using the Licensed Property, or (iii) replace the Licensed Property with a compatible, functionally equivalent non-infringing software.

- 8.2. As part of the Licensed Property, ISS may supply to Customer or incorporate certain Open Source Software, including components or other Open Source Software technology in the Licensed Property. ISS has disclosed to Customer and Customer has accepted ISS use of Open Source Software in the development, delivery and ongoing operation of the Licensed Property. ISS represents, and warrants that Customer's Use of the Licensed Property as provided hereunder will not violate the terms of the applicable Open Source Software license.
- 8.3. In the event that during the term of this License Agreement, ISS becomes aware of an event, occurrence, error, defect or malfunction in the Licensed Property that may adversely affect Customer, then ISS will promptly provide Customer with written notice of the event, occurrence, error, defect or malfunction and the possible adverse effect, as well as a proposed remedy therefore.
- 8.4. ISS warrants that the software licensed under this License Agreement shall be merchantable and fit for the purpose for which it is sold to Customer without material defect.

**9. LIMITATION OF LIABILITY**

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, ECONOMIC, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS LICENSE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED UNDER THIS LICENSE AGREEMENT, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT OR BASED ON A WARRANTY, EVEN IF THE OTHER PARTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ISS AND CUSTOMER'S LIABILITY FOR DAMAGES HEREUNDER SHALL IN NO EVENT EXCEED ONE MILLION DOLLARS (\$1,000,000.00) UNDER THIS LICENSE AGREEMENT.

**10. TERM AND TERMINATION**

- 10.1. Term. The term of this License Agreement (the "Term") shall commence on the "Effective Date" as defined in Schedule A and shall continue until the sooner of: (a) Final Acceptance for each Licensed Software product individually; or (b) the License Agreement is terminated pursuant to Section 10.2 or 10.3.
- 10.2. Termination for Cause. Either Party may terminate this License Agreement for Cause, provided that such Party follows the procedures set forth in this Section. For purposes of this Section, "Cause" means either:
- (a) This License Agreement may be terminated by either party (i) upon material breach by the other party of a term hereof which breach has not been cured within thirty (30) days of receipt of written notice reasonably identifying and describing such breach; (ii) as may be mutually agreed; or (iii) the failure by Customer to timely pay when due any fees and expenses owed to ISS pursuant to this License Agreement and any delinquent amounts that remain outstanding for a period of thirty (30) days after ISS provides written notice of its intent to terminate for failure to pay.

- (b) No Party may terminate this License Agreement under Section 10.2(a)(i) unless it cooperates in good faith with the alleged breaching Party during the cure period and complies in good faith with the dispute resolution procedures set forth in Section 11 following such period.
  - (c) In the event either Party terminates this License Agreement pursuant to this Section 10.2, each Party shall return all products, documentation, confidential information, and other information disclosed or otherwise delivered to the other Party prior to such termination, subject to record retention requirements under Ohio public records law, and all revocable licenses granted herein shall terminate.
- 10.3. Termination for Convenience. Customer may terminate this License Agreement for its convenience, after issuing sixty (60)) days written notice to ISS. Should City terminate without cause and for its own convenience, an equitable adjustment in the payment to ISS shall be made, which shall provide for prompt payment to ISS of reasonable expenses incurred before the termination, including but not limited to, costs ISS reasonably incurs relating to commitments which had become firm before the termination, except that no amount shall be allowed for anticipated profit or fees on unperformed services.
- 10.4. Survival. Any provision of this License Agreement that by its very nature or context is intended to survive any termination, cancellation or expiration thereof, shall so survive, and shall apply to respective successors and assigns.

## **11. DISPUTE RESOLUTION**

Disputes arising out of, or relating to, this License Agreement shall first be discussed by the Project Managers. Any dispute that cannot be resolved within five (5) Business Days at the Project Manager level (or such other date as agreed upon by the Project Managers) shall be referred to the individual reasonably designated by Customer and ISS Project Executive assigned to Customer's account ("Intermediary Dispute Level"). Any dispute that cannot be resolved in ten (10) Business Days at the Intermediary Dispute Level shall then be referred to Customer's chief executive officer or other individual reasonably designated by Customer and ISS chief executive officer or other individual reasonably designated ("Executive Dispute Level").

## **12. CONFIDENTIALITY**

- 12.1 In the performance of this License Agreement, each party may have access to confidential, proprietary or trade secret information owned or provided by the other party relating to software products, object code, source code, business plans, financial information, specifications, flow charts and other data, or personal information of non-party individuals ("Confidential Information"). For the purpose of this License Agreement, Confidential Information shall consist only of information that comes within the definition of a "trade secret" under Ohio Revised Code section 1333.61 Each Party shall be responsible for designating or labeling materials or information provided to the other party as Confidential Information. Each party ("Recipient") which receives Confidential Information from the other party ( "Disclosing Party") agrees, with respect to such Confidential Information to (a) use such Confidential Information only for purposes of fulfilling its obligations under this License Agreement; (b) use the same methods and degree of care to prevent disclosure of such Confidential Information as it uses to prevent



disclosure of its own proprietary and confidential information, but not less than a reasonable degree of care; (c) disclose Confidential Information to its employees, agents and contractors only on a need-to-know basis and not to disclose any Confidential Information to any other third party without the prior written consent of the Disclosing Party, unless such information is required to be disclosed pursuant to Ohio public records law; and (d) return any Confidential Information in tangible form to the Disclosing Party upon request and to retain no copies, compilations or reproductions thereof, except as may be required to be retained pursuant to Ohio public records law. A Recipient shall not be obligated to treat information as Confidential Information if such information: (i) was rightfully in the Recipient's possession or was rightfully known to Recipient, on a non-confidential basis, prior to receipt from the Disclosing Party; (ii) is or becomes public knowledge without the fault of the Recipient; (iii) is or becomes rightfully available to the Recipient without confidential restriction from a source not under the Disclosing Party's control or obligated to the Disclosing Party to keep such information confidential; (iv) is independently developed by the Recipient without use of the Confidential Information disclosed hereunder; provided, however, that the burden of proof of such independent development shall be on the Recipient; or (v) is disclosed pursuant Ohio public records law or government action; provided, however, that the Recipient shall give, unless prohibited from so doing, the Disclosing Party reasonable prior notice of disclosure. Each party will notify the other of any breach of this Section. Each of Customer and ISS agrees that any Confidential Information of a party that is in the possession of any representative shall remain the property of such party, and shall be returned immediately upon demand by Disclosing Party or, if not earlier demanded, upon expiration or termination of this License Agreement, subject to record retention requirements under Ohio public records law.

- 12.2. Each of Customer and ISS acknowledges that a breach of the confidentiality provisions of this License Agreement may result in serious and irreparable harm to the other party. In the event of such a breach, the other party shall be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages hereunder.
- 12.3 ISS agrees that its Consultants' access to Customer's premises shall comply with all security measures required by Customer or any third party to protect Confidential Information or other proprietary property of Customer or of third parties in Customer's possession.