

Software Usage Agreement

This agreement, dated _____, is between State of Minnesota, acting through its State Court Administrator's Office, Conservator Account Auditing Program, address 7533 Sunwood Drive NW, Suite 306, Ramsey, Minnesota 55303 (hereinafter "Licensor"), and _____, (hereinafter "Licensee"), collectively referred to as "the Parties", and, in consideration of the mutual covenants, promises, and representations contained herein, the Parties agree as follows:

WHEREAS, in June 2012, the Minnesota Judicial Branch applied for, and was awarded, a grant from the State Justice Institute (Grant Number SJI-12-N-128) that was specifically to support the creation of an Online Conservator Reporting program, and

WHEREAS, the application for grant funds specifically envisioned that the developed software could have unlimited potential to be replicated on a county, regional or statewide basis throughout the nation, and

WHEREAS, with the help of the grant funds, the Minnesota Judicial Branch was able to secure and implement software specifically designed to meet the goals of the Online Conservator Reporting program. The program is called MyMNConservator (MMC).

WHEREAS, the Minnesota Judicial Branch now seeks to provide this Software to Licensee.

1. SOFTWARE

The Minnesota Judicial Branch is the owner and Licensor of specific Software, including a source code and accompanying documents.

2. DEFINITIONS

"Software" shall mean any application source code, MMC Requirements Document, or other works which are distributed to Licensee by Licensor.

"Licensor" shall mean the Minnesota Judicial Branch as the owner of any Software covered by this Agreement and is the sole entity authorized to release the Software under the terms of this Agreement.

"Licensee" shall mean the person, organization, group, entity, or other agency that Licensor provides the Software covered by this agreement.

3. ACKNOWLEDGEMENT OF SOFTWARE

The MMC application is written to interact with the Licensor's case management system, MNCIS, a version of Tyler's Odyssey using APIs and other specific integrations.

The application also utilizes an in-house developed security/authentication middleware. The Licensee understands that they will need to modify their own case management system as it relates to:

- Security/authentication software

- APIs or integrations
- All code specific to MNCIS or Odyssey

Access to our information about the Licensors case management system, security/authentication software, APIs and integrations is not included under the terms and conditions of this Agreement.

4. GRANT OF LICENSE

Subject to the remaining terms and conditions of this Agreement, Licensor hereby grants, and Licensee accepts, a no-cost, royalty-free, non-transferable, non-exclusive, perpetual license for the Software under the terms and conditions described herein. Distribution of the Software will be in the “as is” state at the time the Licensee enters into the terms of this Agreement with the Licensor.

Under this Agreement, Licensee may use the Software and develop derivative versions of the Software by adding to or deleting from the substance or structure of the Source Code. Licensee agrees that it shall not authorize, permit, or allow the disclosure of the Software by any person or entity except as expressly authorized under this agreement. Licensee cannot remove any copyright or proprietary notices included in and/or on the Software and its related documents, manuals, or other works.

5. SOFTWARE MODIFICATIONS BY LICENSOR

Licensor reserves the right to make modifications to the Software without notice to Licensee and Licensor is not required to provide any enhancements, updates, and/or performance modifications made to the Software to Licensee after Licensee initially receives the Software.

6. SOFTWARE ENHACENMENTS BY LICENSEE

Any enhancements, changes, updates, and/or performance modifications made by Licensee must be provided free of charge to Licensor for use at its discretion in subsequent Agreements by Licensor.

Any documentation, manuals or other work by Licensee must be provided free of charge to Licensor for use at its discretion in subsequent Agreements by Licensor. Licensor may, at its discretion, include any enhancements, updates, and/or performance modifications made by Licensee to subsequent Licensees of the Software without any payment to Licensee, even if Licensor charges a subsequent Licensee for the Software

7. NO SUPPORT FROM LICENSOR

Licensor will not provide any support, maintenance, or enhancements to Licensee under this Agreement. Licensor also will not provide any technical support or additional services beyond providing the Software.

8. USE AND DISTRIBUTION

This limited license and the Software provided in this Agreement are for Licensee’s internal use only. Licensee shall not share, sell, sublicense, assign, transfer, or lease the Software or any derivative version, in whole or in part, to any other person or entity, including other

agencies or departments, or permit the use of the Software without the prior written consent of Licensor.

9. CONSORTIUM REQUIRED

In consideration of the no-cost, royalty-free, non-transferable, non-exclusive, perpetual license provided by Licensor, Licensee agrees to participate in any consortium at the request of Licensor to share data analysis to assist in the refinement of the Software.

The consortium will include, but is not limited to, analyzing accounting data in order to refine and audit the results to ensure the Software's output information is grounded on valid information.

10. TERMINATION OF AGREEMENT

Within ten (10) days of the effective date of termination of this Agreement, Licensee shall either (1) uninstall and return any and all copies of the Software as defined in this Agreement or (2) destroy the same and certify in writing to Licensor that the same have been destroyed.

In the event there is no effective termination date provided, the same provisions of this paragraph apply once Licensor has given written notice of its intent to terminate and ten (10) days have passed since the date of the written notice.

11. EMPLOYEE ACCESS

Only authorized personnel of Licensee may use or have access to the Software. Prior to allowing access, all employees of Licensee shall be bound by Licensee to make no unauthorized use or disclosure of the Software.

Licensee shall keep a log identifying the date of and all persons to whom the Software has been provided. Licensee shall keep this log for a period of one (1) year following the termination of the Agreement. Licensee shall provide Licensor with access to, and a copy of, such logs upon request by Licensor. Licensor may conduct audits of Licensee's logs from time to time. In the event that Licensee fails to maintain such logs, maintain accurate logs, or to promptly provide access or copies of such logs to Licensor, Licensor may terminate this Agreement without prior notice, which may be otherwise required by this Agreement.

12. PROTECTION AND SECURITY

Licensee acknowledges that the Software contains highly confidential information and trade secrets of the Minnesota Judicial Branch. Licensee agrees to take all reasonable precautions to protect the Software and preserve its confidential, proprietary, and trade secret status. Licensee shall be exclusively responsible for the supervision, management, and control of its use of the Software and shall take all necessary steps to ensure that only authorized personnel of Licensee shall have access to, and use of, the Software.

13. COPYING

Licensee may copy the Software in whole or in part but only for internal use consistent with this Agreement. The original and all copies made by Licensee shall be and shall remain the property of Licensor.

14. ENDORSEMENT

Licensee must not claim that Licensor, or any agency thereof, endorses its products or services.

15. PUBLICITY

Any publicity regarding the Software must identify Licensor as the owner of the Software and no publicity shall be made without the prior written approval from Licensor. Additionally, any publicity regarding, and/or enhancements of, the Software must comply with the requirements of the State Justice Institute Grant Guidelines, including an acknowledgement which prominently displays that support was received from the State Justice Institute (see Grant Guidelines section VI – 11a(1)). For purposes of this provision, publicity includes but is not limited to: notices, informational pamphlets, press releases, social media, research, reports, and signs prepared by or for Licensee with respect to the Software.

16. NO WARRANTY

The Software is provided “as is” without warrant of any kind, either express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose. The Minnesota Judicial Branch expressly disclaims all warranties not stated herein. Licensee assumes the entire risk as to the quality and performance of the software. The Minnesota Judicial Branch does not warrant that the functions contained in the Software will meet Licensee’s requirements or that the operations of the Software will be uninterrupted or error-free. Licensee also assumes responsibility for the selection of the Software to achieve Licensee’s intended results, and for the installation, use, and results obtained from the Software.

17. INJUNCTIVE RELIEF

Licensee acknowledges that Licensor will be irreparably harmed if Licensee’s obligations under this Agreement are not specifically enforced and that Licensor would not have an adequate remedy at law in the event of an actual or threatened violation of this Agreement by Licensee. Therefore, Licensee agrees that Licensor shall be entitled to an injunction or any appropriate degree of specific performance for actual or threatened violations or breaches by Licensee without the necessity of Licensor showing actual damages or that monetary damages would not afford an adequate remedy. Licensor shall be responsible for reasonable attorneys’ fees incurred by Licensor in obtaining any relief pursuant to this agreement.

18. CHOICE OF LAW

This Agreement shall in all respects be governed by and interpreted, construed and enforced in accordance with the laws of the United States of America and the State of Minnesota, without regard to Minnesota’s choice of law provisions. Any action arising out of or relating to this Agreement, its performance, enforcement or breach will be venued in a state or federal court situated within the State of Minnesota. Licensor irrevocably consents and submits itself to the personal jurisdiction of said court for that purpose.

19. COMPLETE AGREEMENT

This document constitutes a complete agreement by the Parties. Any and all previous discussions, written or otherwise, are considered to be merged into this written Agreement. Anything which may have been previously discussed by the Parties but is not a part of this written Agreement is expressly deemed not to be a part of the Agreement between the Parties.

20. WAIVER

The failure by either Party at any time to enforce any provision of this Agreement, right or remedy available to the Party pursuant to this Agreement, or to exercise any option available to the Party pursuant to this Agreement, shall not constitute a waiver of such provision, right, remedy, or option or in any way affect the validity of this Agreement. The waiver of any default by either Party shall not be deemed a continuing waiver but shall apply solely to the instance to which such waiver is directed.

21. ENFORCEABILITY

If any clause or section of this Agreement is found to be invalid by any competent court, the remainder of the Agreement and its terms remain in full force.

22. FORCE MAJEURE

Neither Party shall be liable for any failure or delay in the performance of its obligations under this Agreement if such failure or delay is caused by any event or circumstance beyond its control.

23. DRAFTING

Each party agrees and acknowledges that no presumption or inference shall be made or drawn against the drafter(s) of this Agreement.

24. HEADINGS

The captions and headings are included for ease of reference only and will be disregarded in interpreting or construing this agreement.

25. MODIFICATIONS OR AMENDMENTS

Any modification or amendment of this Agreement, as agreed by the Parties, must be in writing and signed by all Parties.

By signing this document, the Parties execute this Agreement and agree to be bound by the same.

Licensee:

Licensee certifies that the appropriate persons have executed the contract on behalf of Licensee as required by applicable articles, by-laws, resolutions or ordinances. (If a corporation with more than one individual serving as corporate officer, two corporate officers must execute)

Licensor:

Person signing certifies that applicable procurement policies have been followed. Where contract and amendments exceed \$50,000, signature of State Court Administrator or her/his Deputy is also required.

<i>By</i>
<i>Title</i>
<i>Date</i>

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<i>Title</i>
<i>Date</i>

Approved as to form and execution for Licensor by:

(reserved)

<i>By</i>
<i>Title</i>
<i>Date</i>