

AGREEMENT CONCERNING BULK DISTRIBUTION OF ELECTRONIC CASE
RECORD INFORMATION ON RECURRING BASIS

This AGREEMENT made this _____ day of _____, 20__ is entered into by the Administrative Office of Pennsylvania Courts ("AOPC") of the Unified Judicial System (UJS) of the Commonwealth of Pennsylvania, with offices at 5035 Ritter Rd, Suite 700 Mechanicsburg, Pennsylvania, 17055, hereinafter called the "COMMONWEALTH" and _____ ("SUBSCRIBER").

The purpose of this AGREEMENT is to establish the terms and conditions under which the COMMONWEALTH agrees to provide the SUBSCRIBER with a recurring bulk distribution of electronic case record information.

Terms and Conditions of AGREEMENT

1. DEFINITIONS.

- A. "CPCMS" means the Common Pleas Criminal Court Case Management System.
- B. "Electronic Case Record" means information or data created, collected, received, produced or maintained by a court or office in connection with a particular case that exists in the PACMS, CPCMS, or MDJS and is provided in response to bulk distribution requests, regardless of format.
- C. "MDJS" means the Magisterial District Judge Automated System.
- D. "PACMS" means the Pennsylvania Appellate Courts Case Management System.
- E. "Request for Bulk Distribution of Electronic Case Records" means any request regardless of the format the information is requested to be received in, for all or a subset of electronic case records that is releasable to the public pursuant to the provisions of the *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania*.

2. SERVICES.

- A. The COMMONWEALTH will provide SUBSCRIBER with electronic case record information from the PACMS, CPCMS and/or MDJS consistent with the provisions of the *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania*.
- B. For those SUBSCRIBERS receiving electronic case record information from the CPCMS and/or MDJS, the COMMONWEALTH will provide a LifeCycle file on a weekly basis which SUBSCRIBER shall use as described in Section 3(b) and (c).

- C. When the electronic case record information is requested in electronic media, the COMMONWEALTH shall, in its sole discretion, determine the appropriate format.
- D. The COMMONWEALTH specifically reserves the right, in its sole discretion and at any time without prior notice, to make any changes it deems appropriate relating to the information and data provided under this AGREEMENT. Such changes include, but are not limited to altering the format of the information, file structures, display changes, operating hours, computer programs and network services.
- E. Recent entries made in the court filing offices may not be immediately reflected in the electronic case record information provided. Neither the courts of the COMMONWEALTH nor the COMMONWEALTH assumes any liability for inaccurate or delayed data, errors or omissions. Electronic case record information should not be used in place of a criminal history background check, which can only be provided by the Pennsylvania State Police. Employers who do not comply with the provisions of the Criminal History Record Information Act (18 Pa.C.S. § 9101 et seq.) may be subject to civil liability in 18 Pa.C.S. § 9183.

3. OBLIGATIONS OF SUBSCRIBER.

- A. SUBSCRIBER shall notify its users, customers, clients or other third party recipients that the electronic case record information received from the COMMONWEALTH is not an official case record; official case records are maintained by the court in which the record was filed.
- B. SUBSCRIBER shall retrieve and access the appropriate LifeCycle file(s) created by AOPC on a weekly basis and update their data accordingly. Each file will contain a list of CPCMS or MDJS cases that must be removed from subscriber data in order for the same to remain current and up to date. Therefore, subscribers of only CPCMS information will need to retrieve and access the CPCMS LifeCycle file. However, subscribers of CPCMS and MDJS information will need to retrieve and access two LifeCycle files, one for each system: CPCMS and MDJS. The MDJS LifeCycle files will be located at: <ftp://common.pacourts.us> (Directory: SEMIPRIVATE/ACTIONS/LIFECYCLE/MDJS/WEEKLY/PUBLISH). The CPCMS LifeCycle files will be located at: <ftp://common.pacourts.us> (Directory: SEMIPRIVATE/ACTIONS/LIFECYCLE/CPCMS/WEEKLY/PUBLISH).
- C. SUBSCRIBER agrees to promptly comply with all COMMONWEALTH instructions and directions concerning the electronic case record information provided, including the LifeCycle files. Failure to comply may result in immediate termination of this AGREEMENT.

- D. SUBSCRIBER shall timely make all payments due to the COMMONWEALTH in accordance with Section 5.
- E. In the event of termination of this AGREEMENT, SUBSCRIBER agrees to immediately stop all use of the electronic case record information that has been provided by the COMMONWEALTH, including LifeCycle files, remove all such data from its databases, notify its users, customers, clients or other third party recipients to stop using the data, and ensure that users, customers, clients or other third party recipients remove the data from their databases.
- F. The SUBSCRIBER agrees to provide the following disclosure statement to each user, customer, client or other third party recipient at the time any electronic case information is provided. The SUBSCRIBER shall ensure that the following statement is displayed or provided every time electronic case information is provided:

"The data or information provided is based upon information received by the Administrative Office of Pennsylvania Courts ("AOPC"). AOPC makes no representation as to the accuracy, completeness or utility, for any general or specific purpose, of the information provided and as such, assumes no liability for inaccurate or delayed data, errors or omissions. Use of this information is at your own risk. AOPC makes no representations regarding the identity of any persons whose names appear in the records. User should verify that the information is accurate and current by personally consulting the official record reposing in the court wherein the record is maintained."

- G. The SUBSCRIBER agrees to provide the COMMONWEALTH with a list of all the SUBSCRIBER'S websites, subsidiaries, affiliates, customers, clients and other third party recipients that use or distribute information obtained from the COMMONWEALTH, and all other names which the SUBSCRIBER uses in the course of doing business. The SUBSCRIBER agrees to update this list and send it to the COMMONWEALTH within thirty (30) days of any change.
- H. The SUBSCRIBER shall delete any electronic case record information that is inadvertently included in the data or information provided by the COMMONWEALTH and is excluded from public access under Section 3.00 of the *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania*. A copy of this policy is attached. The SUBSCRIBER shall take other appropriate action to ensure that such electronic case record information is not disclosed to others.
- I. The SUBSCRIBER shall designate a Contract Administrator who shall be the sole point-of-contact with regard to all contractual matters.

4. AUDITS

- A. The COMMONWEALTH may, at its discretion, perform audits of the SUBSCRIBER to verify compliance with the terms and conditions of this AGREEMENT and the appropriate use of the information and data provided by the COMMONWEALTH. The SUBSCRIBER agrees to cooperate with the COMMONWEALTH in the event of such an audit.
- B. SUBSCRIBER agrees to provide the COMMONWEALTH with access at no charge to any database created using the data or information from the electronic case record information as well as an online account for the SUBSCRIBER'S service with valid user logon identifiers and passwords for the purposes of monitoring and auditing contract compliance. SUBSCRIBER shall also provide to the COMMONWEALTH copies of materials and information that SUBSCRIBER provides its subscribers, customers, clients or other third parties.

5. FEES

- A. SUBSCRIBER agrees to pay all amounts due under this AGREEMENT, as described in "Attachment A – Fees", as appended to this AGREEMENT. The schedule of fees in Attachment A is subject to change. SUBSCRIBER will be provided at least thirty (30) days' notice before the effective date of any change in fees.
- B. The COMMONWEALTH may terminate service, without notice, to SUBSCRIBER if SUBSCRIBER'S account is overdue.

6. LIMITATION OF LIABILITY

- A. SUBSCRIBER acknowledges and accepts that all information and data provided under this AGREEMENT may be subject to error or omission and correspondingly agrees that the COMMONWEALTH and the courts of the Unified Judicial System of the Commonwealth of Pennsylvania shall not be responsible or liable in any way whatsoever for the accuracy and completeness of any data provided or for the use of the information or data provided. Specifically:
 - i. The COMMONWEALTH and the courts of the Unified Judicial System of the Commonwealth of Pennsylvania shall not be liable for any demand or claim, regardless of form of action or venue thereof, for any damages resulting from the use of any information, data or other materials provided under this AGREEMENT.

- ii. THE COMMONWEALTH and the courts of the Unified Judicial System of the Commonwealth of Pennsylvania shall not be liable for any demand or claim, regardless of form of action or venue thereof, for any damages arising from incorrect or incomplete information or data provided under this AGREEMENT.
- iii. THE COMMONWEALTH and the courts of the Unified Judicial System of the Commonwealth of Pennsylvania shall not be liable to SUBSCRIBER 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.

- B. THE COMMONWEALTH provides no warranties, express or implied, including the implied warranty of fitness for a particular purpose, that the information or data provided under this AGREEMENT is accurate, reliable, timely or complete. It is expressly understood by the parties that it is SUBSCRIBER'S responsibility to verify information or data obtained through this AGREEMENT with official court information reposing at the court where the official case records resides.
- C. Personal liability. No official, director, officer, agent or employee of the COMMONWEALTH or the courts of the Unified Judicial System of the Commonwealth of Pennsylvania shall be charged personally or held personally liable to SUBSCRIBER under any term or provision of this contract because of any breach hereof or because of its execution, approval or attempted execution.

7. WARRANTIES.

- A. THE COMMONWEALTH provides the electronic case record information as is.
- B. Use of this information is at the risk of the requestor.
- C. The COMMONWEALTH makes no representation as to the accuracy, completeness or utility, for any general or specific purpose, of the information provided and as such, assumes no liability for inaccurate or delayed data, errors or omissions.
- D. The electronic case record information contained in the PACMS, CPCMS and MDJS is not supported by fingerprints. Therefore, it should not be used for the purpose of linking cases to specific individuals.

- E. THE COMMONWEALTH provides no warranties of any kind or nature, express or implied, in connection with the services the COMMONWEALTH provides pursuant to this AGREEMENT including that the service will be uninterrupted.

8. TERMINATION

- A. Either party by written notice may immediately terminate this AGREEMENT, PROVIDED that if the SUBSCRIBER'S account is overdue, the COMMONWEALTH may terminate the SUBSCRIBER'S service without notice.
- B. COMMONWEALTH may terminate this AGREEMENT at any time without notice and penalty, if the COMMONWEALTH determines that such termination is in the COMMONWEALTH'S best interest.
- C. In the event that the COMMONWEALTH terminates this AGREEMENT, the COMMONWEALTH will have any remedy available to it under law or equity.
- D. In the event of termination of this AGREEMENT and should subscriber wish to re-subscribe, SUBSCRIBER will be required to sign the then-current version of the Agreement Concerning Bulk Distribution of Electronic Case Record Information on Recurring Basis and pay any outstanding balance in order to resume service.

- 9. ASSIGNMENT. SUBSCRIBER shall not assign or transfer any interest in this AGREEMENT without prior written approval of the COMMONWEALTH. The COMMONWEALTH reserves the right to assign or transfer the AGREEMENT to any person, office or entity under the control of the COMMONWEALTH, as it deems appropriate or as ordered by the Commonwealth of Pennsylvania.

- 10. SURVIVAL. The provisions of Paragraphs 3, 4(a), 5, 6, and 7 of this AGREEMENT shall survive the termination of this AGREEMENT.

- 11. SEVERABILITY. If any provision of this AGREEMENT, or application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or applications of this AGREEMENT which can be given effect without the invalid provision or application, and to this end the provisions of this contract are severable.

- 12. WAIVER. No term or provision hereof shall be deemed waived and no breach or default excused by the COMMONWEALTH unless such waiver or consent shall be in writing. Any consent by the COMMONWEALTH to, or waiver of breach or default by the SUBSCRIBER, whether express or implied shall not

constitute consent to, waiver of, or excuse for any different or subsequent breach or default.

13. **GOVERNING LAW.** This AGREEMENT shall be interpreted, construed, and enforced in accordance with the laws of the Commonwealth of Pennsylvania. In the event of any conflict between the laws of the Commonwealth of Pennsylvania and any provision of this AGREEMENT, the laws of the Commonwealth shall automatically preempt such provisions in this contract and become a part of this AGREEMENT, fully binding on the parties hereto. Venue and jurisdiction for any disputes arising under this Agreement shall lie in Pennsylvania.
14. **INDEMNIFICATION.** SUBSCRIBER agrees to indemnify, defend and hold harmless the COMMONWEALTH its agents, officers and employees; and the Unified Judicial System of Pennsylvania, its agents, officers and employees from all claims, suits, or actions of whatever nature resulting from or arising out of the activities of the SUBSCRIBER or its officers, employees, subcontractors, agents, clients or customers under this AGREEMENT.
15. **SUBSCRIBER INFORMATION**

Subscriber's Name: _____
Business Name: _____
Contract Administrator: _____
Technical Contact: _____
Address: _____
City, State, ZIP: _____
Phone Number: _____
Fax Number: _____
Email Address: _____
16. **ENTIRE AGREEMENT.** This AGREEMENT contains the entire AGREEMENT between the parties. No amendment or modification changing its scope or terms has any force or effect unless it is in writing and signed by all parties to the AGREEMENT with the exception of periodic fee changes set forth in Attachment A.
17. **RETURN OF CONTRACT.** Failure to sign and return this contract within fifteen (15) days of receipt will result in withdrawal of approval and denial of this request.
18. **AVAILABILITY OF STATE FUNDS.** The performance of COMMONWEALTH'S duties under this AGREEMENT is subject to the availability of State Funds to enable it to perform those duties.
19. The COMMONWEALTH shall designate a Contract Administrator, who shall be the single authority to act for the COMMONWEALTH under this contract.

Whenever the COMMONWEALTH is required by terms of the contract to provide written notice to the SUBSCRIBER, such notice must be signed by the Contract Administrator, or in that individual's absence, or inability to act, such notice shall be signed by the Contract Administrator's designee.

IN WITNESS WHEREOF, this AGREEMENT has been executed by and on behalf of the parties hereto, the date and year first written above.

Accepted by:

ADMINISTRATIVE OFFICE OF PA COURTS
(COMMONWEALTH)

SUBSCRIBER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____