

# LICENSE AGREEMENT

*Titan Public Safety Solutions, L.L.C.*

and

*City of Waukesha*

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This is a LICENSE AGREEMENT (the “Agreement”) between:

**TITAN PUBLIC SAFETY SOLUTIONS, L.L.C.**, with its principal office at 4624 South Biltmore Lane, Madison, WI 53718 (“TiPSS”)

and

**CITY OF WAUKESHA**, with its Municipal Court office at 201 Delafield Street, Waukesha, WI 53188 (“Customer”).

TiPSS owns certain software and related documentation, which it desires to license to Customer, and Customer desires a nonexclusive license to use such software and documentation in the United States on the terms and conditions of this Agreement.

TiPSS and Customer have entered into this License Agreement as of April 1, 2019 with respect to the Use of the Licensed Products and Customer’s obligation to maintain the secrecy of Confidential Information (as these and other capitalized terms are defined in the License Agreement), except as otherwise required by Federal or Wisconsin Public Records laws.

## LICENSE AGREEMENT

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Accordingly, the parties agree as follows:

### 1. DEFINITIONS

"Confidential Information" means information which:

- a) is contained or manifested in the Licensed Products, or in any Program Fix, Program Upgrade or Program Enhancements (as those terms are defined in any applicable Systems Support Agreement);
- b) is created, developed, or otherwise generated by or on behalf of TiPSS;
- c) concerns, or relates to any aspect of TiPSS business; and
- d) is, for any reason, identified by TiPSS as confidential;

Except such information which:

- a) at the time of this Agreement is publicly and openly known and in the public domain; or
- b) after the date of this Agreement becomes publicly and openly known and in the public domain through no fault of Customer; or
- c) is in Customer's possession prior to this Agreement and lawfully obtained by Customer from a source other than from TiPSS; or
- d) is, following a reasonable opportunity for TiPSS to dispute and debunk such a determination by Customer, determined to be considered open or public record as required by State or Federal law.

"Customer" includes the City of Waukesha, the departments of City of Waukesha, and the third party information services providers contracted by the City, but only to the extent that such providers are performing work for and on behalf of the Customer.

"Designated Computer System" or "System" means the hardware owned by the Customer and operated by Customer.

"Go-Live Date" is the date that the product has been installed and is ready to be put into production by the Customer.

"Licensed Products" means the proprietary computer software programs ("Software") and instructions, specifications, guides, manuals and other forms of documentation ("Documentation") which are identified on Exhibit A attached hereto, together with any proprietary programs and documentation which may be added to such list, upon Customer's request, by a supplement to Exhibit A attached hereto, duly executed by both parties. In addition,

the term "Software" shall include any related Program Fixes, Program Enhancements or Program Upgrades, which might be provided by TiPSS pursuant to any Systems Support Agreement with Customer.

"Use" means (a) entering into and/or storing in a machine any portion of the Software; (b) translating or interpreting any code or machine instructions contained in the Software; (d) displaying any of the Software in connection with the processing of such code or machine instructions; and (e) use of any Documentation in conjunction with the Software.

## 2. USE OF LICENSED PRODUCTS

- 2.1 Subject to the terms and conditions of this Agreement, TiPSS grants to Customer a corporate, nonexclusive and nontransferable license to Use the Licensed Products in the United States.
- 2.2 No rights are granted hereunder to Use any Licensed Products for which any uncontested required payment has not been received by TiPSS. If such uncontested required payment is subsequently received by and such funds are accepted by TiPSS, the rights granted hereunder to use any Licensed Products shall extend retroactively to cover the period to which the payment applied.
- 2.3 The Customer acknowledges that the Licensed Products contain trade secrets of TiPSS, and that this Agreement does not grant the Customer any ownership or title in or to any part of the Licensed Products. Customer agrees that it will never take or cause any action, which would be inconsistent with or tend to impair the rights of TiPSS in the Licensed Products, except to the extent any disclosure of Confidential Information by Customer is required by order of a Court or by applicable law; provided, however, Customer shall provide TiPSS with the opportunity to secure a protective order in the context of any court order which requires disclosure of Confidential Information by Customer.
- 2.4 The Customer shall NOT, without the prior written consent of TiPSS in each instance, Use the Licensed products or permit the Licensed Products to be used (directly or indirectly):
  - a) other than solely for User's internal business purposes;
  - b) by the number of concurrent users in excess of the count listed in Exhibit A for each Software module;
  - c) for the processing of data for any non-licensed party;
  - d) at a location other than that specified in this Agreement, unless the Customer is forced to close said location for more than three weeks in which case the Use may occur to support the Customer's location of Municipal Court;
  - e) by any entity other than Customer; or

- f) other than solely on the Designated Computer System, unless the Customer is forced to abandon said Designated Computer System for more than three weeks in which case the Use may occur on a different Customer Computer System to support the Customer's location of Municipal Court.
- 2.5 Customer shall not knowingly Use the Licensed Products, directly or indirectly, in a manner contrary to the Export Administration Regulations issued by the U.S. Department of Commerce.
- 2.6 Customer shall notify TiPSS promptly of the circumstances surrounding any unauthorized possession or use of knowledge of any part of the Licensed Products.
- 2.7 Customer shall not undertake to copyright, trademark or apply for patent or other proprietary grant of right with respect to the Licensed Products.
- 2.8 Nothing in this Agreement grants to Customer the right to sell, lease, sublease or otherwise transfer or dispose of the Licensed Products in whole or in part.

### **3. MODIFICATION AND REPRODUCTION OF LICENSED PRODUCTS**

- 3.1 The Customer shall NOT, without prior written permission from TiPSS (a) make (or permit to be made) any copies of the Licensed Products provided to Customer in printed or human-readable form, or (b) reproduce Software provided to Customer in the form of machine-readable code or derivative software, except to the extent such copies and reproductions are necessary to enable the limited Use licensed under Section 2 of this Agreement. Any such copies or reproductions shall be solely for the Use of Customer.
- 3.2 All full or partial copies of Licensed Products shall be owned by TiPSS and considered part of the Licensed Products licensed under this Agreement. Customer shall maintain records of such copies in accordance with Section 5 of this Agreement.
- 3.3 It is agreed that a single archive copy of Software is sufficient to support Customer's Use. At no time shall more than one archive copy of the installation media exist without prior written permission of TiPSS.
- 3.4 All backup copies of Licensed Products shall include the same proprietary notices and legends which appear on the label of the Licensed Products supplied by TiPSS.
- 3.5 Customer shall not, without prior written consent of TiPSS, keep any copies of the Licensed Products at a location other than the location specified in of this Agreement, excepting the archive copy of the code, and except as provided for by the Software Escrow Agreement (if applicable).

#### 4. CONFIDENTIAL INFORMATION

- 4.1 All Licensed Products are and shall be the sole and exclusive property of TiPSS. Customer shall not take or cause any action, which would be inconsistent with or tend to diminish or impair TiPSS' rights in Licensed Products, other than Customer's exercises of its rights under this License Agreement.
- 4.2 Confidential Information is revealed to Customer in strict confidence, and solely for the purpose of the business arrangement. Customer shall not use, or induce others to use, any Confidential Information for any other purpose whatsoever.
- 4.3 Customer acknowledges that the Licensed Products are unique and were developed or otherwise acquired by TiPSS at great expense, and that any unauthorized disclosure or Use of the Licensed Products would cause irreparable injury or loss to TiPSS for which damages would be an inadequate remedy.
- 4.4 Customer shall, at all times, hold in confidence the Confidential Information and shall never disclose, or permit disclosure of, such Confidential Information (including methods or concepts utilized in the Licensed Products) to anyone, except to employees of Customer (including contractors as included in the definition of Customer) to whom disclosure is necessary in connection with the limited license to Use granted in Section 2 of this Agreement. Customer further agrees to exercise all reasonable precautions to prevent access to the Licensed Products by unauthorized persons.
- 4.5 Customer shall never de-compile or otherwise generate source code for the Software and shall never reverse engineer the Software, except as provided for in the Software Escrow Agreement.
- 4.6 Prior to disposing of any computer media or apparatus, Customer shall ensure that any Software contained by such media or stored in such apparatus has been completely erased or otherwise destroyed.
- 4.7 No provision of this section shall require or compel the Customer to violate state or federal open/public record requirements and the Customer shall not be in violation of this section or this Agreement if complying with such requirements; however, the Customer shall contact TiPSS prior to release of any record or information which may reasonably be considered Confidential by TiPSS for the purpose of allowing TiPSS to dispute and debunk such a release determination.

## **5. RECORDS**

- 5.1 Customer shall maintain and provide to TiPSS, within ten (10) days of request, appropriate records specifying as to individual users: the name of each individual then currently with access to Licensed Products.

## **6. PERFORMANCE BY TiPSS**

- 6.1 TiPSS shall deliver the then current version of the Licensed Products (in the form of machine-readable object code and certain human-readable documentation) to Customer at a mutually agreed upon date. TiPSS shall not be liable to Customer if a delivery delay is due to causes beyond its control. In such event, the time for performance hereunder shall be extended by the period of any such delay.
- 6.2 In the event that on-site services are requested by the Customer, the Customer shall reimburse TiPSS for travel, lodging and other incidental expenses arising in connection with installation and training. TiPSS will provide an estimate of expenses for Customer approval prior to providing the service.
- 6.3 TiPSS shall provide remote software installation service and support, conversions, custom form letters, remote training, and training manuals as summarized in Exhibit A.

## **7. WARRANTY AND LIMITATION OF LIABILITY**

- 7.1 TiPSS warrants that it is the owner of the Licensed Products and all proprietary rights relating thereto, and that it has full power and authority to authorize and license the Customer to Use the Licensed Products in accordance with the terms hereof.
- 7.2 The Licensed Products are provided on an "AS IS" basis, except that TiPSS warrants the following: (i) that the physical media of the Licensed Products shall be free from defects at the time of delivery; (ii) that the Licensed Products shall perform substantially in accordance with the manual TiPSS provides to Customer with the Licensed Products; and (iii) that the Licensed Products supplied by TiPSS do not infringe upon the trademark, copyright or patent rights of any third party. With respect to such media, TiPSS shall replace the same if notified within ten (10) days after delivery of the Licensed Products. With respect to the warranty regarding performance of the Licensed Products, such Warranty shall continue for a period of sixty (60) days following the Formal Acceptance Date for the applicable Licensed Product. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ANY WARRANTY OF NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Customer understands that no maintenance or support services are provided under this Agreement, but that such services may be secured by execution of a Systems Support Agreement.

- 7.3 Customer has full responsibility for determining the hardware and software necessary to operate the Software, and TiPSS will not provide any hardware or software other than the Licensed Products. Further, Customer has full responsibility for control and management of the Use of the Licensed Products, including by way of non-limiting example, proper operating procedures, equipment configurations, audit and backup procedures, restart and recovery procedures, and checkpoints for input/output accuracy.
- 7.4 TiPSS' liability for damages arising under this Agreement or pursuant to Customer's Use of the Licensed Products, excluding any damages or costs on account of any infringement action not caused by the fault of Customer, shall be limited to the charges paid to it by Customer pursuant to Section 8 of this Agreement. EXCEPT FOR ANY LIABILITY TO CUSTOMER ARISING SOLELY FROM THE INFRINGEMENT OF THE LICENSED PRODUCTS ON THE RIGHTS OF ANY THIRD PARTY WHICH IS CAUSED BY TiPSS, IN NO EVENT SHALL TiPSS BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING BUT NOT LIMITED TO LOST PROFITS AND COST OF DOWN-TIME) ARISING OUT OF OR RELATED TO THE LICENSED PRODUCTS OR ANY USE THEREOF, EVEN THOUGH TiPSS MAY KNOW OR HAVE BEEN ADVISED, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

## **8. CHARGES AND PAYMENT**

- 8.1 Customer agrees to pay TiPSS for each copy of the Licensed Products used by Customer, as set forth in Exhibit A attached hereto, which are incorporated herein by reference.
- 8.2 Customer shall be invoiced for all amounts due under paragraph 8.1 above upon **the Go-Live Date** for the TiPSS Software. Payment for License Fees and Service Fees shall be made within 60 days of invoicing, unless an alternate payment plan has been agreed to.
- 8.3 Customer shall pay TiPSS the charges for all services that are specified in Exhibit A attached hereto.
- 8.4 Customer shall pay all undisputed charges on invoices within sixty (60) days of the date of the invoice. Customer shall, in addition, pay interest at the rate of 18% per annum (or the maximum rate permitted by law) on any undisputed invoice amounts which are not paid within such sixty (60) day period. Notwithstanding the foregoing, interest shall not accrue on charges disputed within such sixty (60) day period until ten (10) days after the resolution of the dispute.

## 9. INFRINGEMENT

- 9.1 Customer shall take reasonable steps to ensure that none of its actions lead to an infringement of any patent, copyright, or other proprietary right of TiPSS in the Licensed Products, and shall immediately notify TiPSS of any known or attempted infringement.
- 9.2 In the event Use of the Licensed Products is enjoined, TiPSS shall, at its option, obtain for Customer the right to continue using the Licensed Products, or modify the Licensed Products to make them non-infringing.

## 10. TERM AND TERMINATION

- 10.1 The license granted hereunder shall commence upon execution of this Agreement by TiPSS.
- 10.2 TiPSS may terminate the Customer's license to Use the Licensed Products, in the event that the Customer fails to perform any of its obligations hereunder and fails to remedy such nonperformance within thirty (30) calendar days, which period may be extended at the written discretion of TiPSS, after receiving written demand therefor. TiPSS' termination of Customer's license to Use the Licensed Products and/or repossession of the Licensed Products shall be without prejudice to any other lawful remedies that TiPSS may have.
- 10.3 The Customer's license to Use the Licensed Products may be terminated at any time by the Customer upon written notice to TiPSS.
- 10.4 It is expressly understood and agreed that Customer's obligations to keep the Confidential Information confidential and to keep records under Sections 4 and 5 of this Agreement shall continue even after the termination, for any reason, of this Agreement or any provision hereof, provided however, that Customer's obligation to maintain records as provided herein shall expire one (1) year after termination.
- 10.5 Upon termination for non-payment of the Customer's license to Use the Licensed Products, Customer shall immediately:
  - a) cease all Use of the Licensed Products, except that Customer may, for a maximum of 60 days, continue to use the Licensed Products to the extent necessary to promptly retrieve all of Customer's data and convert it into another machine- or human-readable format;
  - b) return all parts of the Licensed Products, together with all authorized and unauthorized copies of the Licensed Products, including all copies of any documentation, notes, listings, and all other materials, media and items comprising, or embodying the Confidential Information, except to the extent that the Customer is required to maintain such indicated items as required by law;

- c) remove and purge all electronically stored copies and portions of copies of the Licensed Products; and
- d) keep the Confidential Information confidential, subject to Section 4 above.

## 11. RISK OF LOSS

- 11.1 TiPSS agrees to replace, at no additional cost to Customer, any of the Licensed Products, which are lost or damaged in shipment or are otherwise defective. If Customer loses or damages any Licensed Product, TiPSS shall replace such Licensed Product, subject to availability, at an additional charge to Customer not to exceed \$100.00.

## 12. MISCELLANEOUS

- 12.1 Neither this Agreement nor any rights or obligations hereunder shall be assignable or otherwise transferable by Customer, in whole or in part, except (i) in the event of a merger of one or more municipal corporations the resulting corporation may be assigned the rights hereunder or (ii) in the event of a merger of Customer's municipal court operations with one or more other municipal court operations occurring prior to five years after the execution of this Agreement, TiPSS will provide a credit toward a multi-jurisdictional license for each license fee assigned to the new joint operation equal to the license fee payable hereunder (excluding related service fees) times a fraction equal to one (1) divided by the number of years since execution of the agreement rounded up to the next complete year or will provide any other such credit as mutually agreed to. [Example: A merger occurring 15 months after execution of this Agreement would generate a credit of one-half (1/2) of the initial license fee.]
- 12.2 The rights of TiPSS and the obligations of Customer hereunder shall inure to the benefit of TiPSS' nominees, successors and assigns, and shall be binding upon Customer and its heirs, assigns and legal representatives.
- 12.3 Any notices required or permitted to be given pursuant to this Agreement shall be in writing and sent by certified mail, postage prepaid and return receipt requested, to the parties at their addresses set forth above, or to such other address as either of them may specify to the other in writing from time to time.
- 12.4 This Agreement shall be construed in accordance with the laws of the State of Wisconsin. In the event of any dispute arising under this License Agreement, venue shall be proper only in the County Circuit Court in which the Customer is located, and both parties waive any right to commence or prosecute an action in any other forum.
- 12.5 This Agreement, and the Exhibits hereto, contain the entire understanding of the parties respecting the subject matter hereof and supersedes all previous verbal and written agreements. The Agreement may not be modified except by a writing expressly purporting to modify this

Agreement and signed by the party against whom enforcement of the change is sought. Each party to this Agreement acknowledges that no other party, nor any agent or attorney of any party, has made any promise, representation or warranty whatsoever, express or implied, not contained herein, concerning the subject matter hereof, to induce the other party to execute this Agreement, and each party acknowledges that it has not executed this Agreement in reliance on any such promise, representation or warranty not contained herein.

- 12.6 No term or provision of this Agreement shall be deemed waived by either party, nor breach excused by such party, unless such waiver or excuse is in writing and signed by such party. No consent by either party to, or waiver by either party of, a breach by the other party, whether expressed or implied, shall constitute a consent to, waiver of, or excuse for any other different or subsequent breach by such other party.
- 12.7 The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, strictly neither for nor against any party hereto, and without implying a presumption that the terms thereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the person who himself or through his agent prepared the same, it being agreed that representatives of both parties have participated in the preparation hereof.
- 12.8 If any provision of this Agreement shall be deemed illegal or unenforceable, such illegality or unenforceability shall not affect the validity or enforceability of any legal and enforceable provision hereof.
- 12.9 No action arising out of any claimed breach of this Agreement or transactions relating hereto may be brought by either party more than two (2) years after discovery of the factual and legal basis for such claim.

EXECUTED as a License Agreement on the date written above.

**CITY OF WAUKESHA**

**TITAN PUBLIC SAFETY SOLUTIONS, LLC**

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Name (type or print)

XONG YANG  
\_\_\_\_\_  
Name (type or print)

\_\_\_\_\_  
Title

Member  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

March 14, 2019  
\_\_\_\_\_  
Date

## EXHIBIT A

PRODUCT	License & Service Fees	Quote Number
<p><i>TiPSSCourts</i> Suite License (5 Full Access and 6 View-Only Access Concurrent License); Installation (Remote); User Manual; Training Including:</p> <ul style="list-style-type: none"> <li>• <i>TiPSSDOT interface</i> License; Installation (Remote); User Manual; Training</li> <li>• <i>TiPSSTax Intercept interface</i> License; Installation (Remote); User Manual; Training</li> <li>• <i>TiPSSSDC interface</i> License; Installation (Remote); User Manual; Training</li> <li>• <i>TiPSSTraCS interface</i> License; Installation (Remote); User Manual; Training</li> <li>• <i>TiPSSCourts to Pro-Phoenix interface</i> License; Installation (Remote); User Manual; Training</li> <li>• <i>TiPSSWebPayment</i> License; Installation (Remote); User Manual; Training</li> </ul>	\$55,770	2018-051r2
<i>TiPSSCashRegister</i> License (3 Full Access Workstation); Installation (Remote); User Manual; Training	\$6,830	2018-051r2
<i>TiPSSCourts Conversion</i> - Citation Import and append Disposition Data	\$10,000	2019-007r
<b>GRAND TOTALS</b>	<b>\$72,600</b>	
<i>Fees listed above do not include annual support fees.</i>		