



**SUBSCRIPTION LICENSE AGREEMENT**

This Subscription License Agreement, which includes the Order Form (below) and the attached Terms and Conditions (collectively, this "Agreement"), between Matrix Pointe Software, LLC an Ohio limited liability company ("Matrix") and the licensee named below ("Licensee"), is made effective as of the date of execution by Licensee (the "Effective Date"). Matrix and Licensee have read and agree to the provisions of this Agreement.

**Order Form**

<b>Matrix Pointe Software, LLC</b> Attn: Joseph J. Whang, CEO 30400 Detroit Road Suite 400 Cleveland, Ohio 44145 (216) 333-1263 jwhang@matrixpointesoftware.com	<b>Licensee:</b> Anthony E. Kendell, Prosecuting Attorney Miami County Safety Building 201 West Main Street Second Floor Troy, OH 45373 tkendell@miamicountyohio.gov
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**Modules:**

Included: MatrixProsecutor, MatrixCrime, MatrixExchange (Including the Defense Attorney Portal), MatrixStorage, and MatrixCivil ("Case Management Software")

**Included Services:**

- Data hosting, servers, data back-ups, system maintenance and data storage in accordance with Section 11 and Exhibit A
- Access to the criminal statute database for the State of Ohio
- Unlimited Support Services for two (2) Designated System Administrators in accordance with Section 4 of this Agreement

**Monthly Subscription License Fee:**

Case Management Software: \$3,500 per month beginning after initial system set-up and customer access to the system.

MatrixStorage: Base Storage amount of 1TB is included with Licensee's subscription ("Base Storage"). Licensee hereby agrees to pay an additional charge of \$100 per terabyte (or TB) per month for storage usage over the Base Storage amount, as defined in the Service Level Agreement.

Cancel at any time with a full refund of any unused monthly license fees.

**Implementation Fee:** \$45,000 after initial Criminal system set-up and customer access to the system. Includes implementation, training, and travel.

Matrix and Licensee, by their duly authorized representatives, have executed this Agreement as of the Effective Date.

**MATRIX POINTE SOFTWARE, LLC**

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Joseph J. Whang

\_\_\_\_\_  
Chief Executive Officer

Date: 9/10/2021

**LICENSEE**

By: \_\_\_\_\_

\_\_\_\_\_  
Anthony E. Kendell

\_\_\_\_\_  
Miami County Prosecuting Attorney

Date: \_\_\_\_\_



## Terms and Conditions to Subscription License Agreement

### 1. Defined Terms

“Agreement” means the Subscription License Agreement Order Form, the Terms and Conditions to Subscription License Agreement, and any exhibits.

“Designated System Administrators” or “Super user” means the user selected by the Licensee to act as a System (defined in this Section) expert and as a conduit between the Licensee and Matrix.

“License Commencement Date” means completion of initial system set-up, customer acceptance, and customer access to the system.

“Licensee Data” means electronic communications of data and all other information that is input into, processed through or created by the use of the System (defined in this Section) by the Licensee.

“Maintenance Period” means the period of time during which Licensee cannot access the System due to maintenance or upgrades.

“Matrix’s Network and Systems” means the System (defined in this Section), and Amazon Web Services or other infrastructure as a service provider.

“Monthly License Fee” means the monthly license fee specified on the Order Form.

“Normal Business Hours” means Monday through Friday, 8 am to 5 pm EST, excluding holidays.

“Professional Services” means implementation services, onsite training, consulting, integration and data conversion.

“Professional Services Fees” means the fees for Professional Services specified on the Order Form or the hourly rate(s) in effect at the time of the performance of the Professional Services.

“Services” means the Support Services, the Professional Services and any other services provided by Matrix.

“Support Services” means telephone and email support.

“Support Services Fees” means the hourly rate(s) in effect at the time of the performance of the Support Services.

“System” means the Modules to be licensed to Licensee as specified on the Order Form (Modules may be updated from time to time in the sole discretion of Matrix), including, but not limited to, user documentation and training processes and materials.

“System Outage” means an interruption or failure of the System lasting longer than one (1) hour during Normal Business Hours.

### 2. License

Subject to Licensee’s compliance with the terms and conditions of this Agreement, Matrix hereby grants to Licensee a non-exclusive, limited, non-transferable, revocable worldwide right and license for Licensee to access and use the System solely for Licensee’s internal business operations. Licensee will not permit the System to be used to process or administer data on behalf of any third party (including, without limitation, another governmental agency), whether or not Licensee is paid a fee for such processing or administration. Furthermore, Licensee will not allow any third party, including, without limitation, any competitor of Matrix, to view, access, or use the System in any manner whatsoever.

### 3. Login Identities

The use and confidentiality of any and all login identities and password(s) are the responsibility of Licensee. Licensee is solely responsible for any costs, expenses, and third party claims resulting from the unauthorized use of any login identities and password(s). Licensee shall promptly notify Matrix in writing of any lost or stolen passwords. Licensee shall be liable to Matrix for any act or omission of any user that would constitute a breach under this Agreement.

### 4. Technical Support & Professional Services



The System will be hosted in accordance with the Service Level Agreement attached hereto as Exhibit A and Section 11. Matrix shall provide unlimited Support Services to the two (2) Designated System Administrators during Normal Business Hours. Support requests by anyone not identified as a Designated System Administrator may be subject to Support Services Fees. For purposes of clarity, the Support Services will not include support for any third party software or systems. Except as provided for on the Order Form, additional services such as implementation, onsite training, consulting, integration and data conversion (the "Professional Services") are available for an additional fee.

## 5. Licensee Data

(a) Licensee authorizes Matrix to share selected Licensee Data with other Licensees and governmental agencies through MatrixExchange. Licensee may opt-out of submitting selected Licensee Data through MatrixExchange by notifying Matrix in writing. Licensee also acknowledges and agrees that Matrix may use Licensee Data in the aggregate for internal business purposes, including but not limited to making improvements to the System.

(b) Except as provided in Section 5, (i) Matrix shall hold the Licensee Data in strict confidence, and (ii) Matrix will not permit any third party, or any employee, consultant, subcontractor or agent to access the Licensee Data except in connection with the normal course of business (including, without limitation, help desk support). Each party agrees not to communicate any information to the other party in violation of the proprietary rights of any third party.

(c) Your License Grant to Matrix. You grant to Matrix a non-exclusive, worldwide, irrevocable and royalty-free license to edit, modify, adapt, translate, exhibit, publish, transmit, participate in the transfer of, reproduce, create derivative works from, distribute, perform, display, and otherwise use your data and content as necessary for the purposes of rendering and operating the Services to you under this Agreement.

(d) Notwithstanding the provisions of this Agreement, Licensee Data will not be subject to the obligations in Section 5 if (i) it has been published or is otherwise readily available to the public without restriction other than by a breach of this Agreement; (ii) it has been provided to Matrix by a third party that is not subject to any confidentiality obligations to Licensee; or (iii) it is required to be disclosed in the context of any administrative or judicial proceeding or as may be required by law.

(e) Licensee hereby authorizes Matrix to use, analyze and disclose all non-personally identifiable Licensee Data in connection with creating criminal justice statistics and conducting comparative studies that have been aggregated with data from other Licensees and/or governmental agencies. Licensee will have access to this aggregated information.

## 6. Payment Terms

(a) Licensee shall pay to Matrix the Monthly License Fee in accordance with the amounts specified on the Order Form. Unless otherwise specified on the Order Form (1) the Monthly License Fee shall be due on or prior to the License Commencement Date, and thereafter on or prior to the monthly anniversary of the License Commencement Date, and (2) Matrix may, in its sole discretion, increase the amount of the Monthly License Fee from time to time (but no more than once per calendar year and in an amount not to exceed 5% annually) upon written notice to Licensee. In accordance with Section 12(a) of this Agreement, Licensee may cancel at any time with a full refund of any unused monthly license fees.

(b) Unless otherwise specified on the Order Form, the Professional Services Fees will be the hourly rate(s) in effect at the time of the performance of the Professional Services. All Professional Services Fees shall be due net thirty (30) days from the invoice date. Furthermore, Licensee shall promptly (but in any case no later than net thirty (30) days from the invoice date) reimburse Matrix for all mutually agreed upon out-of pocket expenses incurred by Matrix in



connection with the performance of the Professional Services.

(c) Any Monthly License Fees or Professional Services Fees that are not paid within thirty (30) days of the due date for such payment shall accrue interest at the lesser of 1.5% per month or the maximum amount permitted by applicable law.

(d) To the extent any national, state or local sales, use, value-added or other taxes, customs, duties, or similar tariffs and fees are imposed and are based on the license granted or the services provided pursuant to this Agreement (other than taxes on Matrix's gross income or gross receipts), such taxes are in addition to the fees set forth in this Agreement and will be paid by the Licensee. If applicable, Licensee shall provide proof of tax-exempt status.

## **7. Copyright and Restrictions**

As between Matrix and Licensee, the System (and all intellectual property rights therein) is owned by Matrix and is protected by United States laws and international treaty provisions. Any rights not expressly granted herein are reserved to Matrix. Licensee may not (i) permit any third party to access the System, (ii) create derivative works based on the System, (iii) sublicense, rent or lease all or any portion of the System, (iv) copy, frame or mirror any part or content of the System, other than copying or framing on Licensee's own intranets or otherwise for its own internal business purposes, (v) reverse engineer the System, or (vi) access the System in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the System.

## **8. Warranties**

(a) Each party represents and warrants that (i) it has all requisite power and authority to enter into this Agreement and consummate the transactions contemplated hereby; (ii) this Agreement is a valid and binding obligation enforceable against such party in accordance with its terms; and (iii) neither the execution, delivery and performance of this Agreement and the other

agreements and instruments contemplated hereunder, nor the consummation of the transactions contemplated hereby will violate or conflict with or constitute a default under any contractual obligation.

(b) Licensee represents and warrants that (i) Licensee is and shall be in compliance with all applicable laws and regulations, including, without limitation, all laws and regulations related to the collection, use, disclosure, and storage of Licensee Data; (ii) Licensee is and shall be in compliance with all contractual obligations and privacy policies relating to Licensee Data; (iii) Licensee is a law enforcement organization duly organized under the laws of its state, county, and other applicable political subdivision; and (iv) Licensee is and shall be solely responsible for all Licensee Data or Third Party data derived from Licensee Data including, without limitation, any and all claims of third parties relating thereto (including claims that Licensee Data is erroneous, outdated or inaccurate).

(c) TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, MATRIX EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS RELATING TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, THE SYSTEM, THE SERVICES, AND ANY THIRD PARTY SYSTEMS AND SOFTWARE USED IN CONNECTION WITH THE SYSTEM), EXPRESS, IMPLIED AND STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. MATRIX EXPRESSLY DISCLAIMS ALL WARRANTIES RELATING TO THE FREQUENCY AND ACCURACY OF ANY LEGAL UPDATES, AND THAT THE OPERATION OF THE SYSTEM WILL BE FREE OF INTERRUPTIONS AND ERRORS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SYSTEM IS PROVIDED "AS-IS" AND WITH ALL FAULTS. FURTHERMORE, MATRIX IS NOT RESPONSIBLE FOR FAILURES OF EQUIPMENT, INTEGRATION WITH OR FAILURES OF THIRD PARTY SYSTEMS OR SOFTWARE, LOST DATA, ERRONEOUS, OUTDATED OR



INACCURATE DATA OR THIRD PARTY TELECOMMUNICATIONS OR DATA LINES. MATRIX DOES NOT WARRANT THAT ITS NETWORKS AND APPLICATIONS (OR THOSE OF ITS THIRD PARTY PROVIDERS) WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE.

(d) In no event will any action against Matrix in connection with this Agreement be instituted more than one year after commencement of the incident that gave rise to such action.

#### **9. Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL MATRIX BE LIABLE TO LICENSEE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES OR LOST PROFITS ARISING OUT OF OR IN CONNECTION WITH TERMS OF THIS AGREEMENT, LICENSEE'S USE OR INABILITY TO USE THE SYSTEM, LOST, UNAVAILABLE OR DAMAGED DATA, THE BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, OR OTHERWISE IN CONNECTION WITH THE SYSTEM, RELATED DOCUMENTATION, THE SERVICES, AND/OR THIS AGREEMENT, EVEN IF MATRIX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL MATRIX'S TOTAL LIABILITY FOR ANY DAMAGES, DIRECT OR INDIRECT, IN CONNECTION WITH THE SYSTEM, THE RELATED DOCUMENTATION, AND/OR THIS AGREEMENT, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT OR OTHERWISE, EXCEED THE TOTAL AMOUNT OF THE TWELVE (12) MONTHLY LICENSE FEES PAYMENTS PAID PRECEDING THE DATE OF THE EVENT GIVING RISE TO LIABILITY OR THE DATE OF THE COMMENCEMENT OF THE ENSUING LEGAL ACTION, WHICHEVER IS LATER.

#### **10. Confidential Information**

Licensee agrees that the pricing and terms of this Agreement are confidential in nature and will not be posted on Licensee's public website. Matrix acknowledges that the information may be obtainable via standard public record request.

#### **11. Data Hosting**

(a) Applicable Policies and Guidelines. Matrix currently provides the Services through Amazon Web Services ("AWS"). As such, Licensee agrees to comply with the AWS policies, including its Acceptable Use Policies (the "Usage Guidelines"). YOU SHOULD CAREFULLY READ THE USAGE GUIDELINES. BY USING THE SERVICES, YOU AGREE TO BE BOUND BY THE TERMS OF THE USAGE GUIDELINES AND ANY MODIFICATIONS TO THE TERMS. MATRIX MAY TERMINATE YOUR SERVICES FOR ANY VIOLATION OF THE USAGE GUIDELINES OR THIS AGREEMENT. Matrix may use any other infrastructure as a service provider as Matrix determines is necessary in order to provide Licensee the included services.

(b) Security. You are solely responsible for any security breaches affecting servers or accounts under your control. If your server or website is responsible for or involved in an attack on or unauthorized access into another server or system, Matrix will shut it down immediately. You will pay any charges resulting from the cost to correct security breaches affecting Matrix or any of its other customers.

(c) Commercial Advertisements via E-Mail. You will not use Matrix services, your account or server to send or facilitate in any way the transmission of unsolicited commercial email. Matrix will enforce substantial penalties, including charging you for related network costs and terminating your account, for violations.

#### **12. Term and Termination**

(a) Unless sooner terminated as set forth in this Agreement, the term of this Agreement shall begin on the Effective Date and continue on a month-to-month basis. Licensee may terminate





this Agreement for any reason and at any time upon written notice to Matrix, and such termination will be effective upon receipt by Matrix.

(b) Matrix may terminate this Agreement if Licensee does not comply with any of its material terms; provided that Matrix is required to give Licensee written notice of such termination and thirty (30) days to cure the non-compliance. In addition, Matrix may terminate this Agreement if: (i) all or a substantial portion of the assets of Licensee are transferred to an assignee for the benefit of creditors, to a receiver or to a trustee in bankruptcy; (ii) a proceeding is commenced by or against Licensee for relief under bankruptcy or similar laws and that proceeding is not dismissed within sixty (60) days; or (iii) Licensee is adjudicated bankrupt.

If Licensee's use of the System is or is likely to be enjoined, Matrix may, in its sole discretion, either procure the right for Licensee to continue use of the System or modify the System in a functionally equivalent manner so as to avoid such injunction. If the foregoing options are not available on commercially reasonable terms and conditions, as determined by Matrix in its sole discretion, Matrix may terminate the Agreement and refund to Licensee the amount of the unused Licensee Fees.

(c) Upon termination of this Agreement for any reason, all licenses will immediately terminate. Sections 1, 3, 5, 6, 7, 8, 9, 10, 11, 12, and 13 will survive any termination of this Agreement. Matrix will provide Licensee Data to Licensee in its native format (Example, Microsoft SQL) at no cost. If Licensee requests additional data management services, such services may be provided by Matrix for a fee to be mutually agreed to by the parties in writing.

### 13. Miscellaneous

(a) Entire Agreement. This Agreement, with its Exhibits, contains Matrix's and Licensee's entire agreement with respect to the subject matter herein. This Agreement may not be

modified except by written instrument signed by both parties and referring to the particular provisions to be modified. All terms, conditions, or provisions in a purchase order or confirmation shall be of no force and effect notwithstanding the execution of such purchase order or other document subsequent to the date of this Agreement.

(b) Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with and shall be governed by the laws of the State of Ohio and applicable federal law. Licensee and Matrix hereby consent to the exclusive jurisdiction and venue of the courts of the State of Ohio, and Licensee hereby consents to and waives any objection regarding jurisdiction and venue in such courts. Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement. All claims, controversies and disputes arising under or relating to this Agreement are to be settled by binding arbitration in the State of Ohio. The arbitration shall be conducted on a confidential basis and an award may be confirmed in a court of competent jurisdiction.

(c) Notices. All notices, requests, demands or other communications which are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery if delivered by hand or by confirmed facsimile; (ii) upon the fifth day after such notice is deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested, or (iii) upon the date of the courier's verification of delivery at the specified address if sent by a nationally recognized overnight express courier.

(d) Force Majeure. Neither party shall be in default if its failure to perform any obligation hereunder is caused solely by supervening conditions beyond that party's reasonable control, including, without limitation, acts of God, civil commotion, strikes, labor disputes, Amazon Web Services interruptions, Internet service



interruptions or slowdowns, vandalism or “hacker” attacks (including, without limitation, by Licensee’s employees or agents), or governmental demands or requirements.

(e) Waiver. The failure of either party to require performance by the other party of any provision of this Agreement or any Attachment shall not affect its right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provisions of this Agreement be taken or deemed to be a waiver of the provision itself.

(f) Severability. If any provision of this Agreement is invalid or unenforceable, that provision will be changed and interpreted to accomplish the parties’ objectives to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.

(g) Independent Contractor. Nothing contained herein shall be deemed or construed as creating a joint venture or a partnership between Licensee and Matrix. Neither Licensee nor Matrix is by virtue of this Agreement authorized as an agent or other representative of the other.

(h) Headings. The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, or describe the scope or extent of such section.

(i) Injunctive Relief. Licensee acknowledges that its breach or threatened breach of this Agreement would cause irreparable injury to Matrix that would be inadequately compensated in money damages. Accordingly, in addition to any and all other remedies that may be available under equity, law, or this Agreement, Matrix shall be entitled to a restraining order and/or an injunction prohibiting such breach to

protect Matrix’s intellectual property interests, without the need to prove irreparable harm or provide a bond or other security.

(j) Application of UCITA. The parties agree that pursuant to Section 104 of the Uniform Computer Information Transactions Act (UCITA), they hereby express their mutual determination to “Opt-Out” of the provisions of UCITA and its application to this Agreement or the transaction of the parties and the parties further agree that UCITA shall not apply to this Agreement or the transaction of the parties. To the extent that certain provisions of UCITA may not be excluded under the law applicable to the Agreement or under the provision of Section 104 of UCITA, only those provisions that cannot be excluded by mutual agreement of the parties pursuant to Section 104 shall apply and no other provision of UCITA shall be applicable to the Agreement or the transaction of the parties.

(k) Use of Name. Licensee hereby authorizes Matrix to identify Licensee as a customer of Matrix, and to use Licensee’s name in connection with any press release, any online or printed marketing materials, or for any similar use.

(l) Assignment; Binding Effect. Matrix may assign this Agreement without the consent of Licensee. Licensee may not assign this Agreement without the prior written consent of Matrix. This Agreement will inure to the benefit of and be binding upon each party and its respective successors and permitted assigns.

(m) Counterparts. This Agreement may be executed in separate original or facsimile counterparts, each of which shall be deemed an original, and all of which shall be deemed one and the same instrument.

**EXHIBIT A**  
**Service Level Agreement**

<b>System Outages:</b>	Matrix will use commercially reasonable efforts to (i) minimize downtime if System Outages (as defined in the Terms and Conditions, above) occur, and (ii) inform Licensee regarding any System Outage outside of the planned maintenance window.
<b>Security:</b>	Matrix uses commercially reasonable efforts to prevent security breaches.
<b>Encryption:</b>	Message and data encryption is enabled on Matrix's server(s), and Matrix utilizes generally accepted encryption standards.
<b>Accessibility:</b>	Matrix will use commercially reasonable efforts to guarantee that its network will be available to Licensee, free of System Outages, 95% of the time during each calendar month, excluding (i) Maintenance Periods (as defined in the Terms and Conditions, above), and (ii) problems outside of Matrix's Network and Systems.
<b>Maintenance:</b>	<p>Matrix will use commercially reasonable efforts to schedule Maintenance Periods between 5:00 p.m. (Eastern Time) and 5:00 a.m. (Eastern Time) Monday through Sunday and to provide email notification forty-eight (48) hours in advance. System-wide maintenance may extend past the Maintenance Periods and will occur on weekends an estimated twelve (12) times per year.</p> <p>Notwithstanding the foregoing, if Matrix determines, in its sole discretion, that a Maintenance Period is necessary outside of the hours stated above, Matrix will perform maintenance and will use commercially reasonable efforts to notify Licensee by email prior to such Maintenance Period.</p>
<b>Data Storage</b>	MatrixStorage allows for an unlimited number of files with no individual file size limits. MatrixStorage usage over the Base Storage is an additional monthly charge per terabyte (or TB), calculated as the sum of all stored files minus the Base Storage. Terabytes are charged for in whole terabytes as measured, rounding up. For example with Base Storage of 1TB, and usage of 2.2TB Licensee would be charged for 2TB for that month.
<b>Backups</b>	Database backup, nightly backup and offsite backup.