

ORIGINAL

377-M0811

MEMORANDUM OF UNDERSTANDING FOR ACCESS TO CASE MANAGEMENT SYSTEM

This Memorandum of Understanding (this "MOU") is entered into on this _____ day of _____, 2007 (the "Effective Date") by and between The Superior Court of California, County of El Dorado (the "Court"), and the County of El Dorado Probation Department (the "User").

RECITALS

WHEREAS, the Court has established and maintains a case management system (the "CMS", as further defined below) containing various court records and information pertaining to cases before the Court, both current and past;

WHEREAS, the Court desires to provide certain justice partners or other approved parties on-line access to certain of such court records and information through a virtual private network (a "VPN");

WHEREAS, portions of the records and information made available through the VPN may comprise sensitive or confidential information, and the access, use and dissemination of such records and information also may be restricted by various statutes, regulations, and rules of court;

WHEREAS, the Court desires to grant User read-only access to and use of the CMS via a VPN provided such access and use complies with applicable laws, rules and regulations, and is in accordance with the terms and conditions set forth in this MOU, including the terms and conditions of any license agreement pertaining to the CMS;

WHEREAS, User desires to obtain read-only access to and use of the CMS via a VPN in compliance with applicable laws, rules and regulations and in accordance with the terms and conditions set forth in this MOU;

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Grant of Access

1.1 **Grant.** Subject to the terms and conditions set forth hereinbelow, the Court hereby grants User, including employees, contractors and agents of User authorized in accordance with Section 1.3, below (each, an "Authorized Users"), a limited right to read-only access to and use of the CMS via a VPN, including read-only access to and use of the court records and information available through the CMS and designed for access by Authorized Users, and User accepts such grant subject to such terms and conditions.

1.2 **Scope of Use.** User's right to access and use the CMS under Section 1.1 shall be strictly limited to read-only access to and use of the records and information made accessible through the VPN by the Court and solely as is necessary in connection with User's lawful operations and activities. User's access to and use of the CMS shall be strictly in compliance with all laws, regulations and rules governing access to and use of court records and information in California including, without limitation, the Usage Policy and Privacy Statement incorporated herein and attached as Exhibit A, Government Code § 68150 *et seq.*, and the California Rules of Court 2.500 *et seq.* User agrees not to disclose or distribute to any unauthorized person any court records or information obtained from the CMS, or to otherwise use or disclose such records or information in violation of the terms of this MOU or any law, regulation or rule.

1.3 **Authorized Users.** User agrees that access to and use of the CMS will be strictly limited to authorized personnel on a need-to-know basis and solely for purposes within the scope of their employment. User shall determine which of its employees, contractors and agents will be authorized to access and use the CMS and the scope of such access and use. User shall be responsible for monitoring access to and use of the CMS by its employees, contractors and agents to ensure that such access and use of the CMS is by Authorized Users only, and that all such use and access is in compliance with this MOU and applicable laws, regulations and rules. All Authorized Users and User's Department Head will be required to sign the Usage Policy and Privacy Statement and provide the signed document to the Court. Upon entering the CMS each Authorized User will be required to acknowledge that they are bound by the Usage Policy and Privacy Statement. The Court reserves the right in its sole discretion to deny any user access and use of the CMS, or require any user to return or destroy any court records or information obtained through the CMS. The Court further reserves the right to amend the Usage Policy and Privacy Statement.

1.4 **ISD License.** The CMS is licensed from ISD Corporation ("ISD"), and access to and use of the CMS is subject to a license agreement between the Court and ISD (the "ISD License"). User acknowledges and agrees that the ISD License strictly limits the right of the Court to grant User access to and use of the CMS on a read-only basis unless User purchases a license from ISD, and that any use of the CMS which exceeds the grant contained in this MOU may violate the ISD License.

1.5 **Passwords.** Each User will receive a password and account designation upon completing the appropriate registration process determined by the Court for the purpose of accessing the CMS via the VPN. Authorized Users shall not share the User password provided by the User with any other person, or permit any other person to access the user account. User shall be responsible for ensuring that each Authorized Users maintains the confidentiality of the User password and account and for all activities that occur under each User's password or account including, without limitation, any unauthorized sharing of or access to such password or account with any other employee or third party. User agrees to (a) immediately notify the Court of any unauthorized use of a password or account, or any other breach of security, and (b) ensure that each Authorized Users exits from his or her account at the end of each session. User's password will be changed by the Court every three months.

1.6 **Postings to the CMS.** User agrees not to use the CMS or VPN to upload, post, transmit or otherwise make available any content that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, obscene, libelous, invasive of another's privacy, or otherwise objectionable, or which User does not have a right to make available under any law, regulation or rule.

1.7 **Definition of CMS.** For the purposes of this MOU, the term "CMS" shall mean that case management system established by the Court and provided by ISD.

1.8 **Indemnity.** User shall be responsible and indemnify the Court for any loss or damage arising from User's failure to comply with this MOU, including any such failure by any employee, contractor or agent of User.

2. TERM OF MOU

2.1 **Term.** The term of this MOU shall commence on the Effective Date and shall continue in full force and effect for one (1) year unless earlier terminated in accordance with the terms and conditions set forth herein. This MOU shall automatically renew for additional terms of one (1) year each unless either provides the other party with notice of its intention not to renew this MOU not less than thirty (30) days prior to the termination of the then current term.

2.2 **Termination for Convenience.** Either party may terminate this MOU for convenience following thirty (30) prior written notice to the party.

2.3 **Termination for Cause.** Either party may terminate this MOU immediately upon written notice to the other party in the event of a material breach of this MOU by such other party.

3. STANDARDS OF SERVICE: OBLIGATIONS OF THE PARTIES

3.1 **Court's Duty.** The Court will use reasonable efforts to maintain the CMS and the accuracy of the records and information residing therein; however, the Court assumes no obligation whatsoever that access to the CMS will be continuous or uninterrupted, that the information and records accessed through the CMS are complete or accurate, or that User will be able to access and use the CMS or the records or information contained therein.

3.2 USER ACKNOWLEDGES AND AGREES THAT THE ACCESS TO THE CMS AND THE RECORDS AND INFORMATION CONTAINED THEREIN ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY WHATSOEVER. THE COURT DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH SUCH ACCESS TO AND USE OF THE CMS AND THE RECORDS AND INFORMATION CONTAINED THEREIN.

3.3 USER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE COURT, INCLUDING JUDGES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS, SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGES INCURRED BY USER, INCLUDING ANY AND ALL AUTHORIZED USERS, IN CONNECTION WITH THE ACCESS TO OR USE OF, OR THE INABILITY TO ACCESS OR USE, THE CMS OR THE RECORDS AND INFORMATION CONTAINED THEREIN INCLUDING, WITHOUT LIMITATION, ANY INACCURACY OF DATA, OR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, EVEN IF THE COURT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

4. GENERAL PROVISIONS

4.1 Entire Agreement. This MOU constitutes the entire agreement and final understanding of the parties with respect to the subject matter hereof and supersedes and terminates any and all prior and contemporaneous negotiations, representations, understandings, discussions, offers and/or agreements between the parties, whether written or verbal, express or implied, relating in any way to the subject matter hereof.

4.2 No Amendment. No alteration, addition, or variation of the terms of this MOU shall be made or binding unless made in writing and signed by both parties.

4.3 Severability. This MOU is subject to all applicable laws and regulations. If any provision of this MOU is found by any court or other legal authority, or is agreed upon by the parties, to be in conflict with any law or regulation, then the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of this MOU to either party is lost, then this MOU may be terminated at the option of the affected party, with the notice as required in this MOU. In all other cases, the remainder of this MOU shall be severable and shall continue in full force and effect.

4.4 No Assignment. User may not assign this MOU in whole or in part without the Court's prior written consent. Any attempted assignment in violation of this Section shall be null and void.

4.5 **Notices.** Any notice, request, demand or other communication required or permitted hereunder shall be in writing and may be personally delivered or given by depositing such notice in the United States mail, first-class postage prepaid, or by overnight courier for next day delivery, and addressed as follows:

To COURT:
Court Executive Officer
Superior Court of California, County of El Dorado
2850 Fairlane Court
Placerville, CA 95667
Phone: (530) 621-7414
Fax: (530) 295-2536
Attention: Tania Ugrin-Capobianco

To USER:
El Dorado County Probation Department
471 Pierroz Road
Placerville, CA 95667
Phone: (530) 621-5625
Fax: (530) 621-2430
Attention: Joseph S. Warchol

A notice shall be effective on the date of personal delivery if personally delivered before 5:00 p.m. on a business day or otherwise on the first business day following personal delivery; or two (2) business days following the date the notice is postmarked, if mailed; or on the first business day following delivery to the applicable overnight courier, if sent by overnight courier for next business day delivery and otherwise when actually received. Each party may change the delivery address by subsequent written notice to the other party in accordance with this section.

4.6 **Construction.** Each party has had the opportunity to participate in the drafting and preparation of this MOU and this MOU will be deemed to have been made and shall be construed, interpreted, governed and enforced pursuant to and in accordance with the laws of the State of California. The headings and captions used in this MOU are for convenience and ease of reference only and shall not be used to construe, interpret, expand, or limit the terms of the MOU, and shall not be construed against any one party.

4.7 **Waiver.** A waiver by either party of a breach of any of the covenants to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions, or conditions of this MOU. In addition, the failure of either party to insist upon strict compliance with any provision of this MOU shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach.

4.8 **Independent Contractor.** User and its officers, employees and agents shall act in an independent capacity in the performance of this MOU, and not as officers, employees or agents of the Court. User has no authority to bind or incur any obligation on behalf of the Court.

Neither the making of this MOU, nor the performance of its provisions, shall be construed to constitute either of the parties hereto as an agent, employee, partner, joint venturer, or legal representative of the other, and the relationship of the parties under this MOU is that of independent contractors.

4.9 **Counterparts.** This MOU may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

4.10 **Dispute Resolution Concerning Services and Payment.** In the event of any dispute concerning this MOU, User's chief executive officer, or his or her designee, and the Court's Chief Executive Officers, or his or her designee, will meet and confer within 10 (ten) business days after receiving notice of the dispute in an attempt to resolve the dispute. In the event no agreement can be reached either party shall have the right to pursue all legal remedies available to it.

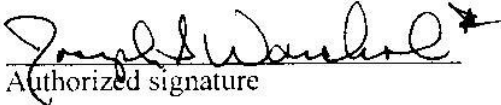
4.11 **Termination of Funding.** If funding or support for the CMS is terminated by the AOC, this MOU may be terminated by the Court immediately upon written notice to User. In such event, the parties shall meet to mutually develop and implement, within a reasonable time frame, a transition plan for to provide User access to and use of the court records and information contained in the CMS.

4.12 **Governing Law.** This MOU is executed and delivered within the State of California and the rights and obligations of the parties hereto shall be construed and enforced in accordance with, and governed by the laws of, the State of California.

4.13 **Authority to Enter MOU.** The Court and User each has all requisite power and authority to conduct its respective business and to execute, deliver, and perform this MOU. Each party warrants that the individuals who have signed this MOU have the legal power, right, and authority to make this MOU and to bind each respective party.

Contract Administrator

County of El Dorado
Probation Department


Authorized signature

Joseph S. Warchol II
Printed name

Chief Probation Officer, Contract Admin
Title

IN WITNESS WHEREOF, the Parties by their duly authorized representatives have caused this **Memorandum of Understanding** to be executed as of the date first written above.

County of El Dorado
Board of Supervisors

Superior Court of California,
County of El Dorado

Authorized signature

Authorized signature

Printed name

Tania Ugrin-Capobianco

Printed name

Chairman, Board of Supervisors

Title

Court Executive Officer

Title

ATTEST:
Cindy Keck, Clerk
of the El Dorado County Board of Supervisors

By: _____ Date: _____
Deputy Clerk

Exhibit A

Usage Policy and Privacy Statement

The Superior Court of California, County of El Dorado (the "Court") provides you with this Usage Policy in order to disclose the terms and conditions which govern your access to and use of the CMS.

Usage Policy

All usage of the CMS is governed by this Usage Policy.

Use of CMS

The CMS is provided solely to assist you in your work for the relevant governmental or non-profit entity at which you are employed. Use of the CMS for any other purpose is prohibited.

Expectations

In using the CMS you should have no expectation of privacy. Your use of the CMS may be monitored at any time to assure compliance with these or any other judicial branch policies. Reports on CMS activity may be regularly reviewed to ensure that systems are functioning efficiently and that CMS usage is work-related.

Responsibilities of Authorized Users

In General

Obey the law.

You may use the CMS only for legitimate, employment-related purposes. Do not use the CMS for non-work related or illegal activities, including those identified in California Penal Code section 502. Violating these policies may be grounds for imposition of penalties set forth in Government Code section 8314. Do not use the CMS to conduct the business of for-profit or nonprofit organizations, to solicit funds, or to advance political, religious, or other ideological causes. You may not use the CMS for personal purposes: no incidental or minimal use of the CMS is permitted for non-work activities.

Exercise reasonable care in using computer systems.

You are responsible for any loss or damage attributable to your failure to comply with these policies. You will be personally responsible for the replacement costs of any state property that is lost, stolen or damaged because of your negligence or your failure to comply with these policies.

Confidentiality and Access

Safeguard confidential information.

Access to the CMS is permitted only if your work requires you to do so, and you may access only those court records and information to which you are authorized. You may not access any other records or information. You may not use or disclose any court records or information obtain from the CMS except as may be necessary within the scope of your employment. The Court may access your files for any reason and may require that you provide logins or passwords for such access.

Report any violations of these policies.

You are required to notify your computer support staff and your supervisor immediately concerning possible security breaches of the CMS. (Notify the court)

Privacy Statement

Users of the CMS should have no expectation of privacy. CMS usage may be monitored at any time to assure compliance with these or any other judicial branch policies. Monitoring reports might disclose the date, time and web pages were viewed by specific users.

Information Collected and Stored

For each user of the CMS, our server may gather and store certain information including, without limitation, the following:

1. Your username and password information
2. Your Internet domain and IP address. The Internet Protocol Address is a numerical identifier assigned either to your Internet service provider or directly to your computer.
3. The date and time of your access to the CMS.

How This Information Is Used

We may use this information to monitor your activity on the CMS and to make the CMS more useful to visitors. Information collected may also be used to diagnose problems with our server; to learn about the number of users to the CMS and the types of technology they use; and to improve the content of the CMS.

We may use personally identifiable information to enforce this Usage Policy, or in response to legal process, for example, in response to a court order or a subpoena. We also may disclose such information in response to a law enforcement agency's request, or where we believe it is necessary to investigate, prevent, or take action regarding illegal activities, suspected fraud, situations involving potential threats to the physical safety of any person, or as otherwise required by law.

Although we take appropriate measures to safeguard against unauthorized disclosures of information, we cannot assure you that personally identifiable information that we collect will never be disclosed in a manner that is inconsistent with this Usage Policy.

Contacting Us

If you have any questions about this Usage Policy or the CMS you may contact the Court IT Manager, Anthony Giron at (530) 621-7455 or agiron@eldoradocourt.org

ACKNOWLEDGEMENT

I, _____ an Authorized User for the (Agency name) have read, understand and agree to this Usage Policy and Privacy Statement.

Authorized User Signature

Date

Department Head Signature

Date