

TraCS Florida Software Sub-User's License Between Florida Department of Transportation And End User

This TraCS Florida software Sub-User's License (hereinafter Sub-License) is entered by the Florida Department of Transportation, an agency of the State of Florida (hereinafter Sub-Licensor) and the End User (hereinafter Sub-Licensee). This Sub-License is pursuant to a License held between then Sub-Licensor and the Iowa Department of Transportation, an agency of the State of Iowa (hereinafter Licensor), wherein the Sub-Licensor has agreed to serve as Lead TraCS Agency in the state of Florida and has accepted the rights and responsibilities associated with that License, which is incorporated herein by reference. The TraCS National Model software is a proprietary product owned by the Licensor and the product is protected by Title 17 United States Code. In addition, the Sub-Licensor has funded the development of additional software components that are used in conjunction with the TraCS National Model software, but are specific to the state of Florida. The combination of these software components with the TraCS National Model software is hereinafter referred to as the TraCS Florida software. It is the intent of the Sub-Licensor that the TraCS Florida software be distributed only to other Florida state and local entities for government use.

Terms and Conditions of TraCS Florida Software Sub-User's License

Use of TraCS Florida software by the Sub-Licensee is permitted only upon the agreement and adherence by the Sub-Licensor and Sub-Licensee to the following:

Regarding TraCS Florida Software:

1. NO WARRANTY: The Sub-Licensee agrees that all TraCS Florida software is offered without warranty or representations and all TraCS Florida software is provided 'AS IS.' Software correction and modification are provided 'AS AVAILABLE.'
2. LIMITATION OF LIABILITY: The Sub-Licensee agrees that the use of the TraCS Florida software is provided at the sole risk of the Sub-Licensee. The Sub-Licensee and Sub-Licensor agree that, in exclusion of statutory violation, neither party shall have liability for damages or losses resulting from the use of TraCS Florida software.
3. The Sub-Licensee agrees that the intended use of TraCS Florida software is as a traffic safety incident reporting, and incident data storage, access, and transmission system. The Sub-Licensee agrees that use of the TraCS Florida software system, components, and supporting data is authorized only within the specified limits of its intended use as a traffic safety software solution for the Sub-Licensee.
4. The Sub-Licensor agrees to provide current versions of TraCS Florida software to the Sub-Licensee. Sub-Licensee will be responsible for downloading patches and/or updated versions of the software from the TraCS Florida website.
5. The Sub-Licensee agrees not to reverse engineer, decompile, or modify TraCS Florida software without authorization by the Licensor and Sub-Licensor.
6. The Sub-Licensee agrees not to distribute TraCS Florida software beyond employee or computer system resources of the Sub-Licensee without expressed authorization from Sub-Licensor.
7. The Sub-Licensor agrees to make available current electronic versions of official Department of Highway Safety and Motor Vehicles (DHSMV) traffic forms to the Sub-Licensee. These forms include, but are not limited to the following:
 - a. HSMV 75901: Florida Uniform Traffic Citation (UTC)
 - b. HSMV 75904: Florida Driving Under the Influence Uniform Traffic Citation (DUI UTC)
 - c. HSMV 90010S: Florida Traffic Crash Report
8. The Sub-Licensor agrees to provide to the Sub-Licensee state statute violation search capability reflecting current state statutes as pertain to DHSMV forms provided by the TraCS Florida software system.

9. The Sub-Licensee agrees that, although Sub-Licensors will provide additional development services and/or guidance when possible, Sub-Licensors are not obligated to develop forms or applications beyond those provided.

10. Sub-Licensors provide to Sub-Licensee a nonexclusive, nontransferable, royalty-free license to copy and use current electronic versions of official Department of Highway Safety and Motor Vehicles (DHSMV) traffic forms provided in the TraCS Florida software at no cost to Sub-Licensee.

11. Sub-Licensors may provide additional forms, reports, functions, and features beyond official Department of Highway Safety and Motor Vehicles (DHSMV) traffic forms and state statute violation search capabilities for an agreed upon fee as referenced in a separate Sub-Licensors and Sub-Licensee contract.

12. Sub-Licensors agree to provide hosting services TraCS Florida software in a Criminal Justice Information Services (CJIS) compliant environment, for use of current electronic versions of official Department of Highway Safety and Motor Vehicles (DHSMV) traffic forms.

Regarding Support Services:

15. LIMITATION OF LIABILITY: The Sub-Licensee agrees that use of the TraCS Florida support services is provided at the sole risk of the Sub-Licensee. The Sub-Licensee and Sub-Licensors agree that, in exclusion of statutory violation, neither party shall have liability for damages or losses resulting from the use of TraCS Florida software or services.

16. The Sub-Licensors agree to provide agency support, subject to limitations below, at no cost to the Sub-Licensee for official Department of Highway Safety and Motor Vehicles (DHSMV) traffic forms. Agency support is defined as assistance to a Sub-Licensee in configuring, installing, and using TraCS Florida software and system components on field units or application servers. Support services may be provided by the Sub-Licensors or by an authorized agent.

13. The Sub-Licensors agree to provide telephone and remote access support, subject to limitations below, to Sub-Licensee representatives Monday through Friday from 9:00 am to 5:00 pm, during non-holiday periods.

14. The Sub-Licensee agrees that the Sub-Licensors will only support Sub-Licensee implementation strategies that have been approved by the Sub-Licensors.

15. The Sub-Licensors agree to provide support and materials deemed sufficient by Sub-Licensors to enable the Sub-Licensee to develop and execute the following system administration responsibilities as related to TraCS Florida software :

- a. Software implementation plans
- b. Sub-Licensee specific training materials and programs
- c. Software update plans
- d. Internal Sub-Licensee support structures and guidelines
- e. Data transmission plans
- f. Coordination with DHSMV and local court for data transmission plans
- g. Methods for reporting usage of the TraCS Florida system to Sub-Licensors

16. Either independently or using the support and materials provided by the Sub-Licensors, the Sub-Licensee agrees to develop and execute the following system administration responsibilities as related to TraCS Florida software :

- a. Software implementation plans
- b. Sub-Licensee specific training materials and programs
- c. Software update plans
- d. Internal Sub-Licensee support structures and guidelines
- e. Data transmission plans
- f. Coordination with DHSMV and local court for data transmission plans
- g. Methods for reporting usage of the TraCS Florida system to Sub-Licensors

17. The Sub-Licensors shall not be responsible for administration or support of Sub-Licensee internal network, database, and security systems, even when required to run the TraCS Florida software.

18. The Sub-Licensee agrees to designate one or more agency personnel as a Sub-Licensee coordinator. The Sub-Licensee further agrees to provide sufficient contact information for all such coordinators.

19. The Sub-Licensee agrees to provide to the Sub-Licensors sufficient reasonable access during normal city business hours to TraCS Florida system components to facilitate the fulfillment of TraCS Florida software implementation, support, and troubleshooting tasks related to the Sub-Licensee's implementation as supervised by Sub-Licensee designated personnel.

Regarding Data and Information Sharing:

20. When sufficient technological capability exists, the Sub-Licensee agrees to submit crash and citation data to appropriate Florida state agencies and local court offices where such data originate from TraCS Florida software.

21. The Sub-Licensee agrees to fully and to the best of its ability answer TraCS Florida software usage surveys and questions as presented by Sub-Licensors on reasonable basis.

22. The Sub-Licensors agree to adhere to Florida statutes, and the rules and regulations provided by Sub-Licensors, DHSMV, and the Florida Department of Law Enforcement (FDLE) as they pertain to the protection of sensitive data including, but not limited to data related to individuals, computer system security, and any other data identified by the Sub-Licensee as sensitive. Additional data elements deemed sensitive by the Sub-Licensee should be provided by the Sub-Licensee as an addendum to this agreement. Furthermore, Sub-Licensors agree that all data disseminated outside of the transmission of data between the Sub-Licensee and entities responsible for data collection, including, but not limited to DHSMV, Clerk of Court Offices, Florida Department of Transportation (FDOT), FDLE, and Florida Association of Court Clerks and Comptrollers (FACC), will be aggregate in nature and free of sensitive data elements.

Regarding the AGREEMENT and Disputes:

23. This AGREEMENT embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this AGREEMENT shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. The terms and conditions herein, whether general or specific, shall take precedence over and supersede any inconsistent or conflicting provision in any attached terms and conditions.

24. It is understood and agreed by the parties hereto that if any part, term, or provision of this AGREEMENT is by the courts held to be illegal or in conflict with any law of the State of Florida, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the AGREEMENT did not contain the particular part, term, or provision held to be invalid.

25. Any questions or matters arising under this AGREEMENT as to validity, construction, enforcement, performance, or otherwise, shall be determined in accordance with the laws of the State of Florida.

26. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of this Agreement shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

27. In any legal action related to this AGREEMENT, instituted by either party, the Requestor hereby waives any and all privileges and rights it may have under Chapter 47 and Section 337.19, Florida Statutes, relating to venue, as it now exists or may hereafter be amended, and any and all such privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those grounded on convenience. Any such legal action may be brought in the appropriate Court in the county chosen by the Sub-Licensors and in the event that any such legal action is filed by the Requestor, the Requestor hereby consents to the transfer of venue to the county chosen by the Sub-Licensors upon the Sub-Licensors filing a motion requesting the same.

28. The parties hereby agree to bear their own attorney's fees and costs with respect to this AGREEMENT subject

to any law to the contrary.

29. The parties hereby agree and covenant that this AGREEMENT is binding on the parties, their heirs-at-law, and their assigns and successors in interest as evidenced by their signatures and lawful executions below.

30. A modification or waiver of any of the provisions of this AGREEMENT shall be effective only if made in writing and executed with the same formality as this AGREEMENT.

31. By their signature below, the parties hereby acknowledge the receipt, adequacy, and sufficiency of consideration provided in this AGREEMENT and forever waive the right to object to or otherwise challenge the same.

Regarding Termination of the License or Sub-License:

32. This Agreement may be terminated by the Sub-Licensee at any time. Within thirty (30) calendar days of termination by Sub-Licensee, the Sub-Licensee agrees to inform Sub-Licensors of the termination of use and reasons for the termination of use. Sub-Licensee agrees to return to Sub-Licensors all copies of the TraCS Florida software, including any modifications, within thirty (30) days of termination, or certify in writing within thirty (30) days of termination that all copies have been destroyed.

33. This Sub-License may be terminated by the Sub-Licensors for 1) breach or nonperformance of any material term or condition of this sublicense by the Sub-Licensee, or 2) if the Sub-Licensors decide to discontinue support or maintenance of the TraCS software for use by other agencies. In the event that the Sub-Licensors terminate the Sub-License, a written notice will be given to the Sub-Licensee at least ninety (90) days prior to termination of the Agreement. If the termination is for breach or nonperformance by Sub-Licensee, Sub-Licensee has ten (10) days to resolve the issue to the satisfaction of the Sub-Licensors, in which case the termination shall be rescinded. If the issue is not satisfactorily resolved after ten (10) days, the termination shall stand and the Sub-Licensee agrees to promptly return to Sub-Licensors all copies of the TraCS Florida software, including any modifications, or certify that all have been destroyed.

34. The Sub-Licensors reserve the right to terminate the license with the Licensor that governs the provision of fees to the Licensor and the rights of the Sub-Licensors and Sub-Licensees to use the TraCS National Model software. In that case, the Sub-Licensee can only retain access to the TraCS National Model (Baseline) software if another Florida state agency chooses to serve as Sub-Licensors. Any fees assessed by the Licensor would at that point become the responsibility of a new Sub-Licensors agency, and could potentially result in fee obligations by Sub-Licensee agencies.

35. If the Sub-Licensors choose to terminate the licensing agreement with the Licensor, written notice will be given to all Sub-Licensee agencies at least ninety (90) days prior to termination of the license. The Sub-Licensors further agree that the most recent source code for the TraCS Florida software, including the codebase for the official DHSMV traffic forms named above, will transfer to the Licensor for distribution to a new Sub-Licensors and Sub-Licensee agencies. The source code will transfer as-is, with no implied warranty or liability. Further modifications or updates will become the responsibility of the new Sub-Licensors and/or Sub-Licensee agencies.

This Agreement shall serve as a software license and the terms of services between Sub-Licensors and the Sub-Licensee upon witness by signature of authorized representatives of Sub-Licensors and the Sub-Licensee. Sub-Licensors and Sub-Licensee representatives must have sufficient authority to commit the Sub-Licensors and Sub-Licensee, respectively, to the terms of this Agreement. This agreement nullifies any previous agreement between Sub-Licensors and the Sub-Licensee.