

# Document A

## INTERGOVERNMENTAL LICENSE AGREEMENT FOR LAW ENFORCEMENT PARTICIPANTS OF THE SEXUAL ASSAULT MANAGEMENT SYSTEM (SAMS 1.0)

This Intergovernmental License Agreement (“Agreement”) is made effective on April 24, 2017 (“Effective Date”), by and between the **City of Portland**, a municipal corporation of the State of Oregon, and its successors or assigns (hereinafter referred to as “City”) and the **City of Duluth**, a municipal corporation created and existing under the laws of the State of Minnesota (hereinafter referred to as “LICENSEE”), by and through their duly authorized representatives. This Agreement may refer to the City and LICENSEE individually as a “Party” or jointly as the “Parties.”

This Agreement shall be perpetual until terminated by the City with sixty (60) calendar days’ notice to LICENSEE.

Authority to enter into this Agreement is found in Oregon Revised Statutes 190.110.

### RECITALS

Whereas, the City of Portland Bureau recognized the need for tracking of Sexual Assault Kits (SAKs) across the United States; and

Whereas, the City of Portland Police Bureau created Sexual Assault Management System (SAMS 1.0) Software to track the Sexual Assault Kits; and

Whereas, the City of Portland Police Bureau created SAMS 1.0 software to track information useful into investigations in Sexual Assault cases; and

Whereas, the City of Portland Police Bureau would like to share this capability across the country to assist other jurisdictions in the effort to test and track results and manage their investigations; and

Whereas, LICENSEE desires to obtain the right to Authorized Use and access of SAMS 1.0; and

Whereas, the City and LICENSEE desire to enter into this Agreement and being fully advised; and

NOW THEREFORE, IN CONSIDERATION of the mutual promises and covenants contained herein, it is agreed as follows:

### 1.0 Definitions

“Amendment” means a written document, required to be signed by authorized representatives of both Parties, which alters the terms and conditions of this Agreement.

“Authorized Use” means functions and capabilities that a User is assigned and able to perform based on User ID password and rights, as requested by the LICENSEE and established by the City or a SAMS 1.0 administrator.

“Authorized User” means a law enforcement agency or other entity or individual that accesses SAMS 1.0 with a valid license from the City of Portland.

“Configuration” means the use of administrative functions provided in the Software to adapt the Software to City-specific requirements, revisions and modifications to the Software to enhance features and functionality but which do not include changes to the Source Code.

“CJI or CJIS” means Criminal Justice Information or Criminal Justice Information System.

“SAK” means Sexual Assault Kits.

“SAMS 1.0 Software” means the proprietary Sexual Assault Management Software, created by the City of Portland Police Bureau, licensed to LICENSEE by City pursuant to this Agreement. SAMS 1.0 Software includes computer programs, firmware, applications, or Operating System Software which are components of the SAMS 1.0 System including, without limitation, any custom Software or customization, application software, base software, diagnostic software, updates, upgrades and any related documentation.

## **2.0 Software License**

**2.1** The SAMS 1.0 Software is licensed, not sold. City hereby grants to LICENSEE a perpetual, non-exclusive, license to use, access, and operate the SAMS 1.0 Software, subject to the terms and conditions of this License.

**2.2** These policies may be changed by the City upon sixty (60) calendar days’ written notice to LICENSEE.

**2.3** LICENSEE may sub-license SAMS 1.0 to other law enforcement agencies provided they give the City fifteen (15) calendar days’ prior written notice. LICENSEE must obligate any sub-licensees to comply with these same terms and conditions.

## **3.0 User Warranties and Obligations**

**3.1** LICENSEE warrants it has read and understands and is in agreement with the principles and requirements set forth herein for participation and use of SAMS 1.0.

**3.2** LICENSEE warrants it has complied and shall comply with all applicable law, ordinances, orders, decrees, labor standards and regulations of its domicile and wherever performance occurs in connection with the execution, delivery, and performance of this Agreement and access and Authorized Use of SAMS 1.0.

**3.3** LICENSEE acknowledges and agrees that LICENSEE, its employees, agents will use SAMS 1.0 only by Users and only for a legitimate, official and authorized law enforcement or public safety purpose. Permission to use the information available in or through SAMS 1.0 other than for Authorized Use shall be obtained in writing from the City SAMS 1.0 Program Coordinator prior to any such use.

**3.4** LICENSEE acknowledges and agrees that LICENSEE, its employees, and agents, may Configure the Software but will not modify or attempt to modify through computer programming, hacking, or other techniques the source code, functions, capabilities, and operations of the SAMS 1.0 Software.

3.5 LICENSEE is responsible for providing its own computers, Internet connections and any other equipment, devices or capabilities required for its Authorized Users to have use of and access to SAMS 1.0. LICENSEE is responsible for configuring and maintaining its computers and devices to conform to SAMS 1.0 access and security requirements as set forth in Sections 5.0 and 6.0 of this Agreement.

#### **4.0 Ownership, Entry, and Maintenance of Information**

**4.1** SAMS 1.0 is not an archiving system. SAMS 1.0 is populated with mirrored information derived from each Authorized User's reported data. SAMS 1.0 is not in any manner intended to be an official repository of original reported records, nor to be used as a substitute for an official repository of original reported records. The information in SAMS 1.0 is not to be accorded any independent record system status. SAMS 1.0 is merely a means to provide Authorized Users to track and manage SAKs or other agency information.

4.4 To the extent that any newly discovered links, matches, relationships, interpretations, etc., located in searches of SAMS 1.0 may be relevant and appropriate for preservation as independent records, it will be the responsibility of the accessing Authorized User to incorporate such information in the Authorized User's own official records system(s) in accordance with that Authorized User's records management processes.

4.5 There is no obligation and there should be no assumption by LICENSEE that a particular LICENSEE'S records housed in SAMS 1.0 represent the totality of all records of that LICENSEE'S records system for any subject or person.

#### **5.0 Access to and Use of Information**

**5.1** LICENSEE will be able to use SAMS 1.0 to search sexual assault data entered by LICENSEE. Functionality available to LICENSEE includes but is not limited to:

- a. Searching for persons or things from transaction data in SAMS 1.0 and saving those searches for automated notification.
- b. Track status of sexual assault kit (SAK) processing.
- c. Placing possible comments on transactions that can be seen by other Authorized Users who view the transaction.
- d. Placing holds on transactions that contain case numbers, comments and directions.

**5.2** LICENSEE shall not use information in SAMS 1.0 for any non-law enforcement purpose, or to establish or verify the eligibility of applicants, recipients, beneficiaries, participants, or providers of services with respect to cash or in-kind assistance or payments under the Federal or State benefit programs.

**5.3** SAMS 1.0 includes an audit capability that logs all Authorized User actions, including the identity of the Authorized User, time of access, queries executed, responses, alerts set, and notifications received.

## **6.0 Security**

**LICENSEE is responsible for properly securing the application and their network to protect the CJJ and personal information contained within the SAMS 1.0 database on their site. The City of Portland has no implied or explicit responsibility for securing or protecting the licensee's data and information.**

**6.1** LICENSEE is solely responsible for authorizing specific employees to access SAMS 1.0 on their instance of SAMS 1.0. It is the licensee's responsibility to grant access only to those employees and agents with an official "need to know" such information.

**6.2** LICENSEE is responsible for training its Authorized Users who are authorized to access SAMS 1.0 regarding the use and dissemination of information obtained from SAMS 1.0. LICENSEE shall ensure its Authorized Users have a clear understanding of the need to verify the reliability of the information from SAMS 1.0 with the Authorized User that provided the information before using the information for preparing affidavits, obtaining subpoenas and warrants, or other law enforcement purposes. Training should also ensure employees understand the restrictions on use of SAMS 1.0 data and information set forth herein.

**6.3** LICENSEE is responsible for ensuring that its Authorized Users access SAMS 1.0 only after successfully completing appropriate training.

**6.4** LICENSEE is responsible for immediately deactivating the SAMS 1.0 User ID and password of any Authorized User who is no longer an employee or agent or contractor of LICENSEE, or who no longer requires Authorized Use of SAMS 1.0.

**6.5** LICENSEE is responsible for resolving issues of any actual or suspected unauthorized use of the SAMS 1.0 system or of any security breach that affects SAMS 1.0. LICENSEE shall provide notification to the City of any security vulnerability discovered relating to the integrity of the SAMS 1.0 Software, such as a computer virus.

**6.6** LICENSEE acknowledges that SAMS 1.0 will contain, CJJ, Law Enforcement Data Systems (LEDS) and other Sensitive But Unclassified (SBU) information from the records systems of the LICENSEES. LICENSEE is responsible for exercising the same degree of care in protecting information accessed in SAMS 1.0 that LICENSEE exercises with respect to its own sensitive information, but at a minimum comply with Federal Bureau of Investigation (FBI) and their State CJIS regulations.

**6.7** LICENSEE acknowledges that unauthorized use or misuse of the SAMS 1.0 Software will result in irreparable harm to the City. In the event of a breach or threatened breach of this Agreement, the City may obtain equitable or injunctive relief prohibiting the breach, in addition to any other appropriate legal or equitable relief and remedies at law.

**6.8** Failure to comply with the Security and Authorized Use specifications contained in this Agreement may, at the sole discretion of the City, result in the suspension of LICENSEE and access to SAMS 1.0 by LICENSEE and its Authorized Users until such failures are corrected to the City's satisfaction.

6.9 Both Parties hereby acknowledge that any SBU information it discloses to the other Party, or any duty of either Party to destroy records upon completion of use, is subject to the provisions of the Oregon and LICENSEE'S Public Records laws.

## **7.0 Cost**

7.1 As of the Effective Date of this Agreement, there are no charges by the City for LICENSEE to use SAMS 1.0.

7.2 LICENSEE shall bear its own costs in relation to SAMS 1.0 unless otherwise provided herein or in an amendment to this Agreement. LICENSEE will be responsible for providing the Web Server and Database Server Hardware. LICENSEE will be responsible for purchasing the necessary licenses for SQL Server software (Version 2008 or Higher).

7.3 LICENSEE shall, where possible, provide attribution "SAMS 1.0 provided courtesy City of Portland, Oregon Police Bureau."

## **8.0 Disclaimers, Limitation of Liability, and Indemnity**

8.1 SAMS 1.0 and its services, data, and information are supplied "as is" without warranty of any kind, whether express or implied. LICENSEE acknowledges that access to SAMS 1.0 and services may be subject to delay, and the data and information may be subject to deletion, theft, errors, or omissions. The City has no responsibility for the accuracy, timeliness, or completeness of information in SAMS 1.0. To the maximum extent permitted by law, the City disclaims all warranties, including without limitation, any implied warranties of merchantability, fitness for a particular purpose, and non-infringement.

8.2 All personnel assigned by LICENSEE to perform SAMS 1.0-related functions shall not be considered employees of the City or of any other Party for any purpose. LICENSEE remains solely responsible for the supervision, work schedules, performance appraisals, compensation, overtime, vacations, retirement, expenses, disability, and all other employment-related benefits incident to assignment of its personnel to SAMS 1.0 access.

8.3 Unless specifically addressed by the terms of this Agreement, LICENSEE shall be responsible for the negligent or wrongful acts or omissions of its own respective officers and employees performing under this Agreement, but only to the extent they would be liable under the laws of the jurisdiction(s) to which they are subject.

8.4 Each party to this Agreement shall be liable for its own acts and the results thereof to the extent authorized by law, and shall not be responsible for the acts of the other party, its officers, employees or agents.

**9.0 Term and Termination**

**9.1** This Agreement shall be in effect for the period of time stated on the first page unless terminated as set forth in this Section.

**9.2** The following conditions apply to termination of this Agreement.

9.2.1 This Agreement may be terminated at any time by the mutual written agreement of the duly authorized representatives of the Parties.

9.2.2 Either Party may terminate this Agreement upon thirty (30) calendar days' written notice to the other Party.

9.2.3 The City may terminate the Agreement with immediate effect in the event of a breach of any provision of this Agreement by LICENSEE.

**9.3** Upon termination of this Agreement, LICENSEE is responsible for decommissioning their installation of SAMS 1.0 if so requested in writing by the City.

**9.4** The rights, obligations, responsibilities, limitations, and other understandings with respect to the disclosure and use of information in SAMS 1.0 shall survive any termination of this Agreement. This applies to LICENSEE'S information, and to other parties' disclosure and use of LICENSEE'S information.

**10.0 Written Notifications**

**10.1** All written notifications and Amendments shall be sent to the following:

<b>For City of Portland:</b>	<b>For LICENSEE:</b>
Sergeant Molly Daul	Name: Lt. Dan Chicos
Portland Police Bureau – Detective Division	Duluth Police Department
1111 SW 2nd Ave., Room 1326	Address: 2030 N. Arlington Avenue
Portland, OR 97204	City, State: Duluth, Minnesota 55811
<a href="mailto:molly.daul@portlandoregon.gov">molly.daul@portlandoregon.gov</a>	e-mail: dchicos@duluthmn.gov
503-823-9781	Phone number: 218-730-5487
<b>Copy to:</b>	<b>Copy to:</b>
Technology Contracts	
City of Portland - Procurement Services	
1120 SW Fifth Avenue, Room 750	
Portland OR 97204	

If either Party makes a change to the name or contact information in the table above, it shall provide written notice to the other Party within thirty (30) calendar days of such change.

**11.0 General**

**11.1 Assignment.** Neither Party shall assign, transfer, subcontract, or delegate all or any part of this Agreement, or any interest therein, without the other Party's prior written consent, except that the City may assign this Agreement to another law enforcement entity or organization upon

thirty (30) calendar days' written notice to LICENSEE if management of SAMS 1.0 is transferred to another law enforcement entity or organization. City acknowledges and agrees neither changes with regard to the governance structure of LICENSEE nor any legislative change affecting the legal status of LICENSEE shall be deemed an assignment under this Agreement.

**11.2 Amendment.** No provision of this Agreement may be amended or modified unless such Amendment or modification is approved as to form by the City Attorney and executed in writing by authorized representatives of the Parties. All changes that would permanently change any provisions of this Agreement shall be memorialized in the form of an Amendment. If the requirements for Amendment or modification of this Agreement as described in this section are not satisfied in full, then such Amendments or modifications automatically will be deemed null, void, invalid, non-binding, and of no legal force or effect.

**11.3 Severability.** The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and 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 term or provision held to be invalid.

**11.4 No Waiver.** The failure of the City to enforce any provision of this Agreement shall not constitute a waiver by the City of that or any other provision.

**11.5 Counterparts.** This Agreement may be executed in several counterparts, all of which shall constitute but one and the same instrument.

This Agreement, together with all Exhibits, Attachments and those documents which by their reference have been incorporated herein, constitutes the entire Agreement between the City and LICENSEE and supersedes all agreements, written and oral, between the Parties on this subject.

The Parties agree that they may execute this Agreement, and any Amendments to this Agreement, by electronic means, including the use of electronic signatures.

*[Remainder of this page intentionally left blank. Signature page to follow.]*

