

SUBSCRIPTION AGREEMENT FOR ELECTRONIC ACCESS TO OFFICIAL RECORDS

This is an Agreement, made and entered into by and between: Charlie Green, Clerk of the Circuit Court for Lee County Florida, hereinafter referred to as "CLERK" and you, hereinafter referred to as "SUBSCRIBER."

WHEREAS, Section 119 of the Florida Statutes allows public records Custodian(s) to provide access to the records by electronic means; and

WHEREAS, CLERK desires to provide SUBSCRIBER access to certain public records within his/her respective custody and control by electronic means using the CLERK as the central contracting entity; and

WHEREAS, SUBSCRIBER by signing this Agreement attests that said SUBSCRIBER is a governmental entity; or professional business entity with a need to access the documents in order to conduct their business; and

WHEREAS, Section 28 of the Florida Statute allows the CLERK to provide access through a subscriber site to secure electronic copies of the CLERK'S Official Records' index and images of a military discharge; death certificate; or a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules as may be provided by the Clerk; **NOW THEREFORE**,

IN CONSIDERATION of the mutual terms, conditions, promises, and covenants hereinafter set forth, CLERK AND SUBSCRIBER agree as follows:

ARTICLE 1: DEFINITIONS

The following general definitions shall apply for the purpose of this Agreement:

"Agreement" shall mean this agreement.

"Clerk" shall mean Charlie Green, Clerk of Circuit Court; Lee County, Florida.

"Subscriber" shall mean the individual executing this Agreement.

"User" shall mean everyone to whom Subscriber has authorized Clerk to issue a login id and password for access privileges.

"Official Records" shall mean those electronic images normally available for viewing in the CLERK'S office using the automated recording application.

"Subscription Period" shall mean the period of time for which the SUBSCRIBER has paid in full.

ARTICLE 2: TERM OF AGREEMENT

This Agreement will commence on the date of execution by the CLERK, and continue for the mutually agreed upon duration of access to the subscription site unless terminated earlier as provided for herein accordance with Article 15.

ARTICLE 3: SCOPE OF AGREEMENT

CLERK and SUBSCRIBER agree that the scope of this Agreement shall be to access those electronic records in the Clerk's Official Records which are prohibited by Florida Law from being accessed from the CLERK'S publicly available Internet website and which are not otherwise completely prohibited from public view by Florida Law or Rules of Court.

ARTICLE 4: DAYS AND HOURS OF OPERATION

CLERK will endeavor to provide continuous operation of the non-public subscriber site wherein SUBSCRIBER accesses records; however, site access may be interrupted during such other periods of remedial maintenance as may be required. CLERK will post advance notice of scheduled maintenance on the site, and routine maintenance will be scheduled after 5:00 p.m. and before 8:00 a.m. or during weekends or holidays.

CLERK reserves the right to reduce or limit the subscriber site service levels during unusual circumstances such as, but not limited to, "brownouts", emergency production requirements mandated by law, intrusions against security regulations and adverse operational impacts.

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ARTICLE 5: SERVICES

CLERK, his employees or agents, will provide SUBSCRIBER with access to the electronic records via the subscriber site.

SUBSCRIBER is responsible for all maintenance and repair work required to keep SUBSCRIBER'S equipment in operating order, and to make connectivity to the Clerk's subscriber site through SUBSCRIBER'S Internet Service Provider.

CLERK may modify the categories, classifications, format or appearance of data provided without prior notice to the SUBSCRIBERS. However, such changes will generally be made to conform to changes in Florida law or to improve service to SUBSCRIBERS.

ARTICLE 6: CLERK'S OBLIGATIONS

Following the execution of this Agreement, CLERK will provide SUBSCRIBER with limited consultation via email on specific problems or questions that arise in the use of the subscriber site, per conditions of support. However, CLERK does not guarantee consultation results nor warrants or represents that all errors or problems will be corrected. Assistance will only be available Monday through Friday, from 8:00 a.m. to 5:00 p.m. with the exception of holidays observed by the CLERK.

ARTICLE 7: SUBSCRIBER'S OBLIGATIONS

SUBSCRIBER is responsible for ensuring that its location or its terminal is not used by Unauthorized Users to access information from the Clerk's subscriber site. Unauthorized Users for the purposes of this Agreement shall be any person or entity other than SUBSCRIBER or its authorized Users.

SUBSCRIBER shall amend the Authorized User by submitting amendment in writing to CLERK. CLERK will revoke and issue an additional User login id and password upon receipt of SUBSCRIBER'S request to amend User list.

Information accessed from subscriber site is for the use of SUBSCRIBER in the ordinary course of its business. The information is not intended or permitted to be represented during commercial resale as the official governmental record required by law. In the event of a breach of this paragraph, CLERK is entitled to seek injunctive relief restraining SUBSCRIBER from accessing information from the subscriber site, and/or terminate this Agreement in accordance with Article 15 herein. This shall not be constructed as prohibiting the CLERK from pursuing any other remedy available at law or equity for such breach.

SUBSCRIBER is responsible for ensuring that use of the Clerk's subscriber site by its Authorized Users is conducted in a proper and legal manner. If SUBSCRIBER or one of its Authorized Users is charged with a crime arising out of use of the subscriber site, CLERK shall have the right to terminate this Agreement immediately. This shall not be construed as prohibiting CLERK from pursuing any other remedy available at law or equity for such a breach.

THE PUBLIC INFORMATION IS PROVIDED SUBJECT TO THE LAWS OF THE STATE OF FLORIDA.

SUBSCRIBER is responsible for pre-payment of the subscription fees in order to maintain active account status. CLERK will invoice SUBSCRIBER prior to the subscription period end date for renewal. Payments must be received within 30 days of the due date or the SUBSCRIBER account will be terminated.

ARTICLE 8: SUBSCRIPTION FEE

Annually on July 1, the payment of \$300.00 is due. If the payment is not received by August 1, the account will be terminated.

Quarterly on July 1, October 1, January 1, and April 1 the payment of \$105.00 is due. If each payment is not received respectively by August 1, November 1, February 1, and May 1, the account will be terminated.

Government Agencies are exempt from the subscription fee pursuant to FS28.24, but must complete the online subscriber agreement.

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The fee must be paid in full prior to initiation of service. Fees are subject to change annually. Fees are not refundable; this service is not prorated for terminations or new agreements. No credit will be accrued during periods the subscription site is out of service.

You will receive your invoice via email; it is your responsibility to ensure we have your current email address. If you do not receive an invoice you are still obligated to make your payment annually or quarterly.

ARTICLE 9: LIMITATION OF LIABILITY

SUBSCRIBER hereby relieves and releases CLERK, his employees and agents from liability for any and all damages resulting from interrupted service of any kind or to SUBSCRIBER'S equipment.

SUBSCRIBER hereby relieves; releases, indemnifies, and holds harmless CLERK, his employees and agents of any liability for any and all damages resulting from incorrect or any other misinformation accessed from this service.

SUBSCRIBER agrees that CLERK, his employees and agents shall not be liable for negligence or lost profits, resulting from any claim or demand against SUBSCRIBER by any other party.

No cause of action, regardless of form, arising out of the transactions under this Agreement, may be brought by either party more than one (1) year after the cause of action has occurred.

IN NO EVENT SHALL CLERK, HIS EMPLOYEES OR AGENTS BE LIABLE FOR CONSEQUENTIAL DAMAGES EVEN IF ANY OF THE ABOVE NAMED PARTIES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

This Agreement creates no rights or privileges that are enforceable by anyone not a party to this Agreement. A gap may exist between the time paper documents are filed in the CLERK'S office and when they are indexed and imaged on the subscriber site. In order to assure the accuracy of the data or information, SUBSCRIBER should consult the official governmental record.

Nothing in this Agreement shall be construed as waiving the sovereign immunity of CLERK, his employees and agents.

ARTICLE 10: WARRANTIES

The CLERK, his employees, or agents, expressly or impliedly, warrant the information or data accessed by SUBSCRIBER is accurate or correct; there are no expressed or implied warranties in connection with this service.

ARTICLE 11: ASSIGNMENT

SUBSCRIBER agrees not to assign any right or interest in this Agreement.

ARTICLE 12: GOVERNING LAW

This Agreement or any dispute arising there from shall in all respects be governed by and interpreted in accordance with the applicable laws of the State of Florida, and venue for any action shall be Lee County.

ARTICLE 13: ENTIRE AGREEMENT

This Agreement contains the entire understanding of the parties, there being no promises, warranties, or undertakings, written or oral, other than those expressly set forth herein. Furthermore, no modifications, alterations or amendments to this Agreement shall be valid unless in writing, and signed by all parties, except as otherwise provided herein.

ARTICLE 14: NOTICE

Any notice or written communication of any kind required or desired to be given or sent pursuant to the terms hereof shall be delivered in person, mailed or emailed.

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ARTICLE 15: TERMINATION

This Agreement may be terminated without cause by either party on fifteen (15) days written notice to the other party.

This Agreement may be terminated immediately by CLERK and without notice to SUBSCRIBER for SUBSCRIBER'S failure to comply with the terms of this Agreement.

Upon termination of this Agreement, access to the subscriber site providing access to the non-public secure electronic copies of the CLERK'S Official Records' index and images, and such other records to SUBSCRIBER will cease.

CLERK may terminate this Agreement immediately if for any reason the subscriber site program is terminated. In the event immediate termination is required, notification will be via telephone contact followed up by written confirmation.

This Agreement shall be terminated by CLERK, the Custodian of the public records, immediately and without notice to SUBSCRIBER in the event CLERK determines that any safeguard to protect the contents of its public records from (1) unauthorized remote access, (2) alteration, or (3) disclosure or modification or exempted matters fails to exist or has been breached.

The SUBSCRIBER account shall be inactivated and this agreement terminated on the 31st day of non-payment following the end of the pre-paid subscription period.

In the event of agreement termination, regardless of the reason, the CLERK will not reimburse SUBSCRIBER for any pre-paid subscription fees and will not prorate any remaining time of a subscription period.

ARTICLE 16: SEVERABILITY

If any provision (or part thereof) of this Agreement is found to be invalid, then it shall be stricken and have no affect. The remaining provisions shall continue in full force and effect.