

**INTERLOCAL AGREEMENT ESTABLISHING THE
FLORIDA E-FILING AUTHORITY**

By

And

Between

Various Clerks of Circuit Courts of the State of Florida

and

The Clerk of the Florida Supreme Court, as the designee of the

Chief Justice of the Florida Supreme Court



Janice Thompson
December 15, 2010

Interlocal Agreement
Establishing The
Florida E-Filing Authority

This Interlocal Agreement Establishing The Florida E-Filing Authority, dated as of September 3 2010 (the "Interlocal Agreement"), entered into by and between those certain clerks of the circuit court executing this Interlocal Agreement and those clerks of the circuit court joining in this Interlocal Agreement hereto, and the clerk of the Florida Supreme Court, as the designee of the Chief Justice of the Florida Supreme Court on behalf of the state courts, each one constituting a "public agency" under Part I of Chapter 163, Florida Statutes, (collectively, the "Clerks");

WHEREAS, the Clerks of the Circuit Court are the official custodians of the records of the Circuit and County Courts in each such clerk's respective county, and the Clerk of the Florida Supreme Court is the official custodian of the records of the Florida Supreme Court, each subject to all statutes, Florida Supreme Court rules and Administrative Orders of the Chief Justice of the Florida Supreme Court applicable to the respective clerk in the performance of that function; and

WHEREAS, each of the Clerks has the power and responsibility to develop, acquire, construct, own, improve, operate, manage and maintain database systems for court filings and related records; and

WHEREAS, in accordance with the Legislative directive and recognition by the Florida Supreme Court of a need to develop and implement a system for statewide electronic filing of Florida county, circuit and appellate court records, the Clerks desire to create a public entity pursuant to Chapter 163, Florida Statutes for the design, development, implementation, operation, upgrading, support and maintenance of a portal for the receipt by electronic filing of such court records; and

WHEREAS, the Florida Association of Court Clerks, Inc., the members of which are the duly elected Clerks of the Circuit Courts and County Comptrollers, through its wholly owned subsidiary FACC Services Group, LLC, has developed a statewide electronic portal which provides the capability for a common entry point for all court electronic filings in the County Court, Circuit Court, District Courts of Appeal and Supreme Court in the State of Florida; and

WHEREAS, Part I of Chapter 163, Florida Statutes permits the Clerks, as public agencies under the Florida Interlocal Cooperation Act, to enter into interlocal agreements with each other to jointly exercise any power, privilege or authority which such Clerks share in common and which each might exercise separately, permitting the Clerks to make the most efficient use of their powers by enabling them to cooperate on a basis of mutual benefit and thereby provide services and facilities in a manner and pursuant to forms of governmental organization that will best serve geographic, economic, population and other factors influencing the needs of such Clerks; and

WHEREAS, the Clerks have determined that it is in the best interest of the Clerks, the judiciary and the public, and it is a valid public purpose, for the Clerks to create a separate legal entity to provide for the design, development, implementation, operation, upgrading, support and maintenance of a state-wide system for electronic filings of court records and to contract through that entity with the Florida Association of Court Clerks, Inc., a Florida corporation, to design, develop, implement, operate, upgrade, support and maintain a state-wide portal for the electronic filing of court documents.

NOW, THEREFORE, in consideration of the foregoing and the covenants herein, it is mutually agreed and understood by and among the Clerks that the Authority be created as a legal entity and public body and a unit of government with all of the privileges, benefits, powers and terms of this Interlocal Agreement and is hereby created for the purposes described herein, as follows:

ARTICLE 1 DEFINITIONS.

1.1. Definitions. Terms not otherwise defined in this Agreement shall be defined as follows:

- a. "Act" or "Interlocal Act" shall mean Part I, Chapter 163, Florida Statutes.
- b. "Administrative Orders" means those administrative orders adopted by the Chief Justice of the Florida Supreme Court or by the Florida Supreme Court.
- c. "Association" shall refer to the Florida Association of Court Clerks, Inc., a Florida not for profit entity the members of which are the duly elected Clerks of the Circuit Courts and Comptrollers of the state of Florida.
- d. "Board" shall mean the Board of Directors of the Authority as further set forth herein.
- e. "Courts" or "courts" shall mean all county, circuit, and appeals courts in the State of Florida.
- f. "Court Records" shall have the same meaning as provided in Rule 2.420(b)(1)(A), Florida Rules of Judicial Administration, and shall include all court related documents filed in the County Courts, Circuit Courts, District Courts of Appeal and Supreme Court of Florida, and includes, but is not limited to, pleadings, discovery requests and responses, orders, judgments, appellate court briefs, motions, petitions and other appellate court papers in each Florida appellate court.
- g. "Rules of Court" means those rules of procedure adopted by the Florida Supreme Court.
- h. "E-Filing" or "ECF" shall mean filing Court Records to a case through electronic systems and processes in compliance with rule 2.525, Florida Rules of Judicial Administration. E-Filing includes filing a Court Record with accompanying data elements necessary to establish an index of records for new cases, associate the record

with an existing case, and/or allow the judiciary to process and manage their cases from filing to timely final disposition, in the case management system. E-Filing may also be referred to as ECF (Electronic Court Filing as established by The National Center for State Courts).

i. "E-Filing Court Records Portal" or "Portal" shall mean a statewide access point for electronic access to Court Records and the transmission of Court Records to and from the Courts. The Portal will be capable of accepting electronic filings from multiple sources, using common data elements passing to and from each local case system. The Portal shall include the following features:

- Single statewide login
- Single Web access to Court Records by authorized users
- Transmissions to/from appropriate Courts
- Providing Electronic Service of notification of receipt of an electronic filing and confirmation of filing in the appropriate Court file
- Open standards-based integration ability with existing statewide information systems and county E-Filing applications
- Automated interface with E-Recording systems
- Compliance with the Electronic Court Filing 4.0 standard, the Global Justice Extensible Markup Language and Oasis Legal Extensible Markup Language standard developed by the National Center for State Courts.

j. "FACCSG" shall mean the FACC Services Group, LLC, a wholly owned subsidiary of the Association.

k. "Florida Courts Technology Commission" shall mean the commission described in Rule 2.236, Florida Rules of Judicial Administration, and AOSC07-59 and AOSC09-23, or their successor.

l. "Member" shall mean a member of the Authority as set forth herein.

m. "Office of the State Courts Administrator" shall mean the office of the State Courts Administrator as described in rule 2.205(e), Florida Rules of Judicial Administration.

n. "Public Agencies" is as defined in the Interlocal Act.

o. "Supreme Court" shall mean the Florida Supreme Court through its designated representative or committee.

Whenever any words are used in this Interlocal Agreement in the masculine gender, they shall be construed as though they were also used in the feminine or neuter gender in all situations where they would so apply, and whenever any words are used in this Interlocal Agreement in the singular form, they shall be construed as though they were also used in the plural form in all situations where they would so apply.

**ARTICLE 2
THE AUTHORITY**

2.1. CREATION. The Clerks hereby create and establish the Florida E-Filing Authority ("Authority"), a legal entity and public body subject to all applicable Florida statutes, Supreme Court rules and Administrative Orders of the Chief Justice of the Florida Supreme Court that govern the individual clerks of circuit court, clerks of the District Courts of Appeal and clerk of the Supreme Court in the performance of their record-keeping functions, as well as all Rules of Court relating to public records and all applicable laws and county ordinances relating to procurements by the clerks of the circuit court in their capacity as clerk of court. Records of the Authority that are not Court Records are subject to the provisions of Chapter 119, Florida Statutes. All meetings of the Authority shall be open to the public except for any meetings specifically made exempt under Chapter 119.

2.2. PURPOSES. The purpose of this Interlocal Agreement shall be for the establishment of the Authority in order to: (i) design, develop, implement, operate, upgrade, support, and maintain the E-Filing Court Records Portal through contract with the Association and/or its wholly owned subsidiary FACCSG; and (ii) provide the most economic and efficient method for e-filing Court Records.

In creating and organizing the Authority, the Clerks acknowledge and agree that the Supreme Court has supervisory authority over the Authority to the same extent that it has over each individual clerk of circuit court, clerk of the District Courts of Appeal and clerk of the Supreme Court in the performance of their record-keeping functions.

The creation and organization of the Authority and the fulfillment of its objectives serve a public purpose, and is in all respects for the benefit of the people of this State, affected Public Agencies and their constituents, and the persons or entities served by the E-Filing Court Records Portal. The Authority is performing an essential public service. All property of the Authority is and shall in all respects be considered to be public property, and the title to such property shall be held by the Authority for the benefit of the public. The use of such property shall be considered to serve a public purpose, until disposed of upon such terms as the Authority may deem appropriate. Insofar as provided for by law, all obligations and interest or income thereon and all the property, facilities, services, activities and revenues of the Authority are declared to be nontaxable for any and all purposes by the State or federal government or any unit of the State or federal government to the same extent as if owned or issued by or on behalf of the Clerks or a Public Agency.

2.3. AUTHORITY MEMBERS. The Members shall consist of those Clerks who are parties to this Interlocal Agreement and those Clerks who have executed a Joinder to this Interlocal Agreement. The district courts of appeal are represented in this Interlocal Agreement through the Clerk of the Supreme Court.

2.4. APPELLATE COURTS. The appellate courts, including the Florida Supreme Court, as a group may withdraw from participation in the E-Filing Court Records Portal with the approval of the chief justice and with 30 days written notice to the Authority. Withdrawal of the appellate courts from participation in the Portal will not cause any additional or changed responsibilities

by the parties under the Interlocal Agreement and the Agreement with the Florida Association of Court Clerks, Inc.

2.5. DURATION OF AUTHORITY. The Authority shall exist so long as the E-Filing Court Records Portal, as developed and/or modified in the future, is operated through the Agreement with the Florida Association of Court Clerks, Inc. attached hereto as Exhibit 1 and incorporated herein, or is operated by the Association's assignee approved in accordance with Section 3.4.a. Termination of the Agreement with the Florida Association of Court Clerks, Inc., or its assignee will dissolve the Authority. Notwithstanding, the Authority shall not dissolve unless and until written notice of dissolution is provided to the Florida State Courts Administrator no less than ninety (90) days prior to dissolution, or, for such reasonably longer period as the Florida State Courts Administrator, under direction from the Chief Justice of the Florida Supreme Court, determines is necessary to avoid disruption in the availability of an E-Filing Court Records Portal. Upon dissolution of the Authority all right, title and interest in and to the Portal any other property owned by the Authority shall be transferred to the Office of the State Courts Administrator.

ARTICLE 3 GOVERNANCE

3.1. BOARD OF DIRECTORS.

a. The Authority shall be governed by a Board of Directors. The Board shall consist of the following:

1. A Chair of the Authority, who shall be the chair of the Technology Committee of the Association, as selected by the Association's President.
2. Seven Clerks of the Circuit Court, in addition to the Chair of the Authority, selected annually by the membership of Association, through the Association's seven annual district caucus meetings, or their replacement should a Director resign, is no longer a clerk of the circuit court, or is removed in accordance with the terms of the Association's caucus rules; and
3. The Clerk of the Supreme Court as the designee of the Chief Justice of the Florida Supreme Court.

b. Any Director other than the Clerk of the Supreme Court who is absent for three (3) consecutive meetings of the Board unless otherwise excused by the Chair shall be deemed to have resigned.

c. Any Director other than the Clerk of the Supreme Court may resign from all duties or responsibilities hereunder by giving at least thirty (30) calendar days prior written notice sent by registered mail to the Board. Such notice shall state the date said resignation shall take effect and such resignation shall take effect on that date. Any Director who resigns shall be replaced in the same manner as the resigning Director was selected.

d. Any resigning Director who is an officer of the Authority shall immediately turn over and deliver to the Authority any and all records, books, documents or other property in his possession or under his control which belong to the Authority.

3.2. MEETINGS.

a. Prior to the beginning of its fiscal year, on a date, place and time as determined by the Board, the Members shall have an annual meeting of the Authority. At the annual meeting the annual statements as required hereunder shall be presented, and such other matter as may come before the Members shall be addressed. In addition to the Annual Meeting, the affairs, actions and duties of the Authority shall be undertaken at a duly called meeting as provided herein. Immediately after the annual meeting of the Members, the Board shall have an annual meeting of the Board.

b. The Board shall convene at a meeting duly called by either a majority of the Directors or the Chairman. The Directors may establish regular meeting times and places. Meetings shall be conducted at such locations as may be determined by the majority of the Directors or the Chairman. Notice of a meeting, unless otherwise waived, shall be furnished to each Director not less than seven (7) calendar days prior to the date of such meeting; provided the Chairman or, in his or her absence or unavailability, the Vice-Chairman, may call a meeting upon twenty-four (24) hours written notice, if such officer determines an emergency exists. All meetings shall be noticed in accordance with applicable law and in accordance with the Florida Government in the Sunshine law. The Board may participate in a regular or special meeting by, or conduct the meeting through, the use of, any means of communication by which all Directors participating, and all members of the public present, may simultaneously hear each other during the meeting. A Director participating by this means is deemed to be present in person at the meeting.

c. Within thirty (30) calendar days of the creation of the Authority, the duly appointed Directors shall hold an organizational meeting to elect officers and perform such other duties as are provided for under this Interlocal Agreement.

d. At any meeting of the Authority at which any official action is to be taken, a majority of all Directors shall constitute a quorum. A majority vote of a quorum of the Directors present at a duly called meeting shall constitute an act of the Authority, except as hereinafter provided in Subsection 3.4.

e. A certificate, resolution or instrument signed by the Chairman, Vice-Chairman or such other person of the Authority as may be hereafter designated and authorized by the Board shall be evidence of the action of the Authority and any such certificate, resolution or other instrument so signed shall conclusively be presumed to be authentic. Likewise, all facts and matters stated therein shall conclusively be presumed to be accurate and true.

f. All meetings of the Members and of the Board shall be conducted in accordance with Roberts Rules of Order.

3.3. POWERS AND DUTIES OF THE BOARD. The Board shall act as the governing board of the Authority and shall have, in addition to all other powers and duties described herein, the following powers and duties:

- a. To fix the time and place or places at which its regular meetings shall be held, and to call and hold special meetings.
- b. To make and pass rules, regulations, resolutions and orders not inconsistent with the Constitution of the United States or of the State, or the provisions of the Interlocal Act or this Interlocal Agreement, necessary for the governance and management of the affairs of the Authority, for the execution of the powers, obligations and responsibilities vested in the Authority, and for carrying into effect the provisions of this Interlocal Agreement.
- c. To fix the location of the principal place of business of the Authority and the location of all offices maintained thereunder.
- d. To create any and all necessary offices in addition to Chairman, Vice-Chairman and Secretary-Treasurer; to establish the powers, duties and compensation of all employees; and to require and fix the amount of all official bonds necessary for the protection of the funds and property of the Authority.
- e. To select and employ such employees and executive officers the Board deems necessary or desirable, and set their compensation and duties.
- f. To employ or hire such attorneys or firm(s) of attorneys, as it deems appropriate to provide legal advice and/or other legal services to the Authority, and to employ and hire such other consultants as it deems appropriate.

3.4. AFFIRMATIVE VOTE OF CLERK OF SUPREME COURT REQUIRED. The Clerk of the Supreme Court is the designee of the Chief Justice on behalf of the state courts. In order for any of the following actions of the Authority to be valid and become effective, the Clerk of the Supreme Court must vote in the affirmative. The failure of the Clerk of the Supreme Court to vote on any matter described below shall be deemed a negative vote.

- a. Approval of any assignment of the contract or agreement between the Authority and the Florida Association of Court Clerks, Inc., and/or FACC Service Group, LLC, to design, develop, implement, operate, upgrade, support-and maintain the E-Filing Court Records Portal,
- b. Whenever the performance of the Court-related functions of the Portal may be materially and adversely impacted by a project, action or matter within the authority of the Authority, the affirmative vote of the Clerk of the Supreme Court is required.
- c. Approval of any vote to terminate the Agreement with the Florida Association of Court Clerk, Inc. or its assignee.
- d. Approval of any vote by the Board to dissolve the Authority.

The purpose of requiring the affirmative vote of the Clerk of the Supreme Court on the matters set forth above is to provide protection to the Court-related functions of the Portal. As to matters for which the Portal is utilized by the Clerks of the Circuit Courts for non-Court related functions authorized by law, nothing herein shall be construed to require an affirmative vote of the Clerk

of the Supreme Court so long as the performance of the Court-related functions of the Portal are not materially and adversely impacted.

3.5. ELECTION OF OFFICERS. At the annual meeting of the Board, and at such other time as may be necessary to fill a vacancy, at a duly called meeting of the Board called for the purpose thereof, the Authority through its Directors shall elect a Vice-Chairman and Secretary-Treasurer and such other officer(s) as the Board may deem appropriate, to conduct the meetings of the Authority and to perform such other functions as herein provided. At the discretion of the Board, the Secretary-Treasurer may be an employee or vendor of the Authority. Said Chairman, Vice-Chairman and Secretary-Treasurer shall serve one (1) year terms unless they resign from the Authority or such officer is replaced by the Board.

3.6. AUTHORITY OF OFFICERS.

a. The Chairman and the Vice-Chairman shall take such actions, have all such powers and sign all documents on behalf of the Authority and in furtherance of the purposes of this Interlocal Agreement as may be approved by resolution of the Board adopted at a duly called meeting.

b. The Secretary-Treasurer, or his or her designee, shall keep minutes of all meetings, proceedings and acts of the Board. Copies of all minutes of the meetings of the Authority shall be sent by the Secretary-Treasurer or his or her designee to all Directors of the Authority. The Secretary-Treasurer may also attest to the execution of documents. The Secretary-Treasurer shall have such other powers as may be approved by resolution of the Board adopted at a duly called meeting.

3.7. EXPENSES. Members of the Authority shall participate at the expense of the office they represent in accordance with Florida law applicable to public employees. Incidental expenses of the Authority such as meeting notices, recording requirements, and advertising or posting solicitations shall be paid by the Florida Association of Court Clerks, Inc. Staff support shall be provided, as necessary and available, by the Office of the State Courts Administrator. If the Office of the State Courts Administrator is unable or unwilling to provide the required staff support it shall provide written notice of such to the Authority and to FACC. Upon receipt of such written notice FACC shall provide the staff support as necessary.

3.8. LIABILITY. No Director, agent, officer, official or employee of the Authority shall be liable for any action taken pursuant to this Interlocal Agreement in good faith or for any omission, except gross negligence, or for any act of omission or commission by any other Director, agent, officer, official or employee of the Authority.

**ARTICLE 4
POWERS AND DUTIES**

4.1. POWERS.

a. The Authority, acting through its Board, shall have only the powers necessary to carry out the purposes of this Interlocal Agreement, including the following powers:

- i. To contract with the Association and/or its wholly owned subsidiary FACCSG to develop, implement, operate, maintain and upgrade the E-Filing Court Records Portal all in accordance with a Statement of Work developed by FACC and approved by the Authority and the Florida Supreme Court. The Authority shall hold all right, title and interest to the E-Filing Court Records Portal until dissolution of the Authority, at which time ownership shall transfer to the office of the Florida State Courts Administrator.
- ii. To contract or otherwise procure the services of accountants, attorneys and other experts or consultants, and such other agents and employees as the Board may require or deem appropriate from time to time.
- iii. To acquire such personal property and rights and interests therein as the Authority may deem necessary and appropriate in connection with the development, acquisition, ownership, expansion, improvement, operation, support and maintenance of the E-Filing Court Records Portal and to hold and dispose of all personal property under its control.
- iv. To exercise exclusive jurisdiction, control and supervision over the E-Filing Court Records Portal and to make and enforce such rules and regulations for the maintenance, management, upgrade and operation of the E-Filing Court Records Portal as may be, in the judgment of the Board, necessary or desirable for the efficient operation of the E-Filing Court Records Portal in accomplishing the purposes of this Interlocal Agreement.
- v. To develop, acquire, construct, own, operate, manage, upgrade, maintain, and expand the E-Filing Court Records Portal, and to have the exclusive control and jurisdiction thereof.
- vi. To appoint advisory boards and committees to assist the Board in the exercise and performance of the powers and duties provided in this Interlocal Agreement.
- vii. To sue and be sued in the name of the Authority.
- viii. To adopt and use a seal and authorize the use of a facsimile thereof.
- ix. To make and execute contracts or other instruments necessary or convenient to the exercise of its powers.
- x. To maintain an office or offices at such place or places as the Board may designate from time to time.
- xi. To lease, as lessor or lessee, or license, as licensor or licensee, to or from any person, firm, corporation, association or body, public or private, facilities or property of any nature to carry out any of the purposes authorized by this Interlocal Agreement.

technology infrastructure, which security review will be divided into 7 areas: policies, physical security, root or administrative user security, normal user security, file security, overall security procedures, and periodic testing.. The audit(s) shall be performed annually and as may be requested by the auditor general, any Member, or as may be requested by the Supreme Court.

4.3. ADOPTION OF RATES, FEES OR OTHER CHARGES.

a. The Authority may impose only those fees, service charges, and check, debit and credit card transaction fees that the individual clerks of court are permitted to impose through express statutory authorization .

b. Any revenue generated by a statutorily authorized fee or service charge imposed by the Authority must be disclosed to the Florida State Courts Administrator and the Legislature, and must be distributed in accordance with legislative directive.

4.4. DESIGN, DEVELOPMENT, IMPLEMENTATION, OPERATION, UPGRADING, SUPPORT AND MAINTENANCE OF E-FILING COURT RECORDS PORTAL.

a. Prior to the implementation and operation of the E-Filing Court Records Portal, and prior to any enhancements to or extensions of, or development, implementation or operation of any project related thereto, the Authority shall consult with the Florida Court Technology Commission, or any other person or entity designated by the Supreme Court.

b. Any changes to the E-Filing Court Records Portal shall be made only in accordance with (i) Information Technology Infrastructure Library, a widely accepted approach to information technology service management adopted by the Association and which includes a formal process for change management and quality assurance and (ii) prior to implementing any changes to the E-Filing Court Records Portal, the Authority shall consult with the Florida Court Technology Commission.

c. The initial agreement and all modifications or amendments to the agreement with the Association attached hereto as Exhibit 1 and incorporated herein with respect to significant and material changes to the design, development, implementation, operation, upgrading, support and maintenance of the E-Filing Court Records Portal that adversely impact the court related functions of the portal must be agreed to by the Clerk of the Supreme Court and shall include but not necessarily be limited to the following terms:

i. that no assignment of the agreement shall be permitted without prior notice to and consent by the Supreme Court.

ii. that all records relating to the design, development, implementation, operation, upgrading, support and maintenance of the E-Filing Court Records Portal be subject to public disclosure under applicable Florida public records law.

iii. that the development and implementation of the E-Filing Court Records Portal shall be complete on or before January 1, 2011. Any standard data elements approved by the Supreme Court after the implementation of the E-filing

Court Records Portal shall be implemented within a reasonable, agreed upon time after receipt of such new standard data elements by FACC from the Authority in writing in sufficient detail to allow FACC to fully design, develop and implement such new standard data elements, which time is not to exceed 90 days from the date of receipt of said new data elements unless a longer period of time is reasonably required and agreed to by the Supreme Court and the Authority.

iv. that the E-Filing Court Records Portal shall include the ability for the E-Filing of all Court Records.

v. that the use of any court's name in advertising or marketing is prohibited without the prior written consent of the Supreme Court.

vi. that the E-Filing Court Records Portal shall comply with standards adopted by the Supreme Court in In Re: Statewide Standards for Electronic Access to Courts, AOSC09-30 (July 1, 2009), including amendments to those standards, as well as any other standards or requirements relating to electronic access to the courts that the Supreme Court may approve.

vii. that deficiencies in the design, development, implementation, operation, upgrading, support or maintenance of the Portal will be addressed by a corrective action plan approved by the Supreme Court and the Authority, which approval shall not be unreasonably delayed or withheld, and shall provide that a failure to object to a submitted corrective action plan within ten (10) business days shall be deemed to be approval of the submitted corrective action plan.

viii. that a failure by the Authority to require compliance or enforcement of a contractual requirement does not constitute a waiver of any other contractual requirement.

ix. that includes a process to address changes in material terms of the agreement as a result of changes in Rules of Court, Administrative Orders or statutes.

x. that includes a mechanism to collect and remit filing fees which includes procedures for use of debit and credit cards and for collection of fees and service charges.

xi. that includes a warranty of ability to perform.

xii. that provides for termination for cause, with notice to the Supreme Court.

xiii. that provides for termination without cause by either party, with notice to the Supreme Court.

xiv. that provides for termination by the Authority, with notice to the Supreme Court.

- xv. that provides for indemnification by the Association to the Authority and, in any subcontract with FACCSG, an indemnification from FACCSG to the Association and the Authority
- xvi. that provides for appropriate insurance.
- xvii. that complies with Section 508 of the Rehabilitation Act of 1973, the American with Disabilities Act of 1990, and Part III of chapter 282, Florida Statutes, giving disabled employees and members of the public access to information that is comparable to the access available to others.
- xviii. that ensures confidentiality of Court Records and information in accordance with Florida and federal laws, and court rules.
- xix. that provides that FACCSG shall be an independent contractor.
- xx. that provides for compliance with federal and Florida anti-discrimination laws.
- xxi. that provides that change orders for the Portal must be implemented without any cost to the Court.

By execution of this Interlocal Agreement all parties hereto agree that the initial Agreement For the Design, Development, Implementation, Operation, Upgrading, Support And Maintenance Of the Statewide E-Filing Court Records Portal between the Authority and the Association for the design, development, implementation, operation, upgrading, support and maintenance of the E-Filing Court Records Portal, a copy of which is attached hereto as Exhibit 1, shall be executed by the Authority.

ARTICLE 5 MISCELLANEOUS

5.1. DELEGATION OF DUTY. Nothing contained herein shall be nor be deemed to authorize the delegation of any of the constitutional or statutory duties of the State or the Clerks or Members or any officers thereof.

5.2. FILING. A copy of this Interlocal Agreement shall be filed for record with the Clerk of the Circuit Court in each county wherein a Member is located.

5.3. IMMUNITY.

a. All of the privileges and immunities from liability and exemptions from laws, ordinances and rules which apply to the activity of officials, officers, agents or employees of the Clerks and Members shall apply to the officials, officers, agents or employees of the Authority when performing their respective functions and duties under the provisions of this Interlocal Agreement.

b. The Clerks and the Members intend to utilize Sections 768.28 and 163.01(9)(c), Florida Statutes, other Florida Statutes and the common law governing sovereign immunity to the fullest extent possible. Pursuant to Section 163.01(5)(o), Florida Statutes, Members may not be held individually or jointly liable for the torts of the officers or employees of the Authority, or any other tort attributable to the Authority, and that the Authority alone shall be liable for any torts attributable to it or for torts of its officers, employees or agents, and then only to the extent of the waiver of sovereign immunity or limitation of liability as specified in Section 768.28, Florida Statutes. The Clerks intend that the Authority shall have all of the privileges and immunities from liability and exemptions from laws, ordinances, rules and common law which apply to the public agencies of the State. Nothing in this Interlocal Agreement is intended to inure to the benefit of any third-party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

5.4. FISCAL YEAR. The fiscal year of the Authority shall be the same fiscal year as that of the State of Florida.

5.5. LIMITED LIABILITY. No Clerk nor Authority Member shall in any manner be obligated to pay any debts, obligations or liabilities arising as a result of any actions of the Authority, the Directors or any other agents, employees, officers or officials of the Authority, except to the extent otherwise mutually agreed upon, and the Authority, the Directors or any other agents, employees, officers or officials of the Authority shall not have any authority or power to otherwise obligate any individual Clerk or Authority Member in any manner.

5.6. AMENDMENTS. This Interlocal Agreement, including Exhibit 1, may be amended in writing at any time by the concurrence of all of the Members.

5.7. SEVERABILITY. In the event that any provision of this Interlocal Agreement shall, for any reason, be determined invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the other provisions of this Interlocal Agreement shall remain in full force and effect.

5.8. CONTROLLING LAW. This Interlocal Agreement shall be construed and governed by Florida law.

5.9. EFFECTIVE DATE. This Interlocal Agreement shall become effective on the later of (A) the dated date hereof or (B) the date the last initial Member executes this Interlocal Agreement, and the filing requirements of Section 5.2 hereof are satisfied.

5.10. COUNTERPARTS. This Interlocal Agreement may be executed in several counterparts, each of which shall be deemed an original, but all constituting only one agreement.

[Remainder Of Page Is Blank]

IN WITNESS WHEREOF, this Interlocal Agreement Establishing The Florida E-filing Authority has been executed this 3rd day of September, 2010.

Clerk of the Circuit Court in and for
Bay County
By: [Signature]
Name: Bill Kinsaul

Clerk of the Circuit Court in and for
Hernando County
By: [Signature]
Name: Karen Nicolai

Clerk of the Circuit Court in and for
CLAY County
By: [Signature]
Name: JAMES B. JETT

Clerk of the Circuit Court in and for
Sarasota County
By: [Signature]
Name: KAREN E. Rushing

Clerk of the Circuit Court in and for
Leon County
By: [Signature]
Name: Bob Tinner

Clerk of the Circuit Court in and for
Columbia County
By: [Signature]
Name: P. DeWitt Cason

Clerk of the Circuit Court in and for
Palm Beach County
By: [Signature]
Name: Sharon R. Beck

Clerk of the Circuit Court in and for
Orange County
By: [Signature]
Name: Lydia Gardner

Clerk of the Florida Supreme Court
By: [Signature]
Name: THOMAS D. HALL

AGREEMENT FOR THE
DESIGN, DEVELOPMENT, IMPLEMENTATION, OPERATION, UPGRADING, SUPPORT
AND MAINTENANCE OF
STATEWIDE E-FILING COURT RECORDS PORTAL

This Agreement For The Design, Development, Implementation, Operation, Upgrading, Support And Maintenance Of A Statewide E-Filing Court Records Portal ("Agreement") is entered into this 22 day of September, 2010, by and between the Florida E-Filing Authority ("Authority") and the Florida Association of Court Clerks, Inc. ("Association").

WITNESSETH

WHEREAS, the Florida Legislature and the Florida Supreme Court recognized the need for the development, implementation, operation, support and maintenance of a statewide electronic filing system allowing the electronic filing of trial and appellate court records; and

WHEREAS, the Clerks of the Circuit and County Court are the official custodians of court records in each such clerk's respective county, and the Clerk of the Florida Supreme Court is the custodian of the records of the Florida Supreme Court, each subject to applicable statutes, court rules and Florida Supreme Court rules and administrative orders of the chief justice of the Florida Supreme Court in the performance of that function; and

WHEREAS, various Clerks of the Circuit Court and the Clerk of the Florida Supreme Court created the Authority pursuant to an Interlocal Agreement as permitted by Chapter 163, Florida Statutes, to contract for the design, development, implementation, operation, upgrading, support and maintenance of an electronic portal for the electronic filing of court records; and

WHEREAS, the Association, by itself and/or through its wholly owned subsidiary FACC Services Group, LLC has the management and technical ability to develop, implement, operate and maintain the E-Filing Court Records Portal for the electronic filing of court records; and

WHEREAS, the Authority feels it is in the best interest of the Authority, the Clerks of the Circuit Court, the Clerks of the District Courts of Appeal, the Clerk of the Florida Supreme Court, the state courts and the Florida public to enter into this Agreement with the Association for the design, development, implementation, operation, upgrading, support and maintenance of the electronic portal for the electronic filing of court records.

NOW THEREFORE, in accordance with the terms and conditions as set forth herein, and for mutual consideration, given by each to the other, the Authority and the Association hereby agree as follows:

1. **Definitions.** Terms not otherwise defined in this Agreement shall be defined as follows:
 - a. "Act" or "Interlocal Act" shall mean Part I, Chapter 163, Florida Statutes.
 - b. "Administrative Orders" shall mean those administrative orders issued by the Florida Supreme Court or the chief justice of the Florida Supreme Court.

c. "Authorized Users" shall mean those attorneys who are attorneys of record and pro-se parties who have made an appearance in a case filed in a Court, the clerks of the Courts, and Court personnel.

d. "Courts" or "courts" shall mean all county, circuit, and appellate courts in the State of Florida.

e. "Court Records" shall have the same meaning as provided in rule 2.420, Florida Rules of Judicial Administration, and shall include appellate court briefs, motions, petitions and other appellate court papers in each Florida appellate court.

f. "E-Filing" shall mean filing Court Records to a case through electronic systems and processes in compliance with rule 2.525, Florida Rules of Judicial Administration. E-Filing includes filing a court record with accompanying data elements necessary to establish an index of records for new cases, associate the record with an existing case in the case management system, and allow judges to process and manage their cases from filing to timely final disposition. E-Filing may also be referred to as ECF (Electronic Court Filing as established by The National Center for State Courts).

g. "E-Filing Court Records Portal" or "Portal" means a statewide access point for electronic access and transmission of Court Records to and from the Courts. The Portal will be capable of accepting electronic filings from multiple sources, using common data elements passing to and from each local case system. The Portal shall include the following features:

- Single statewide login
- Single Web access to Court Records by Authorized Users
- Transmissions to/from appropriate Courts
- Providing Electronic Service of notification of receipt of an electronic filing and confirmation of filing in the appropriate Court file
- Open standards-based integration ability with existing statewide information systems and county E-Filing applications
- Automated interface with E-Recording systems
- Compliance with the Electronic Court Filing 4.0 standard, the Global Justice Extensible Markup Language and Oasis Legal Extensible Markup Language standard developed by the National Center for State Courts.

h. "FACCSG" shall mean the FACC Services Group, LLC, a wholly owned subsidiary of the Association.

i. Florida Courts Technology Commission ("FCTC") shall mean the commission established by pending rule 2.236, Florida Rules of Judicial Administration, and described in AOSC07-59 and AOSC09-23, or their successors.

j. "Pre-Owned Software" shall mean all software and designs owned in fee simple or by license by the Association and/or FACCSG as of the date hereof and used in the E-Filing Court Records Portal.

k. "Rules of Court" means those rules of practice and procedure adopted by the Florida Supreme Court.

l. "Supreme Court" shall mean the Florida Supreme Court through its designated representative or committee.

Whenever any words are used in this Development Agreement in the masculine gender, they shall be construed as though they were also used in the feminine or neuter gender in all situations where they would so apply, and whenever any words are used in this Development Agreement in the singular form, they shall be construed as though they were also used in the plural form in all situations where they would so apply.

2. SERVICES TO BE PROVIDED BY THE ASSOCIATION

a. The Association shall develop, implement, operate, support and maintain the E-Filing Court Records Portal in accordance with the terms and conditions as set forth herein. In doing so, the Association shall:

(1) provide all software and consulting personnel to perform the required professional services in the manner and under the terms and conditions described in exhibits attached hereto.

(2) use its best efforts to develop each deliverable ("Deliverable") as defined in the Statement of Work attached hereto as Attachment A and made a part hereof ("SOW").

b. The E-Filing Court Records Portal will allow electronic filing of Court Records and electronic access to electronic Court Records by Authorized Users. The E-Filing Court Records Portal shall comply with standards adopted by the Supreme Court in In Re: Statewide Standards for Electronic Access to Courts, AOSC09-30 (July 1, 2009), including amendments to those standards, as well as any other standards or requirements relating to electronic access to the Courts that the Supreme Court may approve, including, but not limited to:

- (1) single statewide login protocol, including authentication of users
- (2) single web access to Court Records by Authorized Users
- (3) electronic transmission of data in accordance with specified standards
- (4) electronic payments and transaction logs
- (5) electronic notices and service on parties
- (6) local validation of electronic transmissions by the Clerk
- (7) electronic certificate of service
- (8) emergency filing protocol
- (9) integration with existing statewide systems
- (10) development and use of schemas
- (11) electronic signature protocol
- (12) technical failure protocol
- (13) network/communication requirements
- (14) software and application requirements

- (15) support requirements
- (16) access to technical assistance
- (17) maintenance procedures and schedules
- (18) software maintenance
- (19) software version control

c. Any deficiencies in the implementation, operation, support or maintenance of the E-Filing Court Records Portal shall be addressed by the corrective action plan described in Paragraph 10 of this Agreement.

d. Development, implementation and operation of the E-Filing Court Records Portal, including implementation of data elements approved by the Supreme Court and delivered by the Authority to the Association prior to or as of the date hereof shall be complete on or before January 1, 2011. Any standard data elements approved by the Supreme Court after the implementation of the E-filing Court Records Portal shall be implemented within a reasonable, agreed upon time after receipt of such new standard data elements by FACC from the Authority, in writing in sufficient detail to allow FACC to fully design, develop and implement such new data elements, which time is not to exceed 90 days from the date of receipt of the new data elements, unless a longer period of time is reasonably required and agreed to by the Florida Supreme Court and the Authority.

e. Any changes to the work to be performed hereunder shall be by a written Change Order agreed upon by the Authority and the Association. The Authority will not enter into a Change Order except after consultation with the FCTC. Change Orders will be required if the Supreme Court promulgates rules for additional data elements. The process for Change Orders is as follows:

- (1) Either party may request a change to the Portal by submitting to the other party a written notice (change request) setting forth the requested change and the reason for such request.
- (2) Within five (5) business days (or such other period of time as agreed by the parties) after the receipt of the Change Request, the parties shall discuss the necessity, desirability and /or acceptability of the Change Request.
- (3) When and if both parties have agreed in writing upon the changes, the change shall be made within an agreed upon period of time.

Any such changes shall be implemented at no cost to the Court or the Authority.

f. All work hereunder will be performed by the Association or by its wholly owned subsidiary, FACCSG.

g. Except as expressly provided in this Agreement or in a later writing signed by the Authority, the Association shall bear all expenses arising from the performance of its obligations under this Agreement.

3. FILING FEES AND SERVICE CHARGES FOR USE OF THE E-FILING COURT RECORDS PORTAL

The E-Filing Court Records Portal shall provide for the payment of filing fees and service charges. Such provisions shall include payment of fees and charges by electronic transfer of funds, by credit card and by debit card.

a. The Authority shall advise the Association as to the amount(s) of the fees and costs which are to be charged for each type of electronic filing contemplated hereby. Only those fees, service charges, and check, debit and credit card transaction fees that the individual clerks of court, in performance of their record-keeping functions, are permitted to impose through express statutory authorization may be charged by the Association, with approval of the Authority, under this Agreement,

b. Any revenue generated by a fee or service charge imposed by the Authority with the approval of the Legislature must be disclosed to the Florida State Courts Administrator and must be distributed in accordance with legislative directive.

c. The Association shall transfer fees, service charges and check, debit, and credit card transaction fees received from electronic filings through the E-Filing Court Records Portal as follows:

(1) All statutory fees and other statutorily prescribed revenues collected pursuant to this agreement by the Association on behalf of the individual, applicable clerks of the Courts will be transmitted to the such clerk in full by electronic funds transfer via Automated Clearing House ("ACH") transfer within one (1) business day of the availability of funds to the Association.

(2) Prior to implementation of electronic fund transfers from the Association to the applicable individual clerk the clerk must provide to the Association the bank account and other information required as set forth in Attachment B hereto to allow the electronic transfer of the funds. The clerk's bank account must support ACH transfer deposits. Any changes to the banking information provided by the clerk to the Association must be provided in the form as attached as Attachment B and shall be enforceable against the Association five (5) business days after receipt by the Association of the written changes from the applicable clerk.

(3) The individual clerk must provide contact information (name, address, telephone, e-mail, and facsimile) for the individual who shall serve as the single-point of contact for financial questions relevant to the clerk's account. Any changes to the contact information provided by the clerk to the Association shall be enforceable against the Association five (5) business days after receipt by the Association of the written changes.

(4) Service charges, convenience fees and/or other fees, each as permitted to be charged by statute and which are charged by the Association for the use of the E-Portal will be retained by the Association.

(5) The individual clerks of the Courts may notify the Association of financial irregularities regarding a specific transaction or batch of transactions upon discovery of such irregularities; however, pursuant to Bank Card Rules, the period to provide notice of irregularities shall not exceed eighteen (18) months from the time of a transaction or batch processing. After this time period transactions and funds transfers are considered settled.

(6) The Association agrees to comply with any recommendations made in any independent audit of the transmission of the fees to the individual clerks which are commercially practicable unless the Association and the Authority otherwise mutually agree.

(7) To the extent an audit report discloses any discrepancies in charges, billings, or financial records, and following a period for review and verification by the Association of the amount, the Association will adjust and either pay any overcharge, or bill for any under charge as soon as reasonably possible, but not to exceed thirty (30) days. The Association shall cooperate to assure that verification is completed in a timely manner.

(8) The accounting system shall be in accordance with industry acceptable accounting standards and include a numbered chart of accounts, books of original entry of all transactions, appropriate subsidiary ledgers, a general ledger, which includes to-date postings and an audit trail through financial statements. Such books may either be maintained on paper or on computer with appropriate backup.

4. COMPENSATION

a. The Association agrees to provide the services hereunder to the Authority at no additional cost or charge to the Authority or the Court.

b. Should the Authority request services outside the scope of this Agreement, such as software maintenance or enhancements not covered in the SOW or this Agreement, such services and costs therefore shall be provided under terms and conditions agreed upon at the time of requesting such services and shall be documented in a separate agreement or an amendment to this Agreement.

5. INDEPENDENT CONTRACTOR

The relationship of the Association to the Authority shall be that of an independent contractor, and no principal-agent or employer-employee relationship is created by this Agreement. Any subcontract with FACCSG shall provide that FACCSG is an independent contractor of FACC.

6. SUBCONTRACTS

The Association reserves the right to subcontract work, as necessary, in the performance of its responsibilities under this Agreement to the FACCSG. The Association agrees to be responsible for the accuracy and timeliness of all work submitted in the fulfillment of its responsibilities

under this Agreement.

7. OWNERSHIP OF THE PORTAL AND PORTAL DATA

The Authority is the owner of the E-Filing Court Records Portal. Data in the E-Filing Court Records Portal shall not be owned by the Association. The data transmitted and filed through the E-Filing Court Records Portal is maintained by the Clerks of the Circuit Court, the Clerks of the District Courts of Appeal, and the Clerk of the Florida Supreme Court in their respective offices as clerks of the applicable court, pursuant to applicable statutes, Rules of Court, and administrative orders.

8. OWNERSHIP OF SOFTWARE AND DESIGNS

The Association hereby transfers to the Authority, for use in the State of Florida, all right, title and interest in the E-Filing Court Records Portal, reserving to itself an unlimited license to use all software and designs thereof as it deems desirable. Any software and designs subsequently developed by or on behalf of the Association or FACCSG for the development, implementation, operation, support and maintenance of the E-Filing Court Records Portal shall be owned by the Authority with the Association having an unlimited license to use all of such software and designs as it deems desirable.

9. WARRANTIES

The Association does hereby represent and warrant to the Authority as follows:

a. Ability To Perform. The Association represents and warrants to the Authority that it, either through its own officers and employees or through FACCSG, has the technical expertise and financial stability to perform the services hereunder. The Association warrants that the Portal now complies with all requirements, standards, and specifications imposed under this Agreement, and that the Portal will be implemented, operated and maintained in the future in accordance with the requirements, standards and specifications imposed under this Agreement.

b. Ownership Of Pre-Owned Software. The Association hereby represents and warrants to the Authority that the Association has full rights to the Pre-Owned Software used by it in the development, implementation, operation, support and maintenance of the E-Filing Court Records Portal and that it has full right, power and authority to grant to the Authority the license contemplated hereby. The Association shall and does hereby agree to indemnify and hold the Authority harmless for any claim made by any third party contesting the Association's rights of the Pre-Owned Software or the ability of the Association to grant the License to the Authority.

c. Disclaimer. The Association shall have no liability to the Authority under this Agreement except the correction or avoidance of deficiencies and defects identified by the Authority in consultation with the Florida Court Technology Commission and the Supreme Court. The warranties set forth in this section are in lieu of all other representations and warranties relating to the software, expressed or implied.

d. Indemnification. The Association does hereby indemnify and hold the Authority harmless for any loss or damage, including payment of attorney's fees, resulting from a violation of this section on Warranties or resulting from the Association's failure to perform as required hereunder. In any subcontract with FACCSG, FACCSG shall indemnify and hold the Association and the Authority harmless for any loss or damage resulting from a violation of this section on Warranties or resulting from its failure to perform under any subcontract with the Association.

10. CORRECTIVE ACTION PLAN

If the Authority identifies any deficiency based upon requirements, standards or specifications required under this Agreement that the Authority, in consultation with the FCTC and the Supreme Court, deems to be of sufficient magnitude, the Authority will notify the Association in writing of the deficiency, and of the need to submit a corrective action plan ("CAP"). The written notice of the deficiency shall be in such detail necessary to adequately identify the specific items alleged to be deficient. The Association shall have five (5) business days to object in writing to the Authority to any of the allegations of deficiency.

If the Association does not timely object to all of the allegations of deficiency, the Association will submit to the representative for the Authority a formal written CAP within ten (10) day business days of receipt of the written notice from the Authority. The CAP will contain the steps the Association agrees to take to remedy the deficiencies and a proposed timeline in which to commence and complete the steps necessary to remedy the deficiencies.

The Authority will notify the Association in writing of its acceptance or rejection of the CAP within ten (10) business days of receipt of the CAP. Failure of the Authority to respond to the submitted CAP within ten (10) business days shall be deemed to be approval of the submitted CAP. If the CAP is unacceptable in any way, the Authority will provide a written statement to the Association identifying the items of the CAP which are unacceptable and the reasons therefore. The Association will have ten (10) business days from receipt of the rejection letter to submit a revised CAP.

Upon acceptance of the CAP, the Association shall begin implementation and performance of the CAP as set forth in the CAP and will continue such implementation and performance until completion of the CAP or upon amendment to the CAP agreed to by the Authority. Acceptance of the CAP by the Authority does not guarantee that implementation of the CAP will result in elimination of future deficiencies.

The CAP will remain in effect until all deficiencies are corrected. Updates on the status of the CAP will be required as determined by the Authority.

The Association's failure to respond to a request for a CAP or failure to meet the terms of the CAP may result in termination of the Agreement under the termination provisions set forth in this Agreement. The Authority may exercise other remedies as permitted by law.

Should the Authority and the Association fail to agree (1) that a deficiency requiring a CAP exists, or (2) the CAP as proposed by the Association is sufficient to adequately cure the deficiencies, the applicable contract administrators of the Association and the Authority, with

consultation with the FCTC, will meet to reach an amicable solution.

11. AUDIT

For work performed under this Agreement, the Association shall be subject to or cause to be conducted independent (i) budget audit, (ii) financial and/or performance audit that is performed in accordance with the Statement on Audit Standards 70 audit guidelines promulgated by the American Institute of CPAs; the audit will focus on the existence of controls that are suitably designed to provide reasonable assurance that the specific control objectives are achieved and that the controls are operating as designed, and (iii) security review audit of the Association's technology infrastructure, which security review will be divided into 7 areas: policies, physical security, root or administrative user security, normal user security, file security, overall security procedures, and periodic testing.. The audit(s) shall be performed annually and as may be requested by the Authority, the Florida Auditor General, or as may be requested by the Supreme Court.

12. LIMITATION OF LIABILITY

In no event shall the association be liable to the authority or any third party for loss of business or profits or any other economic loss or for any incidental, indirect, special, or consequential damages.

13. INSURANCE AND WORKERS' COMPENSATION

The Association shall carry public liability and Workers' Compensation insurance and shall hold the Authority and its officers harmless from all claims, demands, payments, suits, actions, recoveries, and judgments, including attorney's fees, of every kind and description brought or recovered against it by reason of any act or omission of the Association, its agents, or employees of the work described.

14. EMPLOYMENT LAWS

a. The Association agrees that it will not violate state or Federal laws prohibiting discrimination on the basis of race, creed, color, national origin, physical handicap or disability which may require a reasonable accommodation therefor, sex, age, political affiliation or beliefs, religious beliefs.

b. The Association shall comply with Section 112.0455, Fla. Stat., "Drug-Free Workplace Act. The Association and its employees shall refrain from the use of drugs and from being under the influence of drugs while in the workplace.

c. The Association shall prohibit sexual harassment in the workplace and take all reasonable steps to ensure that each employee be allowed to work in an environment free from any form of improper discrimination and from retaliation against those who oppose or report sexual harassment.

d. The Association shall comply with Section 508 of the American with Disabilities Act (28 USC §794(d)), giving disabled employees and members of the public access to information that is comparable to the access available to others.

e. The Association assures that it will not employ any unauthorized aliens in violation of the Immigration and Naturalization Act.

f. The Association agrees that compliance with these assurances constitutes a condition of continued receipt of or benefit from the Agreement, and that it is binding upon the Association and employees for the period during which services are provided. The Association further assures that all subcontractors with which it subcontracts and its employees are not discriminating against those participants or employees in violation of the above statutes, regulations, and assurances, and the Association will take all reasonable steps necessary to prohibit any violation of the above statutes, regulations and assurances.

g. Failure to comply with any part of these assurances may constitute a breach of this Agreement and shall be grounds for termination of this Agreement.

15. OFFICE SPACE, FACILITIES, AND RECORDS

The Authority shall not provide office space, office equipment and machines, computers, and other equipment or records as may be needed in the performance of this Agreement.

16. CONFIDENTIALITY OF BUSINESS RECORDS/DATA SOFTWARE

Each party hereto acknowledges that in the performance of their duties hereunder they may receive from time to time certain confidential information of or from the other party. The parties desire to establish the terms under which they may disclose confidential and proprietary information.

a. As used herein Confidential Information shall mean:

(1) any data or information that is competitively sensitive material, and not generally known to the public, including, but not limited to, products planning information, marketing strategies, plans, finance, financial information, operations, customer relationships, customer profiles, sales estimates, business plans, and internal performance results relating to the past, present or future business activities of either party, its subsidiaries and affiliated companies and the customers, clients and suppliers of any of the foregoing;

(2) any scientific or technical information, design, process, procedure, formula, or improvement that is commercially valuable and secret in the sense that its confidentiality affords a party a competitive advantage over its competitors; and

(3) all confidential or proprietary concepts, documentation, reports, data, specifications, computer software, source code, object code, flow charts,

databases, inventions, information, know-how, show-how and trade secrets, whether or not patentable or copyrightable.

Confidential Information shall not include any information which by law is subject to disclosure pursuant to the Florida Public Records laws. Notwithstanding the foregoing, all software and design of the Association not transferred to the Authority hereby is deemed confidential pursuant to section 119.071(1)(f), Florida Statutes.

Confidential Information of a disclosing party, includes without limitation, all documents, inventions, substances, engineering and laboratory notebooks, drawings, diagrams, specifications, bills of material, equipment, prototypes and models, and any other tangible manifestation of the foregoing which now exist or come into the control or possession of the other party. If the Confidential Information is provided in a tangible form, the disclosing party shall clearly mark it "Proprietary" or "Confidential." If the Confidential Information is provided orally, the disclosing party shall clearly identify it as being proprietary or confidential. In the event the disclosing party inadvertently fails to clearly identify any tangible or oral information it provides to the recipient party, as confidential or proprietary, in the manner or fashion as set forth herein, such information shall still be treated by the recipient party as confidential or proprietary information, if such information would otherwise be reasonably construed as Confidential Information hereunder.

b. Except as expressly authorized by the prior written consent of the disclosing party, the other party shall:

- (1) limit access to any Confidential Information received by it to its employees, agents, consultants or representatives ("Representatives") who have a need-to-know in connection with the evaluation of the potential business transaction, and only for use in connection therewith; and
- (2) advise its employees, agents, consultants and Representatives having access to the Confidential Information of the proprietary nature thereof and of the obligations set forth in this Confidentiality Agreement; and
- (3) take appropriate action by instruction or agreement with its employees, agents, consultants and Representatives having access to the Confidential Information to fulfill its obligations under this Confidentiality Agreement; and
- (4) safeguard all Confidential Information received by it using a reasonable degree of care, but not less than that degree of care it uses in safeguarding its own similar information or material; and
- (5) use all Confidential Information received by it solely for purposes of performing the services contemplated hereby and for no other purpose whatsoever; and
- (6) except as may otherwise be provided above, not disclose any Confidential Information received by it to third parties; and

(7) except as may otherwise be provided above, not disclose the existence of the discussions to any third party.

Upon the request of the disclosing party, the other party shall destroy or surrender to the disclosing party all memoranda, notes, records, drawings, manuals, records, and other documents or materials (and all copies of same) pertaining to or including the Confidential Information. Upon the destruction or return of such materials the other party agrees to certify, in writing, that all of the foregoing materials have either been destroyed or surrendered to the disclosing party.

c. The obligations of confidentiality and restriction on use above shall not apply to any Confidential Information that the non-disclosing party proves:

(1) Was in the public domain prior to the date of this Agreement or subsequently came into the public domain through no fault of the non-disclosing party; or

(2) Was lawfully received by the non-disclosing party from a third party free of any obligation of confidence to such third party; or

(3) Was already in the possession of the non-disclosing party prior to receipt thereof, directly or indirectly, from the disclosing party; or

(4) Is required to be disclosed in a judicial or administrative proceeding after all reasonable legal remedies for maintaining such information in confidence have been exhausted including, but not limited to, giving the disclosing party as much advance notice of the possibility of such disclosure as practical so that the disclosing party may attempt to stop such disclosure or obtain a protective order concerning such disclosure; or

(5) Is subsequently and independently developed by employees, consultants or agents of the non-disclosing party without reference to the Confidential Information disclosed under this Agreement.

d. Except as specifically provided for herein, this Agreement does not confer any right, license, interest or title in, to or under the Confidential Information to the non-disclosing party. Except as specifically provided for herein, no license is hereby granted to the non-disclosing party, by estoppel or otherwise under any patent, trademark, copyright, trade secret or other proprietary rights of the disclosing party. Title to the Confidential Information shall remain solely in the disclosing party.

e. Both parties agree that all their obligations undertaken herein with respect to the Confidential Information received pursuant to this Agreement shall survive and continue after any expiration or termination of this Agreement.

f. The parties agree that money damages would not be a sufficient remedy for breach of the confidentiality and other obligations of this Agreement. Accordingly, in addition to all other remedies that each party may have, each party, as applicable, shall be entitled to specific performance and injunctive or other equitable relief as a remedy for

any breach of the confidentiality and other obligations of this Agreement. Each party agrees to waive any requirement for a bond in connection with any such injunctive or other equitable relief.

17. DISCLOSURE OF CONFIDENTIAL COURT RECORDS

The Association acknowledges that in performing its services hereunder it may have access to confidential information in Court Records ("Confidential Court Information"). To that end, the Association agrees that

- a. The Association, its employees, agents and subcontractors shall be bound by the same requirements of confidentiality as the clerks of the Courts with regard to Confidential Court Information. The Association shall comply with all state and federal laws, regulations, Court rules, Court Administrative Orders, and judicial orders concerning maintaining the confidentiality of Confidential Court Information.
- b. All employees, agents and subcontractors of the Association performing work under this Agreement shall sign a non-disclosure agreement in substantially the form as in Attachment C hereto prior to commencing work under this or any related contract. All signed non-disclosure agreements shall be returned to the Authority.
- c. The Association shall assume responsibility for the safety and security of Confidential Court Information in its control or the control of FACCSG. All Confidential Court Information in its control or the control of FACCSG shall be securely stored in a manner to prevent access by unauthorized persons. The Association shall provide to the Authority its written protocols for ensuring that confidentiality of the Confidential Court Information is maintained.

18. IMPOSSIBILITY OF PERFORMANCE

The Association shall diligently and professionally perform the services required hereunder. However, should there be a case of force majeure the Association shall take all reasonable steps necessary to resume performance hereunder as quickly as possible. In addition, the Association agrees:

- a. The Association shall have provisions for an alternative site and plans in case of problems or disaster at the primary site, which will ensure the continued and uninterrupted ability for Authorized Users to electronically file and access Court Records.
- b. A system to provide for the collection and processing of payments of fees and service charges and check debit and credit card transaction fees in case of problems or disaster.
- c. The preparation of a disaster plan, with written procedures, designated responsible individuals, test results and a periodic test schedule to address issues arising from disasters.

The Association shall inform the Authority immediately and in writing (within 4 hours of the

situation) of any situation which can reasonably be expected to adversely affect or interrupt the electronic filing of court records or electronic access to court records.

19. ASSIGNMENT OF AGREEMENT

The Association shall not assign, transfer, convey, or otherwise dispose of this Agreement or its rights, title, or interest in this Agreement without previous consent and written approval of the Authority. This prohibition shall not impair the Association's right to subcontract the duties hereunder to the FACCSG.

20. CHANGES IN AGREEMENT

This Agreement may be changed only upon the written agreement of the Authority and the Association. Changes to the scope of the development, implementation, operation, support and maintenance of the E-Filing Court Records Portal will be governed by the process stated in Paragraph 2.e.

21. TERMINATION

a. Either party may terminate this Agreement without cause, on thirty (90) days prior written notice to the other.

b. Either party shall have the right to terminate this Agreement for cause, unless such cause is timely cured as provided below, by providing written notice of termination to the non-compliant party. Such notice shall specify the time, the specific provision of this Agreement or the "for cause" reason that gives rise to the termination. Upon receipt of a notice of termination for cause, except as specifically provided otherwise herein the non-compliant party shall have a period of thirty (30) days to remedy or cure such grounds for termination. If the Association is in default it shall propose a corrective action plan within this 30 day period, as provided under Paragraph 10, and diligently cure the default pursuant to the corrective action plan. Any uncured event or cause shall be an *Event of Default*.

For purposes of this Agreement, the phrase "for cause" shall mean but not be limited to:

- (1) Modifications or enhancements to the E-Filing Court Records Portal by the Association without the express written consent of the Authority.
- (2) Any material breach or evasion by one party of the terms or conditions of this Agreement and its amendments, if any, including a material breach of Warranties contained herein.
- (3) Fraud, misappropriation, embezzlement, malfeasance, significant misfeasance or illegal conduct by one party, its officers or directors.
- (4) Intentional disclosure by one party, or by its officers, employees or agents, of any information known by that party to be Confidential Information of the other party.

(5) One party (i) files, or consents by answer or otherwise to the filing against it, of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (ii) makes an assignment for the benefit of its creditors, (iii) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of a party or of any substantial part of a party's property, or (iv) takes action for the purpose of any of the foregoing.

(6) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to one party or with respect to any substantial part of one party's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, or (iii) ordering the dissolution, winding-up or liquidation of one party.

c. On and after any Event of Default, the non-defaulting party shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement in accordance with its terms or to seek specific performance of all or any part of this Agreement; provided, however, any licenses granted hereunder shall not terminate.

d. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

e. If this Agreement is terminated by either party, either for cause or not for cause, written notice of such termination shall be delivered to the other party with a copy being delivered simultaneously to the Florida State Courts Administrator.

22. COSTS OF ENFORCEMENT

In any action to enforce the terms of this Agreement each party shall bear its own costs and expenses incurred in enforcing its rights hereunder, which costs and expenses shall include reasonable attorneys fees (which fees includes reasonable paralegal fees), whether incurred prior to or during litigation or any appeals therefrom.

23. NOTICES AND CONTACT

Any notices given hereunder shall be deemed given if (i) delivered by hand delivery, (ii) sent by special courier, such as FedEx or UPS, or (iii) sent by registered mail, return receipt requested, in which instance delivery shall be deemed to have occurred five (5) business days after depositing such notice in the mail, postage pre-paid. Unless and until another contact person or address is provided in writing by one party to the other, notices shall be delivered to:

As to the Association:

As to the Authority

24. MISCELLANEOUS

a. Subject to exemptions under Chapter 119, Florida Statutes, and confidentiality provisions as contained herein, all records relating to this Agreement and the performance hereunder by the Association shall be subject to public disclosure under Florida public records law.

b. The Association will maintain documentation relating to this Agreement for 4 years following the conclusion of the Agreement.

c. Neither the Association nor FACCSG may use the name of the Supreme Court in any advertising or marketing materials or presentations without the prior written consent of the Supreme Court.

d. The failure by the Authority to require compliance or enforcement of a provision in this Agreement shall not constitute a waiver of compliance with any other provision nor a waiver of future non-compliance of any provision of this Agreement.

25. SEVERABILITY

If any provision of this Agreement shall be declared invalid or unenforceable, such invalidity or unenforceability shall not affect the balance of this Agreement, but the balance of this Agreement shall be construed as if not containing the provision, and the rights and obligations of the parties shall be construed and enforced accordingly provided that same is not of a material nature and does not substantially affect the work or the associated cost.

26. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Florida. Any action undertaken to enforce any provision hereof shall be commenced and maintained in the applicable state or federal courts in Tallahassee, Leon County, Florida.

27. ENTIRE AGREEMENT

This Agreement, together with the attachments hereto and the SOW, constitutes the entire agreement between the parties hereto and no prior written or oral agreements concerning the subject hereof between the Authority and the Association survive execution hereof.

This Agreement, together with the SOW, may not be altered or amended except in writing,

making specific references to this Agreement and executed by a duly authorized official of the Authority and by a duly authorized officer of the Association.

IN WITNESS WHEREOF, the parties have set their hands hereof the day and the day and year first written above.

Florida E-Filing Authority

By: P. Dewitt Cason

Name: Honorable P. Dewitt Cason

Title: Chair, Florida E-Filing Authority

Florida Association of Court Clerks, Inc.

By: Tim Smith

Name: Honorable Tim Smith

Title: President, Florida Assoc of Court Clerks

ATTACHMENT B

Clerk Electronic Funds Transfer Account Information

ADMIN/USER INFORMATION:

- 1. Clerk of Court for _____
(County/DCA/Supreme Court)
- 2. Contact Name/Administrator: _____
- 3. Office Address: _____

- 4. Phone Number: _____
- 5. Fax Number: _____

BANKING INFORMATION:

- 6. Name of Bank: _____
- 7. Bank Account No: _____
- 8. Bank Routing No: _____
- 9. Bank Phone Number: _____
- 10. Bank Fax Number: _____
- 11. Bank Email Address: _____
- 12. Bank Mailing Address: _____

TECHNICAL CONTACT INFORMATION:

Name: _____

Phone Number: _____ Fax _____

E-mail Address: _____

ATTACHMENT C

AGREEMENT TO MAINTAIN

THE SECURITY OF CONFIDENTIAL INFORMATION

Court records may contain information the access to which the public is not allowed due to applicable statute, rules of Judicial Administration, Administrative Order or court order ("Confidential Court Information"). By signing this agreement you are acknowledging that you understand the policy as described herein and that you agree to abide by it.

The clerks of the courts of Florida have an obligation to the parties to protect the confidentiality of certain information. These citizens expect the clerks to take the necessary measures to protect their right to privacy. Therefore, each person given access to confidential information must ensure the confidentiality of confidential information entrusted to the clerks and prevent its unauthorized disclosure.

Disclosure of any Confidential Court Information obtained by you in the performance of your services with the Florida Association of Court Clerks, Inc., or with FACC Services Group, LLC, no matter how it was obtained by the you, is prohibited. Disclosure includes making known to any person in any manner whatever, the contents of the court records deemed confidential.

Confidential Court Information made available to you may be used only for purposes that are directly related to the discharge of the Association's duties in its development, installation, operation, support and maintenance of the -Filing Court Records System.

IF THERE IS ANY DOUBTS OR UNCERTAINTY CONCERNING DISCLOSURE OF INFORMATION THE INFORMATION SHOULD NOT BE DISCLOSED.

By signing this agreement, you are agreeing to abide by the policy described above and that you will not release any Confidential Court Information which you might obtain.

CONFIDENTIAL INFORMATION CERTIFICATE

I have reviewed the foregoing and my signature below indicates I understand the legislative policy and accept responsibility for complying with it.

Signature

Date

Print Name: