

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: