

SUBSCRIPTION AGREEMENT FOR ELECTRONIC ACCESS TO OFFICIAL RECORDS

KEN BURKE, CPA

CLERK OF CIRCUIT COURT & COMPTROLLER

PINELLAS COUNTY, FL

This agreement is made and entered into by and between, Ken Burke, CPA, Pinellas County Clerk of the Circuit Court & Comptroller, hereinafter referred to as "CLERK", and ____, hereinafter referred to as "SUBSCRIBER."

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

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

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

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

ARTICLE 1: DEFINITIONS

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

"Agreement" shall mean this agreement.

"Clerk" shall mean Ken Burke, CPA, Clerk of the Circuit Court & Comptroller for Pinellas County, Florida.

"Subscriber" shall mean the individual executing this Agreement.

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

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

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ARTICLE 2: TERM OF AGREEMENT

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

ARTICLE 3: SCOPE OF AGREEMENT

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

ARTICLE 4: DAYS AND HOURS OF OPERATION

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

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

ARTICLE 5: SERVICES

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

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

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

ARTICLE 6: CLERK'S OBLIGATION

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

ARTICLE 7: SUBSCRIBER'S OBLIGATION

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

SUBSCRIBER agrees to ensure that its User ID and password are not used by any other person to access information from the CLERK'S subscription site and agrees that such activity, if allowed, is grounds for immediate termination in accordance with Article 15 of this Agreement.

Information accessed from the subscription site is solely for the use of SUBSCRIBER in the ordinary course of its business. The information is neither intended nor permitted to be represented during commercial resale as the official government record required by law. In the event of a breach of this paragraph, CLERK is entitled to seek injunctive relief restraining SUBSCRIBER from accessing information from the subscription site, and/or terminate this Agreement in accordance with Article 15 herein. This shall not be construed as prohibiting the CLERK from pursuing any other remedy available at law equity for such breach.

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

SUBSCRIBER is responsible for pre-payment of the subscription fees in order to maintain active account status, as set forth in ARTICLE 8, SUBSCRIPTION FEE. CLERK will invoice SUBSCRIBER prior to the subscription period end date for renewal. Payments must be received within 30 days of the due date or the SUBSCRIBER account will be terminated.

ARTICLE 8: SUBSCRIPTION FEE

Pricing is as follows:

- A. There is a one-time initial set up fee of \$100.00 per user sign on and an annual usage fee of \$75.00 to be paid by October 1st of the current year. If the annual payment is not received by November 1st, the account will be terminated. Up to five additional users may be added per account for an annual usage fee of \$300.00 per organization, with the increase in increments of five.
- B. The fee must be paid in full prior to initiation of service. Fees are subject to change annually. Fees are not refundable; this service is not prorated for terminations or new agreements. No credit will be accrued during periods the subscription site is out of service.
- C. You will receive your invoice via email; it is your responsibility to ensure we have your current email address. If you do not receive an invoice you are still obligated to make your payment annually.

ARTICLE 9: LIMITATION OF LIABILITY

SUBSCRIBER hereby relieves and releases CLERK, his employees and agents from liability from any and all damages resulting from interrupted service of any kind, including SUBSCRIBER's equipment.

SUBSCRIBER hereby relieves releases, indemnifies, and holds harmless CLERK, his employees and agents from any liability for any and all damages resulting from incorrect or any other misinformation accessed from the subscription site.

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

No cause of action, regardless of form, arising out of the transaction under this Agreement, may be brought by either party more than one (1) year after the cause of action occurred, except that an action for nonpayment may be brought at any time permitted by law.

In no event shall CLERK, his employees or agents be liable for consequential damages even if any of the above named parties has been advised of the possibility of such damages.

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

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The CLERK is neither responsible nor liable for subscription site failures and down time caused by an act of God, floods, fires, storms, strikes, lockouts, disputes with employees, riots, wars, acts of public enemy, government restrictions, prohibitions, regulations, or other interferences beyond his control. His only responsibility is to bring the subscription site back to acceptable operating efficiency as quickly as available time and resources will allow.

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

ARTICLE 10: WARRANTIES

NEITHER CLERK, HIS EMPLOYEES NOR AGENTS EXPRESSLY OR IMPLIEDLY WARRANT THAT THE INFORMATION OR DATA ASSESSED BY SUBSCRIBER IS ACCURATE OR CORRECT. THERE ARE NO EXPRESSED OR IMPLIED WARRANTIES IN CONNECTION WITH THIS SERVICE.

ARTICLE 11: ASSIGNMENT

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

ARTICLE 12: GOVERNING LAW

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

ARTICLE 13: ENTIRE AGREEMENT

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

ARTICLE 14: NOTICE

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

ARTICLE 15: TERMINATION

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

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

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

This Agreement shall be terminated immediately by CLERK if CLERK fails to receive appropriate and continued funding for operation of the subscription site provided under this Agreement. In the event immediate termination is required, notification to SUBSCRIBER will be by email and/or telephone contact followed by email confirmation.

This Agreement shall be terminated by the CLERK on November 1 of any calendar year in which SUBSCRIBER fails to pay in advance the annual subscription fee. In order for a SUBSCRIBER, whose services have been terminated for failure to make timely payment, to have services re-activated, the annual fee must be paid. A new User ID and password may be assigned, at the sole discretion of the CLERK.

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

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

ARTICLE 16: SEVERABILITY

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

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This Agreement is hereby entered into, this _____ day of _____ 20_____

Nancy Dickman
Manager Recording Services
Pinellas County, Florida

Before me this _____ day of _____, 20_____, a Notary Public in and for Pinellas County, Florida, personally appeared Nancy Dickman, known to me to be the person who executed the subscriber site agreement acknowledged to me that he executed the same for the purposes therein stated; that he executed the same as his free act and deed and stated that the facts contained therein are true and correct to the best of his knowledge, information and belief.

_____ Notary Public

Subscriber's Signature

By: _____

Title: _____

STATE OF _____

)SS

COUNTY OF _____)

Subscribed and sworn to me before this _____ day of _____, 20_____, a Notary Public in and for said state and personally appeared _____, known to me to be the person who executed the Subscription Agreement and acknowledged to me that ___ he executed the same for the purposes therein stated; that ___he executed the same as h___ free act and deed and stated that the facts contained therein are true and correct to the best of h___ knowledge, information and belief.

_____ Notary Public

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EXHIBIT A CONTACT

INFORMATION

This contact information includes the mail and email addresses to which required written correspondence between the parties shall be mailed, in accordance with Article 14.

FOR CLERK:

Ken Burke, CPA
of Circuit Court
Pinellas County, FL

Recording Services
315 Court Street, Room 150
Clearwater, FL 33756

If you have any questions, please email us at:
recording@pinellascounty.org

FOR SUBSCRIBER:

Name: _____ Clerk
Title: _____
Individual Signing Agreement as Subscriber
D/B/A: _____
Address: _____

City/St/Zip: _____ Phone:
(_____) _____
Fax: (____) _____
E-mail: _____

USERS AUTHORIZED UNDER SUBSCRIBER'S SERVICE AGREEMENT

SUBSCRIBER: List name of each individual for which you are authorizing access to subscriber site records under the terms of your subscriber agreement. Each user will be issued a unique login id and password. You are responsible for ensuring that each user only has knowledge of his individual login id and password. You must notify the Clerk immediately upon termination of privileges of any of these users so that the CLERK can disable the user's login. Please list any additional users on a separate sheet of paper.

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User Name	Phone Number	Email Address	Clerk's Office Use only: Log In ID