

**HIGHLANDS COUNTY CLERK OF COURTS
SUBSCRIPTION AGREEMENT FOR
ELECTRONIC DOWNLOADS OF COURT DATA**

SUBSCRIBER INFORMATION

Company/Agent Name: _____
Address: _____

NOTE: UPON RECEIPT of the initial payment of the set up fees and initial service period charge set forth in Article 7 below, a LOGIN ID and PASSWORD will be furnished and you will be able to access the system.

This is an Agreement, made and entered into by and between: Clerk of Courts for Highlands County, Florida, hereinafter referred to as "CLERK" and _____, hereinafter referred to as "SUBSCRIBER"

WHEREAS, Section 119.07(2)(a) of the Florida Statutes allows public records Custodian(s) to provide access to public records by electronic means; and

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

WHEREAS, the purpose of this Agreement is to provide electronic download access through a secure file transfer site to the public records particularly described in the download data field description, Exhibit "C" hereto; NOW THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments 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 Highlands County Clerk's Office, Highlands County, Florida.
- "Subscriber" shall mean _____
- "FTP site" shall mean a secured file transfer site owned and maintained by the CLERK, allowing "read-only" access to authorized Subscribers.
- "User" shall mean everyone to whom Subscriber has authorized CLERK to issue a login id and password for access to the FTP site to download electronic records.

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 in accordance with Article 14.

ARTICLE 3: SCOPE OF AGREEMENT

CLERK and SUBSCRIBER agree that the scope of this Agreement shall be to access and to electronically download court records that are not expunged or sealed or deemed confidential by Florida Statutes, federal statutes, Florida Rules of Court, or orders/opinions from courts in Florida.

ARTICLE 4: DAYS AND HOURS OF OPERATION

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

CLERK reserves the right to reduce or limit the FTP site access 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 downloads of daily updates to court records via the FTP site.

SUBSCRIBER is responsible for all maintenance and repair work required to keep the SUBSCRIBER'S equipment in operating order, and to make connectivity to the CLERK's FTP site through SUBSCRIBER'S Internet Service Provider and retrieve updates to court records on a daily basis.

CLERK may modify the categories, classifications or format of electronic download data upon prior notice to the SUBSCRIBERS; however, such changes will generally be made to conform to changes in Florida law or to improve service to SUBSCRIBERS.

ARTICLE 6: CLERK'S OBLIGATIONS

Following the execution of this Agreement, CLERK will provide SUBSCRIBER with limited consultation on specific problems or questions that arise in the use of the FTP site. However, CLERK does not guarantee consultation results nor warrant or represent 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. subject to operational priority needs of the CLERK, with the exception of holidays observed by the CLERK.

ARTICLE 7: SUBSCRIBER'S OBLIGATIONS

SUBSCRIBER is responsible for ensuring that only authorized users access the CLERK'S FTP site. Authorized Users for the purposes of this Agreement shall be any person or entity provided as a SUBSCRIBER'S Authorized User listed in Exhibit "A", or any person thereafter substituted for the Authorized User.

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

SUBSCRIBER is responsible for ensuring that access to the CLERK'S FTP site and use of the data obtained from the CLERK by any of its Authorized Users is conducted in a proper and legal manner. If SUBSCRIBER or any of its Authorized Users is charged with a crime arising from that access to the CLERK's FTP site or of use of data obtained from the CLERK, the CLERK shall have the right to terminate this Agreement immediately, and the SUBSCRIBER shall be solely liable for any and all illegal actions relating to the misuse of CLERK provided data. This shall not be construed as prohibiting the CLERK from pursuing any other remedy available at law or equity for such a breach.

SUBSCRIBER is responsible for immediately purging all data related to records that are subsequently expunged or sealed, or records deemed confidential by Florida Statutes, federal statutes, Florida Rules of Court, or orders/opinions from courts in Florida. This must be

accomplished by processing a file located on the FTP server that will contain all such records. See Exhibit C for additional information.

SUBSCRIBER shall upon execution of this agreement make payments as detailed in Exhibit B.

Public information is provided subject to the laws of the State of Florida.

ARTICLE 8: 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 or to SUBSCRIBER'S equipment.

SUBSCRIBER hereby relieves, releases, indemnifies, and holds harmless CLERK, and his employees of any liability for any and all damages resulting from incorrect or any other misinformation accessed or downloaded from this service, including any harm, damage, suit or claim of any person as a result of SUBSCRIBER'S use of CLERK'S data, or transfer to or sale of CLERK'S data to a third party by and through SUBSCRIBER.

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.

IN NO EVENT SHALL CLERK, HIS EMPLOYEES OR AGENTS BE LIABLE FOR ACTUAL OR 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 who is not a party to this Agreement. A gap may exist between the time paper documents are filed in the CLERK'S office and when they are indexed into the CLERK'S electronic record maintenance system. Nothing in this Agreement shall be construed as waiving the sovereign immunity of CLERK, his employees and agents.

ARTICLE 9: WARRANTIES

NEITHER THE CLERK, HIS EMPLOYEES, OR HIS AGENTS EXPRESSLY OR IMPLIEDLY WARRANT THAT THE INFORMATION OR DATA ACCESSED BY SUBSCRIBER IS ACCURATE OR CORRECT. THERE ARE NO EXPRESSED OR IMPLIED WARRANTIES IN CONNECTION WITH THIS SERVICE.

ARTICLE 10: ASSIGNMENT

Neither party will assign this Agreement without the prior written consent of the other party, which will not be withheld unreasonably.

ARTICLE 11: GOVERNING LAW

This Agreement or any dispute arising therefrom 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 Highlands County.

ARTICLE 12: 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 13: 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 or mailed postage prepaid by certified mail to the other party at the address given in Exhibit "A".

ARTICLE 14: TERMINATION

This Agreement may be terminated without cause, by either party, upon fifteen (15) days' written notice to the other party. In the event of termination, SUBSCRIBER shall remain responsible for payment for services rendered or obligations incurred until the date of termination.

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

This Agreement shall be terminated immediately if CLERK fails to receive appropriate and continued payment from SUBSCRIBER for access to the FTP site provided under this Agreement prior to the beginning of the service period for which payment is due. In the event immediate termination is required, notification to SUBSCRIBER will be via email or telephone contact followed up by written confirmation. In order for a subscriber, whose services are terminated for failure to make timely payments, to have services re-activated, the \$50.00 set-up fee will have to be paid along with six (6) month advance payment for all monthly services.

Upon termination of this Agreement, access to the FTP site to download electronic records will cease.

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

This Agreement shall be terminated by CLERK, the Custodian of the public records, immediately and without notice to SUBSCRIBER in the event CLERK determines that any safeguard to protect the contents of its public records from unauthorized remote access have been breached.

ARTICLE 15: 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.

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

Robert W. Germaine
Clerk of the Courts

Highlands County, Florida

SUBSCRIBER: _____

By: _____

Title: _____

STATE OF _____

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/she executed the same for the purposes therein stated; that he/she executed the same as His/her free act and deed and stated that the facts contained therein are true and correct to the best of his/her knowledge, information and belief.

Notary Public

EXHIBIT "A"

Contact information includes the address to which all required written correspondence between the parties shall be mailed, in accordance with Article 13.

FOR CLERK:

Robert W. Germaine, Clerk of Courts
Attention: Information Technology
590 S Commerce Ave
Sebring, FL 33870-3867

Please e-mail trackit@hcclerk.org or call 863-402-7399 for additional information or assistance with this service offering.

FOR SUBSCRIBER:

Representative Name: _____

Subscriber Organization Name: _____

Business Title: _____

Physical Address: _____

City/St/Zip: _____

Contact Phone: _____

Contact Fax: _____

Contact E-Mail: _____

Subscriber: Please list the name of the individual(s) for which you are authorizing access to the CLERK's records under the terms of your subscription agreement. The user(s) will be issued a unique user ID and password. You are responsible for ensuring that only the named user has knowledge of their individual user ID and password. You must notify the CLERK immediately upon termination of privileges of any of the users so that the CLERK can disable the user's login.

After initial payment is received, user ID(s) and password(s) will be established on our FTP (File Transfer Protocol) server, and you will be notified. This notification will include server, folder and file connection and name information necessary to pick up the files. You will be contacted via phone with your user ID and password.

SUBSCRIBER'S AUTHORIZED USER(S) & IP ADDRESS INFORMATION:

Authorized User's Name: _____

Outbound Public IP: _____

Contact E-Mail: _____

Alternate User's Name: _____

Outbound Public IP (if different): _____

Contact E-Mail: _____

EXHIBIT "B"

Fee Schedule

Please check all database types needed and enter amount due.

- 1) Criminal Data
- 2) Civil Data
- 3) Traffic Data

The fee structure for data file exports is as follows:

- 1) \$50 set-up fee
- 2) \$25 per month per database
- 3) Deposit is calculated at twice the monthly fees

Payment for the set-up fee, deposit and first month's charges are required in order to initiate this service. Your account will be charged and invoiced \$_____ monthly for this service. **Please**

sign and print this completed agreement and mail it with your initial payment of \$_____

made payable to the "Highlands County Clerk" at the address below.

Highlands County Clerk
Attention: Accounts Receivable
590 S Commerce Ave
Sebring FL 33870-3867

EXHIBIT "C"

File layouts. Records to be delivered pursuant to contract:

1. Historical downloads data for Traffic, County and Circuit Civil, County and Circuit Criminal from inception through current date as outlined in the referenced file layouts for historical data for Court Records, meaning all Index data permitted by law or Court Rule or Order more particularly described in document on FTP server.
2. Incremental daily downloads of Traffic, County and Circuit Civil, County and Circuit Criminal data as outlined in the referenced file layouts for Court Records, meaning all Index data permitted by law or Court Rule or Order more particularly described in document on FTP server.

File layout detail is located on the CLERK's website at:

http://www.hcclerk.org/img/documents/courtrecords_filelayout.pdf

File layout detail is also located on the CLERK's FTP server and will be available upon execution of this agreement and subsequent set-up of user's account.

Full extract files will be generated monthly after close of business on the last day of each month. Daily incremental files will be generated each business day. All files should be available for pick up any time after 8:00 AM.

SUBSCRIBER is responsible for immediately purging all data related to records that are subsequently expunged or sealed, or records deemed confidential by Florida Statutes, federal statutes, Florida Rules of Court, or orders/opinions from courts in Florida. This must be accomplished by processing a file located on the FTP server that will contain all such records. Purge file layout detail is located on the CLERK's FTP server and will be available upon execution of this agreement and subsequent set-up of user's account.