

# MASTER SUBSCRIBER AGREEMENT FOR MINNESOTA COURT DATA SERVICES FOR GOVERNMENTAL AGENCIES

THIS AGREEMENT is entered into by and between

City of Lake Elmo

(Government Subscriber Name / Name of Entity)

of 3800 Laverne Avenue North, Lake Elmo, MN 55042

(Government Subscriber Address)

(hereinafter "Government Subscriber") and THE STATE OF MINNESOTA

Office of State Court Administration

(Judicial District OR Office of State Court Administration)

of 25 Rev. Dr. Martin Luther King Jr. Blvd. St. Paul, Minnesota 55155

(Address)

(hereinafter "the Court").

## Recitals

The Court offers Court Data Services, as defined herein, to Minnesota Government Subscribers as authorized by the Rules of Public Access. The Court Data Services are offered to Government Subscribers as governmental units and are offered solely for certain governmental use as permitted herein. Government Subscriber desires to use Court Data Services, and the Court desires to provide the same, to assist Government Subscriber in the efficient performance of its governmental duties as required or authorized by law or court rule in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State or local court or agency or before any self-regulatory body.

Court Data Services are defined in the Definitions section of this Agreement and may involve a one-way or two-way transmission of information between the parties, some of which may include court information that is not accessible to the public pursuant to the Rules of Public Access and which may not be disclosed by Government Subscriber without the prior approval of the appropriate court or record custodian. Government Subscriber agrees herein to limit its access to and use of Court Records and Court Documents through Court Data Services to the Government Subscriber's "Legitimate Governmental Business Need" as defined herein.

The access to statewide public Court Documents is a pilot program. During the initial phase of the pilot program, the State will not charge Government Subscriber for access to Court Documents. The State may charge Government Subscriber for access to Court Documents at a later date or after the initial phase of the pilot program concludes.

## Agreement

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements contained herein, the Court and Government Subscriber agree as follows:

**1. TERM; TERMINATION; ONGOING OBLIGATIONS.**

**1.1 Term.** This Agreement shall be effective on the date executed by the Court and shall remain in effect according to its terms.

**1.2 Termination.**

1.2.1 Either party may terminate this Agreement with or without cause by giving written notice to the other party. The effective date of the termination shall be thirty (30) days after the other party's receipt of the notice of termination, unless a later date is specified in the notice. Termination of this Agreement pursuant to Clause 4.5 shall be effective immediately and may occur without prior notice to Government Subscriber.

1.2.2 The provisions of Clauses 5, 6, 8, 9, 10, 12.2, 12.3 and 15 through 24 shall survive any termination of this Agreement, as shall any other provisions that by their nature are intended or expected to survive such termination. Upon termination, the Government Subscriber shall perform the responsibilities set forth in paragraph 8.6 hereof.

**1.3 Subsequent Agreement.** This Agreement may be superseded by a subsequent agreement between the parties.

**2. DEFINITIONS.**

**2.1 "Court Data Services"** means one or more of the following services and includes any additional or modified services identified as such on the Justice Agency Resource webpage of the Minnesota Judicial Branch website, which is currently [www.courts.state.mn.us](http://www.courts.state.mn.us), or other location designated by the Court and/or its affiliates, as the same may be amended from time to time by the Court and/or its affiliates:

2.1.1 "Bulk Data Delivery" means the electronic transmission of Court Records in bulk form from the Court to the Government Subscriber, from one or more of the Court's databases and through any means of transmission, as described in applicable Policies & Notices and materials referenced therein.

2.1.2 "Court Integration Services" means pre-defined automated transmissions of i) Court Records from the Court's computer systems to Government Subscriber's computer systems; and/or ii) Government Subscriber Records from the Government Subscriber's computer systems to the Court's computer systems; on a periodic basis or as triggered by pre-determined events, as described in applicable Policies & Notices and materials referenced therein.

2.1.3 "MNCIS Login Accounts" means a digital login account created for and provided to the Government Subscriber for online access to and use of Court Records and Court Documents through the Minnesota Court Information System ("MNCIS"), as described in applicable Policies & Notices and materials referenced therein.

- 2.1.4 **"ViBES Login Accounts"** means a digital login account created for and provided to the Government Subscriber for online access to and use of Court Records through the Violations Bureau Electronic System ("ViBES"), as described in applicable Policies & Notices and materials referenced therein.
- 2.2 **"Court Data Services Databases"** means any databases and the data therein, used as a source for Court Data Services, together with any documentation related thereto, including without limitation descriptions of the format or contents of data, data schemas, and all related components.
- 2.3 **"Court Data Services Programs"** means any computer application programs, routines, transport mechanisms, and display screens used in connection with Court Data Services, together with any documentation related thereto.
- 2.4 **"Court Documents"** means electronic images of documents that are part of or included in a court file when the electronic images become available. Court Documents have a document security classification as follows:
- 2.4.1 **"Public1"** means the classification used for documents that are accessible to the general public in electronic form from any location.
- 2.4.2 **"Public2"** means the classification used for documents that are accessible to the general public in electronic form at the courthouse, but not from any other location.
- 2.4.3 **"Public2 Citation"** means the classification used for Court Payment Center documents that are accessible to the general public in electronic form at the courthouse, but not from any other location.
- 2.4.4 **"Confidential1"** means the classification used for documents that are not accessible to the general public in electronic form, but are available to Government Subscribers with legal authorization to access the case under Minn. R. Pub. Access 8, subd. 4(b).
- 2.4.5 **"Confidential2"** means the classification used for documents that are not accessible to the public in electronic form and is not accessible to Government Subscribers except as authorized by specific court rules or orders that identify the specific document to be accessed.
- 2.4.6 **"Sealed1"** means the classification used for documents that are not accessible to anyone except by court order or specific authorization.
- 2.5 **"Court Records"** means all information in any form made available by the Court and/or its affiliates to Government Subscriber for the purposes of carrying out this Agreement, including:
- 2.5.0 **"Court Case Information"** means any information in the Court Records that conveys information about a particular case or controversy, including without limitation Court Confidential Case Information and Court Documents, when available, as defined herein.

- 2.5.1 **"Court Confidential Case Information"** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access and that conveys information about a particular case or controversy.
- 2.5.2 **"Court Confidential Security and Activation Information"** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access and that explains how to use or gain access to Court Data Services, including but not limited to login account names, passwords, TCP/IP addresses, Court Data Services user manuals, Court Data Services Programs, Court Data Services Databases, and other technical information.
- 2.5.3 **"Court Confidential Information"** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access, including without limitation both i) Court Confidential Case Information; and ii) Court Confidential Security and Activation Information.
- 2.6 **"DCA"** means the District Court Administrator pursuant to Minnesota Statutes, section 485.01.
- 2.7 **"Government Subscriber Records"** means any information in any form made available by the Government Subscriber to the Court and/or its affiliates for the purposes of carrying out this Agreement.
- 2.8 **"Government Subscriber's Individual Users"** means Government Subscriber's employees or independent contractors whose use or access of Court Data Services, as well as the access, use and dissemination of Court Records and Court Documents, is necessary to effectuate the purposes of this Agreement.
- 2.9 **"Legitimate Governmental Business Need"** means a requirement, duty or obligation for the efficient performance of governmental tasks or governmental responsibilities and as required or authorized by law or court rule in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State or local court or agency or before any self-regulatory body.
- 2.10 **"Policies & Notices"** means the policies and notices published by the Court and/or its affiliates in connection with each of its Court Data Services, on a website or other location designated by the Court and/or its affiliates, as the same may be amended from time to time by the Court and/or its affiliates. Policies & Notices for each Court Data Service, hereby made part of this Agreement by reference, provide additional terms and conditions that govern Government Subscriber's use of such services, including but not limited to provisions on fees, access and use limitations, and identification of various third party applications, such as transport mechanisms; that Government Subscriber may need to procure separately to use Court Data Services.
- 2.11 **"Rules of Public Access"** means the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court, as the same may be amended from time to time, including without limitation lists or tables

published from time to time by the Court and/or the SCAO entitled "Limits on Public Access to Case Records" or "Limits on Public Access to Administrative Records," all of which by this reference are made a part of this Agreement. It is the obligation of Government Subscriber to check from time to time for updated rules, lists, and tables and be familiar with the contents thereof. It is contemplated that such rules, lists, and tables will be posted on the main website for the Court, for which the current address is [www.courts.state.mn.us](http://www.courts.state.mn.us).

2.12 "SCAO" means the State of Minnesota, State Court Administrator's Office.

2.13 "This Agreement" means this Master Subscriber Agreement for Minnesota Court Data Services for Governmental Agencies, including all Exhibits, Policies & Notices, and other documents referenced, attached to, or submitted or issued hereunder.

2.14 "Trade Secret Information of SCAO and its licensors" is defined in sections 8.1, 8.2 and 8.4 of this Agreement.

2.15 "User Acknowledgement Form" means the form attached to this document as Exhibit B, signed by Government Subscriber's Individual Users to confirm in writing that the Individual User has read and understands the requirements and restrictions in this Agreement.

3. **DATA ACCESS SERVICES PROVIDED TO GOVERNMENT AGENCY.**  
Following execution of this Agreement by both parties, Government Subscriber will be offered access to the Court Data Services described in Exhibit A, attached hereto and incorporated by reference.

4. **AUTHORIZED ACCESS, USE, AND DISSEMINATION OF COURT RECORDS AND COURT DOCUMENTS LIMITED; TRAINING; VIOLATIONS; SANCTIONS.**

4.1 **Authorized Access to Court Data Services, Court Records and Court Documents.**

4.1.1 Government Subscriber and Government Subscriber's Individual Users shall access only the Court Data Services, Court Records and Court Documents, when available, necessary for a Legitimate Governmental Business Need.

4.1.2 The access of Court Data Services, Court Records or Court Documents, when available, by Government Subscriber or Government Subscriber's Individual Users for personal or non-official use, or any use that is not a "Legitimate Governmental Business Need" as defined herein, is prohibited.

4.1.3 Government Subscriber and Government Subscriber's Individual Users shall not access or attempt to access Court Data Services, Court Records or Court Documents, when available, in any manner not set forth in this

Agreement, Policies & Notices, or other Court Data Services documentation.

**4.2 Authorized Use of Court Data Services, Court Records and Court Documents.**

4.2.1 Government Subscriber and Government Subscriber's Individual Users shall use the Court Data Services, Court Records and Court Documents, when available, accessed only for a Legitimate Governmental Business Need and according to the instructions provided in corresponding Policies & Notices or other materials.

4.2.2 The use of Court Data Services, Court Records or Court Documents, when available, by Government Subscriber or Government Subscriber's Individual Users for personal or non-official use, or any use that is not a "Legitimate Governmental Business Need" as defined herein, is prohibited.

4.2.3 Government Subscriber and Government Subscriber's Individual Users shall not use or attempt to use Court Data Services, Court Records or Court Documents, when available, in any manner not set forth in this Agreement, Policies & Notices, or other Court Data Services documentation.

**4.3 Dissemination of Court Records and Court Documents.** Government Subscriber and Government Subscriber's Individual Users shall not share the Court Records or Court Documents, when available, accessed and data therefrom with third parties and other individuals other than as needed to further a Legitimate Governmental Business Need.

**4.4 Training.** Government Subscriber shall provide Government Subscriber's Individual Users training in the access, use, and dissemination of Court Records and Court Documents.

**4.5 Violations.**

4.5.1 The access or use of Court Data Services, Court Records or Court Documents, when available, beyond what is necessary for a Legitimate Governmental Business Need by Government Subscriber or Government Subscriber's Individual Users is a violation of this Agreement. The dissemination of Court Records or Court Documents, when available, by Government Subscriber or Government Subscriber's Individual Users with third parties or other individuals beyond what is necessary for a Legitimate Governmental Business Need is a violation of this Agreement. The access, use and dissemination of Court Data Services, Court Records or Court Documents, when available, by Government Subscriber or Government Subscriber's Individual Users for personal use is a violation of this Agreement.

4.5.2 Any violation pursuant to Clause 4.5.1, or any unauthorized or attempted access, use or dissemination of Court Data Services, Court Records or

Court Documents, when available, by Government Subscriber or Government Subscriber's Individual Users shall be grounds for the Court to impose sanctions as described in Clause 4.6 and to terminate this Agreement without prior notice to Government Subscriber and/or Government Subscriber's Individual Users.

**4.6 Sanctions.**

4.6.1 Sanctions for a violation pursuant to Clause 4.5.1 may be imposed upon a Government Subscriber and/or Government Subscriber's Individual Users and may include the suspension of access or termination of access for Government Subscriber and/or Government Subscriber's Individual Users.

4.6.2 If the Court decides to terminate the access for Government Subscriber and/or Government Subscriber's Individual Users, the Court shall notify the affected party in writing. The termination shall be effective immediately. Prior notice to Government Subscriber and/or Government Subscriber's Individual Users is not required. Reinstatement of the access shall only be upon the written direction of the Court.

**5. GUARANTEES OF CONFIDENTIALITY.** Government Subscriber agrees:

5.1 To not disclose Court Confidential Information, or Court Documents, when available, to any third party except where necessary to carry out the Government Subscriber's Legitimate Governmental Business Need as defined in this Agreement.

5.2 To take all appropriate action, whether by instruction, agreement, or otherwise, to insure the protection, confidentiality and security of Court Confidential Information and Court Documents, when available, and to satisfy Government Subscriber's obligations under this Agreement.

5.3 To limit the use of and access to Court Confidential Information to Government Subscriber's Individual Users. Government Subscriber shall advise Government Subscriber's Individual Users of the restrictions upon access, use and disclosure contained in this Agreement, requiring each Government Subscriber's Individual User to acknowledge in writing that the individual has read and understands such restrictions. Government Subscriber's Individual Users shall sign the Acknowledgment Form attached in Exhibit B before accessing Court Data Services.

5.4 That, without limiting Clause 1 of this Agreement, the obligations of Government Subscriber and Government Subscriber's Individual Users with respect to the confidentiality and security of Court Confidential Information and Court Documents, when available, shall survive the termination of this Agreement and the termination of their relationship with Government Subscriber.

5.5 That, notwithstanding any federal or state law applicable to the nondisclosure obligations of Government Subscriber and Government Subscriber's Individual Users under this Agreement, such obligations of Government Subscriber and

Government Subscriber's Individual Users are founded independently on the provisions of this Agreement.

- 5.6 That, a violation of Government Subscriber's agreements contained in this Clause 5, or a violation of those same agreements by Government Subscriber's Individual Users, shall be grounds for the Court to terminate this agreement and Government Subscriber and/or Government Subscriber's Individual Users access to Court Data Services, Court Records and Court Documents, when available.

**6. APPLICABILITY TO COURT CASE INFORMATION PROVIDED UNDER LEGAL MANDATE AND PREVIOUSLY DISCLOSED COURT RECORDS AND COURT DOCUMENTS.** Subscriber acknowledges and agrees:

- 6.1 **Court Case Information Provided Under Legal Mandate.** When the Court is required to provide Government Subscriber with Court Case Information under a legal mandate and the provision of such data by the Court is not optional or otherwise left to the discretion of the Court, for example in the case of a state statutory reporting requirement, the provisions of this Agreement that govern or restrict Government Subscriber's access to and use of Court Case Information do not apply to the specific data elements identified in the legal mandate, but remain in effect with respect to all other Court Case Information provided by the Court to Government Subscriber. All other provisions of this Agreement remain in full effect, including, without limitation, provisions that govern or restrict Government Subscriber's access to and use of Court Confidential Security and Activation Information.
- 6.2 **Previously Disclosed Court Records and Court Documents.** Without limiting section 6.1, all Court Records and Court Documents disclosed to Government Subscriber prior to the effective date of this Agreement shall be subject to the provisions of this Agreement.

**7. ACKNOWLEDGMENT BY INDIVIDUALS WITH ACCESS TO COURT RECORDS UNDER THIS AGREEMENT.**

- 7.1 **Requirement to Advise Government Subscriber's Individual Users.** To effect the purposes of this Agreement, Government Subscriber shall advise each of Government Subscriber's Individual Users who are permitted to use and/or access Court Data Services, Court Records and Court Documents, when available, under this Agreement of the requirements and restrictions in this Agreement.
- 7.2 **Required Acknowledgement by Government Subscriber's Individual Users.**
- 7.2.1 Government Subscriber shall require each of Government Subscriber's Individual Users to sign the User Acknowledgement Form (Exhibit B).
- 7.2.2 The User Acknowledgement Forms of current Government Subscriber's Individual Users must be obtained prior to submitting this Agreement to the Court for approval and shall accompany the submission of this Agreement for approval.



7.2.3 Until the User Acknowledgement Form required in Clause 7.2.1 is obtained, a Government Subscriber's Individual User is prohibited from accessing, using or disseminating Court Data Services, Court Records or Court Documents, when available. The access, use or dissemination of Court Data Services, Court Records or Court Documents by a Government Subscriber's Individual User that has not completed a User Acknowledgement Form as required in Clause 7.2.1 is a violation of this Agreement.

7.2.4 Government Subscriber shall keep all such written acknowledgements on file while this Agreement is in effect and for one (1) year following the termination of this Agreement. Government Subscriber shall promptly provide the Court with access to, and copies of, such acknowledgements upon request.

7.2.5 The User Acknowledgment Forms are incorporated herein by reference.

8. **LICENSE AND PROTECTION OF PROPRIETARY RIGHTS.** During the term of this Agreement, subject to the terms and conditions hereof, the Court, with the permission of the SCAO, hereby grants to Government Subscriber a nonexclusive, nontransferable, limited license to use Court Data Services Programs and Court Data Services Databases to access or receive the Court Records and Court Documents, when available. SCAO and the Court reserve the right to make modifications to the Court Data Services, Court Data Services Programs, and Court Data Services Databases, and related materials without notice to Government Subscriber. These modifications shall be treated in all respects as their previous counterparts.

8.1 **Court Data Services Programs.** SCAO is the copyright owner and licensor of the Court Data Services Programs. The combination of ideas, procedures, processes, systems, logic, coherence and methods of operation embodied within the Court Data Services Programs, and all information contained in documentation pertaining to the Court Data Services Programs, including but not limited to manuals, user documentation, and passwords, are trade secret information of SCAO and its licensors.

8.2 **Court Data Services Databases.** SCAO is the copyright owner and licensor of the Court Data Services Databases and of all copyrightable aspects and components thereof. All specifications and information pertaining to the Court Data Services Databases and their structure, sequence and organization, including without limitation data schemas such as the Court XML Schema, are trade secret information of SCAO and its licensors.

8.3 **Marks.** Government Subscriber shall neither have nor claim any right, title, or interest in or use of any trademark used in connection with Court Data Services, including but not limited to the marks "MNCIS" and "Odyssey."

8.4 **Restrictions on Duplication, Disclosure, and Use.**

8.4.1 Trade secret information of SCAO and its licensors will be treated by Government Subscriber in the same manner as Court Confidential Information. In addition, Government Subscriber will not copy any part

of the Court Data Services Programs or Court Data Services Databases, or reverse engineer or otherwise attempt to discern the source code of the Court Data Services Programs or Court Data Services Databases, or use any trademark of SCAO or its licensors, in any way or for any purpose not specifically and expressly authorized by this Agreement. As used herein, "trade secret information of SCAO and its licensors" means any information possessed by SCAO which derives independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. "Trade secret information of SCAO and its licensors" does not, however, include information which was known to Government Subscriber prior to Government Subscriber's receipt thereof, either directly or indirectly, from SCAO or its licensors, information which is independently developed by Government Subscriber without reference to or use of information received from SCAO or its licensors, or information which would not qualify as a trade secret under Minnesota law.

8.4.2 It will not be a violation of Clause 8.4 for Government Subscriber to make up to one (1) copy of training materials and configuration documentation for each individual authorized to access, use, or configure Court Data Services, solely for its own use in connection with this Agreement.

8.4.3 Government Subscriber will take all steps reasonably necessary to protect the copyright, trade secret, and trademark rights of SCAO and its licensors and Government Subscriber will advise Government Subscriber's Individual Users who are permitted access to any of the Court Data Services Programs and Court Data Services Databases, and trade secret information of SCAO and its licensors, of the restrictions upon duplication, disclosure and use contained in this Agreement.

8.5 **Proprietary Notices.** Government Subscriber will not remove any copyright or proprietary notices included in and/or on the Court Data Services Programs or Court Data Services Databases, related documentation, or trade secret information of SCAO and its licensors, or any part thereof, made available by SCAO or the Court, and Government Subscriber will include in and/or on any copy of the Court Data Services Programs or Court Data Services Databases, or trade secret information of SCAO and its licensors and any documents pertaining thereto, the same copyright and other proprietary notices as appear on the copies made available to Government Subscriber by SCAO or the Court, except that copyright notices shall be updated and other proprietary notices added as may be appropriate.

8.6 **Title; Return.** The Court Data Services Programs and Court Data Services Databases, and related documentation, including but not limited to training and configuration material, if any, and logon account information and passwords, made available by the Court and SCAO to Government Subscriber hereunder, and all copies, including partial copies, thereof are and remain the property of the respective licensor. Within ten days of the effective date of termination of this Agreement, Government Subscriber shall either: (i) uninstall and return any and all copies of the applicable Court Data Services Programs and Court Data

Services Databases, and related documentation, including but not limited to training and configuration materials, if any, and logon account information; or (2) destroy the same and certify in writing to the Court that the same have been destroyed.

- 8.7 **Reasonable Security Measures.** The Court may add reasonable security measures including, but not limited to, a time-out feature, to Court Data Services Programs.
9. **INJUNCTIVE RELIEF; LIABILITY.** Government Subscriber acknowledges that the Court, SCAO, SCAO's licensors, and DCA will be irreparably harmed if Government Subscriber's obligations under this Agreement are not specifically enforced and that the Court, SCAO, SCAO's licensors, and DCA would not have an adequate remedy at law in the event of an actual or threatened violation by Government Subscriber of its obligations. Therefore, Government Subscriber agrees that the Court, SCAO, SCAO's licensors, and DCA shall be entitled to an injunction or any appropriate decree of specific performance for any actual or threatened violations or breaches by Government Subscriber or Government Subscriber's Individual Users without the necessity of the Court, SCAO, SCAO's licensors, or DCA showing actual damages or that monetary damages would not afford an adequate remedy. Unless Government Subscriber is an office, officer, agency, department, division, or bureau of the state of Minnesota, Government Subscriber shall be liable to the Court, SCAO, SCAO's licensors, and DCA for reasonable attorney's fees incurred by the Court, SCAO, SCAO's licensors, and DCA in obtaining any relief pursuant to this Agreement.
10. **COMPROMISE LIABILITY.** Government Subscriber and the Court agree that, except as otherwise expressly provided herein, each party will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof. Liability shall be governed by applicable law. Without limiting the foregoing, liability of the Court and any Government Subscriber that is an office, officer, agency, department, division, or bureau of the state of Minnesota shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, section 3.376, and other applicable law. Without limiting the foregoing, if Government Subscriber is a political subdivision of the state of Minnesota, liability of the Subscriber shall be governed by the provisions of Minn. Stat. Ch. 466 (Tort Liability, Political Subdivisions) or other applicable law.
11. **AVAILABILITY.** Specific terms of availability shall be established by the Court and set forth in the Policies & Notices. The Court reserves the right to terminate this Agreement immediately and/or temporarily suspend Government Subscriber's approved Court Data Services in the event the capacity of any host computer system or legislative appropriation of funds is determined solely by the Court to be insufficient to meet the computer needs of the courts served by the host computer system. Monthly fees, if any, shall be prorated only for periods of suspension or upon termination of this Agreement.
12. **ADDITIONAL USER OBLIGATIONS.** The obligations of the Government Subscriber set forth in this section are in addition to the other obligations of the Government Subscriber set forth elsewhere in this Agreement.
- 12.1 **Judicial Policy Statement.** Government Subscriber agrees to comply with all policies identified in applicable Policies & Notices. Upon failure of the

Government Subscriber to comply with such policies, the Court shall have the option of immediately suspending or terminating the Government Subscriber's Court Data Services on a temporary basis and/or immediately terminating this Agreement.

**12.2 Access and Use; Log.**

12.2.1 Government Subscriber shall be responsible for all access to and use of Court Data Services, Court Records, and Court Documents by Government Subscriber's Individual Users or by means of Government Subscriber's equipment or passwords, whether or not Government Subscriber has knowledge of or authorizes such access and use.

12.2.2 Government Subscriber shall also maintain a log identifying all persons to whom Government Subscriber has disclosed its Court Confidential Security and Activation Information, such as user ID(s) and password(s), including the date of such disclosure. Government Subscriber shall maintain such logs while this Agreement is in effect and for a period of one (1) year following termination of this Agreement. Government Subscriber shall promptly provide the Court with access to, and copies of, such logs upon request.

12.2.3 The Court may conduct audits of Government Subscriber's logs and use of Court Data Services, Court Records, and Court Documents from time to time. Upon Government Subscriber's failure to maintain such logs, to maintain accurate logs, or to promptly provide access by the Court to such logs, the Court may terminate this Agreement without prior notice to Government Subscriber.

**12.3. Personnel.** Government Subscriber agrees to investigate, at the request of the Court, allegations of misconduct pertaining to Government Subscriber's Individual Users having access to or use of Court Data Services, Court Confidential Information, or trade secret information of the SCAO and its licensors where such persons violate the provisions of this Agreement, Policies & Notices, Judicial Branch policies, or other security requirements or laws regulating access to the Court Records. Government Subscriber agrees to notify the Court of the results of such investigation.

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**13. FEES; INVOICES; FEES DURING PILOT PROGRAM.**

**13.1 Fees and Invoices.** Applicable monthly fees commence ten (10) days after notice of the Court's approval of this Agreement or upon the initial Government Subscriber transaction as defined in the Policies & Notices, whichever occurs earlier. When fees apply, the State shall invoice Government Subscriber on a monthly basis for charges incurred in the preceding month and applicable taxes, if any, and payment of all amounts shall be due upon receipt of invoice. If all amounts are not paid within thirty (30) days of the date of the invoice, the Court may immediately cancel this Agreement without notice to Government Subscriber and pursue all available legal remedies. Government Subscriber certifies that funds have been appropriated for the payment of charges under this Agreement for the current fiscal year, if applicable.

- 13.2 Fees During Pilot Program.** During the initial phase of the access to Court Documents pilot program, the State will not charge Government Subscriber for access to Court Documents. The State may charge Government Subscriber for access to Court Documents at a later date.
- 14. MODIFICATION OF FEES.** SCAO may modify the fees by amending the Policies & Notices as provided herein, and the modified fees shall be effective on the date specified in the Policies & Notices, which shall not be less than thirty (30) days from the publication of the Policies & Notices. Government Subscriber shall have the option of accepting such changes or terminating this Agreement as provided in section 1 hereof.
- 15. WARRANTY DISCLAIMERS.**
- 15.1 WARRANTY EXCLUSIONS.** EXCEPT AS SPECIFICALLY AND EXPRESSLY PROVIDED HEREIN, COURT, SCAO, SCAO'S LICENSORS, AND DCA MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, NOR ARE ANY WARRANTIES TO BE IMPLIED, WITH RESPECT TO THE INFORMATION, SERVICES OR COMPUTER PROGRAMS MADE AVAILABLE UNDER THIS AGREEMENT.
- 15.2 ACCURACY, COMPLETENESS AND AVAILABILITY OF INFORMATION.** WITHOUT LIMITING THE GENERALITY OF THE PRECEDING PARAGRAPH, COURT, SCAO, SCAO'S LICENSORS, AND DCA MAKE NO WARRANTIES AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED IN THE COURT RECORDS. THE COURT IS NOT LIABLE FOR ANY COURT RECORDS OR COURT DOCUMENTS NOT AVAILABLE THROUGH COURT DATA SERVICES DUE TO COMPUTER OR NETWORK MALFUNCTION, MISTAKE OR USER ERROR.
- 16. RELATIONSHIP OF THE PARTIES.** Government Subscriber is an independent contractor and shall not be deemed for any purpose to be an employee, partner, agent or franchisee of the Court, SCAO, SCAO'S licensors, or DCA. Neither Government Subscriber nor the Court, SCAO, SCAO'S licensors, or DCA shall have the right nor the authority to assume, create or incur any liability or obligation of any kind, express or implied, against or in the name of or on behalf of the other.
- 17. NOTICE.** Except as provided in Clause 2 regarding notices of or modifications to Court Data Services and Policies & Notices, and in Clauses 13 and 14 regarding notices of or modification of fees, any notice to Court or Government Subscriber hereunder shall be deemed to have been received when personally delivered in writing or seventy-two (72) hours after it has been deposited in the United States mail, first class, proper postage prepaid, addressed to the party to whom it is intended at the address set forth on page one of this Agreement or at such other address of which notice has been given in accordance herewith.
- 18. NON-WAIVER.** The failure by either Party at any time to enforce any of the provisions of this Agreement or any right or remedy available hereunder or at law or in equity, or to

exercise any option herein provided, shall not constitute a waiver of such provision, remedy or option or in any way affect the validity of this Agreement. The waiver of any default by either Party shall not be deemed a continuing waiver, but shall apply solely to the instance to which such waiver is directed.

19. **FORCE MAJEURE.** Neither party shall be responsible for failure or delay in the performance of their respective obligations hereunder caused by acts beyond their reasonable control.
20. **SEVERABILITY.** Every provision of this Agreement shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this Agreement so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision shall be deemed severed from this Agreement, and all other provisions shall remain in full force and effect.
21. **ASSIGNMENT AND BINDING EFFECT.** Except as otherwise expressly permitted herein, neither Party may assign, delegate and/or otherwise transfer this Agreement or any of its rights or obligations hereunder without the prior written consent of the other. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, including any corporation or other legal entity into, by or with which Government Subscriber may be merged, acquired or consolidated or which may purchase the entire assets of Government Subscriber.
22. **GOVERNING LAW.** This Agreement shall in all respects be governed by and interpreted, construed and enforced in accordance with the laws of the United States and of the State of Minnesota.
23. **VENUE AND JURISDICTION.** Any action arising out of or relating to this Agreement, its performance, enforcement or breach will be venued in a state or federal court situated within the State of Minnesota. Government Subscriber hereby irrevocably consents and submits itself to the personal jurisdiction of said courts for that purpose.
24. **INTEGRATION.** This Agreement sets forth the entire Agreement and understanding between the Parties regarding the subject matter hereof and supersedes any prior representations, statements, proposals, negotiations, discussions, understandings, or agreements regarding the same subject matter. Except as otherwise expressly provided in Clause 2 regarding Court Data Services and Policies & Notices, and in Clauses 13 and 14 regarding fees, any amendments or modifications to this Agreement shall be in writing signed by both Parties.
25. **MINNESOTA DATA PRACTICES ACT APPLICABILITY.** If Government Subscriber is a Minnesota Government entity that is subject to the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, Government Subscriber acknowledges and agrees that: (1) the Court is not subject to Minn. Stat. Ch. 13 (*see* section 13.90) but is subject to the Rules of Public Access and other rules promulgated by the Minnesota Supreme Court; (2) Minn. Stat. section 13.03, subdivision 4(e) requires that Government Subscriber comply with the Rules of Public Access and other rules promulgated by the Minnesota Supreme Court for access to Court Records provided under this Agreement; (3) the use of and access to Court Records may be restricted by rules promulgated by the Minnesota Supreme Court, applicable state statute or federal

law; and (4) these applicable restrictions must be followed in the appropriate circumstances.

IN WITNESS WHEREOF, the Parties have, by their duly authorized officers, executed this Agreement in duplicate, intending to be bound thereby.

1. GOVERNMENT SUBSCRIBER  
Government Subscriber must attach documented verification of authority to sign on behalf of and bind the entity, such a council resolution, board authority or legally binding decision maker and attach same as Exhibit C.

2. THE COURT

By \_\_\_\_\_  
(SIGNATURE)

Date \_\_\_\_\_

Name (typed) Dean Zuleger

Title City Administrator

Office \_\_\_\_\_

By \_\_\_\_\_  
(SIGNATURE)

Date \_\_\_\_\_

Name (typed) Mark Moore

Title CIO/Director

Information Technology  
Division of State Court  
Administration

Office \_\_\_\_\_