



Software Maintenance Agreement

Version 2.0



This AGREEMENT ("Agreement"), made and entered into this 13 day of March, 2025, into by and between **FACC Services Group, LLC, d/b/a/ Civitek ("Civitek")**, a Florida limited liability company located at 3544 Maclay Blvd. S., Tallahassee, FL 32312, and **Honorable Trey Hightower**, as Clerk of Court, Jefferson County, Florida with its principal offices at 1 Courthouse Circle, Monticello, FL, 32344 (hereinafter "Clerk"), provides as follows.

RECITALS

WHEREAS Civitek currently offers to the Clerks of the Circuit Courts in Florida certain computer software applications and programs, documentation, and related written materials for such applications and programs to assist the Clerks of the Circuit Courts in conducting their court case maintenance functions; and

WHEREAS Civitek currently offers to the Clerks of the Circuit Courts in Florida certain computer software applications and programs, documentation, and related written materials for such applications and programs to support their functions as recording of the Official Records pursuant to s. 28.222, Fla. Stat.; and

WHEREAS Civitek has developed and will continue to develop and will maintain the computer programs, documentation, and related written materials to the CLERICUS software applications specifically listed in section 4 below, and Clerk desires to acquire a right to make use of such programs and materials under the terms and conditions set forth herein; and

WHEREAS Civitek does and will offer other Clerks of the Court in Florida software maintenance to support use of the CLERICUS program in their respective counties.

AGREEMENT

NOW THEREFORE, for and in consideration of the above recitals (incorporated herein as material parts of this Agreement) and the mutual covenant and agreements set forth herein, the parties agree as follows:

1. Definitions.

- (a) "Software" means Civitek's CLERICUS programs, including object code as well as associated procedural code, files, and database schema required to compile the program.
- (b) "Documentation" means all textual material relating to Software, including flow charts, operating instructions, and related technical information, user manuals and all related documentation.
- (c) "Other User Counties" means all other Clerks of the Court of the various Florida counties which have entered into a licensing and maintenance agreement for the use of the Software and Documentation.
- (d) "Derivative Works and Enhancements" means a work or enhancement created by Civitek based on or incorporating the Software, Documentation, or any associated data files, including but not limited to translations, abridgements, condensations, improvements, updates, enhancements, or



any other from in which the Software and/or Documentation may be recast, transformed, adapted, or revised.

- (e) "Court Case Maintenance" refers to the statutory duties performed by the Clerk of the Circuit Court to support the operation of the court system.
- (f) "Official Records Indexing" refers to the statutory duties performed by the Clerk of the Circuit Court to support county recording operations.

2. Term.

- (a) Agreement Term. The maintenance term of this Agreement shall be effective on the date shown above and shall remain in effect for a consecutive three (3) year period.
- (b) Automatic Renewals. Upon expiration of the initial three (3) year term, this Agreement shall automatically renew annually for subsequent one (1) year terms unless terminated in accordance with the provisions below.

3. Termination.

- (a) Termination at Will. During the initial term or any subsequent term of this Agreement, either party may terminate the term of this Agreement, provided the terminating party provides written notice to the other party of the intent to terminate no less than ninety (90) days prior to the next termination/renewal date.
- (b) Termination for Cause. Either party shall have the right to terminate this Agreement for cause at any time (not subject to the 90-day window for Termination at Will), 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 ninety (90) days to remedy or cure such grounds for termination. Any uncured event of cause shall be an Event of Default.

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

- (i) Modifications or enhancements other than as agreed by the parties.
- (ii) 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 provided in Section 4.
- (iii) Fraud, misappropriation, embezzlement, malfeasance, significant misfeasance or illegal conduct by one party, its officers or directors.
- (iv) A breach of the Confidentiality provisions as contained herein.



4. **Scope of Work.** The purpose of this Agreement is to provide software maintenance for the CLERICUS applications used by the Clerk. This Agreement covers only those CLERICUS applications checked below:

CHECK EACH CLERICUS APPLICATION COVERED UNDER THIS AGREEMENT

(X) Court Case Maintenance Application

(X) Official Records Indexing Application

(a) Covered Maintenance.

- (i) General. Civitek (or a subcontractor determined by the Services Group) shall provide maintenance and support of the Software. The Clerk acknowledges it is in their best interest for there to be a single entity providing maintenance and support to the Software, as the Software delivered to the Clerk is part of a multi-county system in which uniformity of all participating Clerk offices is desirable. Civitek will provide to the Clerk all required covered maintenance services which include

- a) Legislative and Supreme Court mandated software changes.
- b) Application upgrades including defect fixes, modifications and enhancements as determined by the CLERICUS User Group and configuration control board.
- c) Service Desk support during normal business hours.
- d) Training materials.
- e) Application manuals.
- f) Advisories and bulletins.

Covered Maintenance Services do not include the costs of accessories and expendable supplies necessary to operate the software such as storage devices, optical disks, paper, etc.

- (ii) Upgrade Maintenance Services. As part of this Agreement, the Clerk shall have the right to receive from Civitek, without additional service charge, all upgrade maintenance services. Upgrade Maintenance services include the right to receive, during the term of this agreement (except as otherwise provided), all enhancements to the software, including all related update releases and associated documentation. The right to receive upgrade maintenance services does not include the labor associated with installation services of any application release or enhancement and or any training services requested and also does not include any new product, all of which are separately chargeable by Civitek. In addition, Clerk offices who choose to perform their own installation or upgrade of the Civitek applications are responsible for ensuring proper completion. Technical support for troubleshooting issues arising from self-performed installations or upgrades is not included in standard maintenance and will be billed at the current hourly support rate.
- (iii) Support of Outdated Software. Support by Civitek of previous versions of software will cease ninety (90) days following the availability of a new enhancement release. Failure of



the Clerk to install new software enhancement releases or any other correction or improvement provided by Civitek shall relieve Civitek of the responsibility for the improper operation or any malfunction of the software as modified by any subsequent correction or improvement and Civitek shall be released thereafter from its obligation to support the software provided herein. After failure to install for an excess of ninety (90) days, once the Clerk upgrades to the current supported application version, Civitek will reinstate covered maintenance services as described hereunder.

- (iv) Platform Support Responsibility: Clerk acknowledges that Microsoft maintains end-of-support and retirement dates for Windows Server, SQL Server, Windows, .NET Framework, and other platform services. The CLERICUS team aligns its development efforts with mainstream supported platforms and strongly recommends that the Clerk upgrade any relevant products to remain current with supported versions.

Civitek does not guarantee that the CLERICUS software will function correctly or efficiently on platform versions that have reached end-of-support status as defined by Microsoft. The Clerk assumes responsibility for maintaining an environment that meets the platform requirements necessary for optimal performance and supportability of the CLERICUS software.

- (v) Exclusions. Covered maintenance services do not include any of the following: maintenance outside the contract period; maintenance required by operator error or improper operation or use of the software; modifications, repairs or additions to the software performed by persons other than Civitek; causes beyond the reasonable control of Civitek; software removed or detached from the system or modifications to the software or to any of the functional specifications requested by the Clerk; installation services and training services including travel costs, including without limitation mileage, air fare, meals, lodging and similar items unless otherwise expressly stated.
- (b) Clerk acknowledges that Civitek has reserved the exclusive right to distribute Software and Documentation to others.
- (c) Clerk shall not modify the Software in any way during the term of this Agreement without the express prior written consent of Civitek.

5. Compensation/Payment Schedule.

- (a) Compensation: The Total payment to Civitek for the software maintenance described herein shall be **\$24,000.00** payable annually. Maintenance includes **\$22,000.00** for Court Case Maintenance Application and **\$2,000.00** for Official Records Indexing Application.
- (b) Clerk has the option to set up a specific payment schedule with financing provided by Civitek in accordance with terms acceptable to Civitek. This specific payment schedule, if needed, must be executed by Clerk and Civitek and will be attached to and become part of this Agreement. Unless a separate specific payment schedule is agreed to by the Clerk and Civitek, payment shall be due annually on October 1st.



- (c) The Clerk understands and agrees to annual increases to the Fees described above for maintenance and support based on the following: The increases will be based on a September CPI + 1%, but no less than 3.0% each year to cover the costs of inflation.

6. Warranties of Civitek.

- (a) Civitek represents and warrants to Clerk that Civitek is the owner of the Software and Documentation and has the right to grant the use granted herein, and that to the knowledge of the Civitek, the Software and Documentation do not infringe any copyright or other proprietary rights of any third party.
- (b) Civitek represents and warrants that no claim, whether or not embodied in an action past or present, for infringement of any patent, copyright, trademark, or other intellectual property right, has been made or is pending against Civitek in connection with the Software or Documentation.
- (c) The delivery method or media on which the Software is provided shall be free of defects in material and workmanship.
- (d) Provided the Software has not been modified in any way by any person or entity other than by Civitek or the authorized representative of Civitek, the Software shall possess all functions and features as described in the specifications.
- (e) Provided the Software has not been modified in any way by any person or entity other than by Civitek or the authorized representative of Civitek, the Software shall perform in accordance with the specifications, training materials, Documentation, and the performance standards.

7. Confidentiality.

In connection with the services performed hereunder by Civitek, certain confidential and proprietary information regarding Civitek and/or its affiliates and the Software and Documentation may be disclosed to Clerk. The parties desire to establish the terms under which Clerk may disclose certain confidential and proprietary information. Therefore, the parties agree as follows:

- (a) Confidential Information. Confidential Information shall mean:
 - (i) 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;
 - (ii) 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.



(iii) 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; and

(iv) To the extent not specifically defined above, any information or data as defined in sections 688.002(4), 812.081, or 119.071(1)(f), Florida Statutes.

If the Confidential Information is provided in a tangible form, Civitek shall mark it "Proprietary" or "Confidential." If the Confidential Information is provided orally, Civitek shall identify it as being proprietary or confidential. In the event Civitek inadvertently fails to identify any tangible or oral information it provides to Clerk, 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) Confidentiality Obligations. Except as expressly authorized by the prior written consent of Civitek, Clerk shall:

- (i) Limit access to any Confidential Information received by it to its authorized employees or representatives ("Representatives") who have a need-to-know in connection with the services provided hereunder and only for use in connection therewith; and
- (ii) Advise its Representatives to have access to the Confidential Information of the proprietary nature thereof and of the obligations set forth in this Confidentiality Agreement; and
- (iii) Take appropriate action by instruction or agreement with its Representatives having access to Confidential Information to fulfill its obligations under this Confidentiality Agreement; and
- (iv) 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
- (v) Use all Confidential Information received by it solely for purposes of the services provided hereunder and for no other purpose whatsoever; and
- (vi) Except as may otherwise be provided above, do not disclose any Confidential Information received by it to third parties.

(c) Exceptions to Confidentiality. The obligations of confidentiality and restriction on use in Section 6.2 shall not apply to any Confidential Information that Clerk proves:

- (i) Was in the public domain prior to the date of this Agreement or subsequently came into the public domain through no fault of Clerk; or



- (ii) Was lawfully received by Clerk from a third party free of any obligation of confidence to such third party; or
 - (iii) 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 Civitek as much advance notice of the possibility of such disclosure as practical so that Civitek may attempt to stop such disclosure or obtain a protective order concerning such disclosure.
- (d) Rights in Confidential Information. 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.
- (e) Term. This confidentiality provision shall remain in effect for a period of three (3) years after termination of this Agreement unless sooner terminated in writing by Civitek. 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) Equitable Relief. 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.

8. Indemnification.

- (a) Civitek shall indemnify, defend and hold harmless the Clerk, its employees, agents, and affiliates from and against any and all claims, actions, liabilities, losses, damage, court costs, expenses and attorneys' fees arising out of or in connection with:
 - (i) The performance of installation, support and maintenance obligations for an Other User County; or
 - (ii) Derivative Works, Enhancements or Maintenance Modifications.
- (b) Survival. Civitek's obligation to indemnify the Clerk hereunder shall survive the termination of this Agreement unless this Agreement is terminated for cause by Civitek.

9. Miscellaneous.

- (a) Entire Agreement. The provisions herein constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements, oral or written, and all other communications relating to the subject matter hereof. No amendment



or modification of this Agreement shall be effective unless set forth in a writing executed by both parties. This Agreement may be executed in counterparts.

- (b) No Assignment. Neither party shall sell, transfer, and assign this Agreement or any right or obligation hereunder without the prior written consent of the other party.
- (c) Force Majeure. With the exception of the Clerk's failure to timely make payments to Civitek, neither party shall be in breach hereof for failure to fulfill its obligations hereunder if such failure is due to a natural calamity, act of government, or similar cause beyond the control of such party.
- (d) Governing Law. The substantive laws of the State of Florida shall govern the validity, construction, and performance of this Agreement. The parties agree that the proper venue for any legal action arising out of this Agreement shall be in a court of competent jurisdiction located in Leon County, Florida.
- (e) Compliance with Laws and Regulations. Civitek and Clerk shall comply with all applicable laws, rules, and regulations of competent public authorities relating to the performance of this Agreement and shall procure all licenses and pay all fees and other charges required thereby.
- (f) Independent Contractors. The parties are not agents of each other as a result of or in any transaction under or relating to this Agreement and shall not enter into nor incur any obligations on behalf of one another. The relationship of the parties hereto shall in all respects be that of independent contractors.
- (g) Notices. All notices and other communications required or permitted hereunder shall be in writing and delivered in person, by courier, facsimile, email or U.S. Mail to the parties at the addresses set forth above. Notice shall be effective when received.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed below by their duly authorized representatives:

Civitek

By: Melissa Bennefield

Name: Melissa Bennefield

Title: Chief Operating Officer

Date: 3/18/2025

Clerk of the Court, Jefferson County, Florida

By: Trey Hightower

Name: Honorable Trey Hightower

Title: Clerk of the Court

Date: 3/13/25



**AFFIDAVIT OF COMPLIANCE
WITH SECTION 787.06(13), FLA. STAT.**

Brian Machek, on July 1, 2024, under penalties of perjury and pursuant to section 787.06(13), Florida Statutes, declares as follows:

1. I am over eighteen years of age and have personal knowledge of the matters set forth herein.
2. I am the Chief Financial Officer of FACC Services Group, LLC, a/k/a Civitek.
3. Civitek does not use coercion for labor or services as defined in section 787.06, Florida Statutes.

Under penalties of perjury, I declare that I have read the foregoing and that the facts stated in it are true. See §92.525, Fla. Stat.

s/ Brian Machek

Brian Machek

Chief Financial Officer

FACC Services Group, LLC,

a/k/a Civitek