

ELECTRONIC RECORDING MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is between Mary Louise Nicholson, Tarrant County Clerk, (“**CLERK**”), and _____ (“**SUBSCRIBER**”) with offices at _____.

CLERK desires to offer the recording of real property documents by electronic means providing for the receiving and transmitting of documents electronically in substitution for conventional paper-based documents. **CLERK** also desires to assure that transactions are not legally invalid or unenforceable as a result of the use of available electronic technologies, to the mutual benefit of the parties to the transactions.

For purposes of this Memorandum of Understanding (“MOU”), *Electronic Recording* is defined as the electronically based submission of documents from **SUBSCRIBER** to **CLERK** and electronically based receipt of confirmation of recording from **CLERK** to **SUBSCRIBER** based on the level of automation and structure of the transaction. *Electronic Recording* is characterized by four levels of automation and structure as follows:

Level 1 – Submitting organizations transmit scanned image copies of ink signed documents to **CLERK**. **CLERK** completes the recording process in the same way as paper using the imaged copy as the source document. An electronic recording endorsement is returned to the organization in the form of a label or printing process in order for the submitting organization to append that information to the original paper document.

Level 2 – Submitting organizations transmit scanned images of ink signed documents along with electronic indexing information to **CLERK**. **CLERK** performs an electronic examination of the imaged documents and indexing data, and then completes the recording process using the imaged copy and electronic indexing information. The electronic version of the recorded document is returned electronically to the submitting organization along with the electronic recording data.

Level 3 – Submitting organizations transmit documents which have been created, signed, and notarized electronically along with the electronic indexing information. Electronic signatures must comply with the UETA and E-Sign specifications. **CLERK** performs an electronic examination of the electronic documents and indexing information then completes the recording process using the electronic documents. The electronic version of the recorded documents and electronic recording data is returned to the submitting organization.

Program Eligibility

State Licensed Attorneys, Mortgage Bankers, Title Insurance Companies, and other trusted entities may, directly or through a trusted third-party electronic recording service provider, submit real property records for Electronic Recording. Electronic Recording mandates a close working relationship as well as mutual trust between the **CLERK**, **SUBSCRIBER**, and any third party electronic recording service provider. All parties to the Electronic Recording transaction desire to operate and maintain a secure recording system that safeguards parties to recordation from deceit, fraud, and forgery. This Memorandum of Understanding outlines the procedures and rules for the trusted relationship between the parties involved in Electronic Recording in order to facilitate a safe and secure Electronic Recording relationship.

CLERK Requirements

The Electronic Recording Program of **CLERK** is defined by the requirements attached to this Memorandum of Understanding.

Attachment A defines the technical specifications including format, levels of recording supported, transmission protocols, and security requirements of the electronic records required by **CLERK**. **SUBSCRIBER** agrees to provide the transmission to **CLERK** following the specifications. **SUBSCRIBER** understands that the specifications may change from time to time. In the event changes to the specifications are required, **CLERK** will provide a written notice to **SUBSCRIBER** within a reasonable timeframe.

Attachment B contains the document and indexing specifications for the Electronic Recording Program. For each document, a **CLERK** specific document code is provided along with the required indexing information. Any **CLERK** specific editing rules will also be described in this attachment.

Attachment C contains the processing schedules and hours of operation for the Electronic Recording Program. No party shall be liable for any failure to perform processing of the transactions and documents where such failure results from any act of Nature or other cause beyond the party's reasonable control (including, without limitation, any mechanical, electronic, or communications failure which prevents the parties from transmitting or receiving the electronic recording transactions) or if the **CLERK** system causes delays or power failures that interfere with the normal course of business. By the agreement **CLERK** is assuming no contractual liability whatsoever for any failure to record any document, delay in recording any document, or for the quality or content or lack thereof of any document presented for recording.

Attachment D provides the payment options supported for the Electronic Recording Program.

CLERK Responsibilities

CLERK shall attempt to protect the integrity of the Recordation process through ongoing monitoring of documents received and recorded through Electronic Recording means.

CLERK shall work with third party electronic service provider and **SUBSCRIBER** to install, configure, and administer necessary infrastructure components to facilitate Electronic Recording.

CLERK shall test and maintain Electronic Recording software and hardware required to operate the Electronic Recording capability. **CLERK, however, shall be held harmless and not liable for any damages resulting from software or equipment failure and assumes no contractual liability for any damages whatsoever via any part of this document.**

CLERK shall apply the level of diligence in handling documents submitted electronically that she would apply to documents submitted manually.

SUBSCRIBER Responsibilities

SUBSCRIBER shall work to ensure that all security measures and credentials implemented are protected. **SUBSCRIBER** assumes all responsibility for documents submitted through unique credentials provided to **SUBSCRIBER** for the purposes of engaging in Electronic Recording.

SUBSCRIBER shall be diligent in ensuring that documents submitted for Electronic Recording have been checked before submission, for errors, omissions, scanning defects, illegible areas, and other deformities that would impact the validity of the document.

SUBSCRIBER acknowledges that Electronic Recording permits them to prepare, sign, and/or transmit in electronic formats documents and business records, and that the document or records shall be considered the "original" record of the transaction in substitution for, and with the same intended effect as paper documents, and that any digital or electronic signature has the same intended effect of paper documents bearing handwritten signatures.

By use of electronic or digital certificates to sign documents, **SUBSCRIBER** intends to be bound by those electronic signatures affixed to any documents and such electronic signature shall have the same legal effect as if that signature was manually affixed to a paper version of the document.

By use of the digital certificates to seal electronic files containing images of original documents or documents bearing manual signatures, **SUBSCRIBER** shall recognize such sealed images for all purposes as fully as the original paper documents and shall be responsible for any failure by Users to comply with quality control procedures for assuring the accuracy and completeness of the electronic files.

The **SUBSCRIBER** and/or its employees attest to the accuracy and completeness of the electronic records and acknowledge responsibility for the content of the documents submitted through the Electronic Recording Program. **Should a dispute or legal action arise concerning an electronic transaction, CLERK will be held harmless and not liable for any damages.**

SUBSCRIBER is responsible for accepting receipt of documents recorded by **CLERK** and for ensuring that the source of the receipt is known to be **CLERK**. **SUBSCRIBER** is responsible for forwarding these documents to **CLERK** ensuring that the source of the documents is known to be the **SUBSCRIBER** who has been authenticated and that the documents to be recorded pass from **SUBSCRIBER** to **CLERK** without modification. **SUBSCRIBER** must maintain an audit trail of all activity available to **CLERK** upon request to resolve issues or investigate potential fraudulent activity. The audit trail must contain, at a minimum, submitter ID, submitted content at point of receipt from **SUBSCRIBER**, submitted content at point of delivery to **CLERK**, date and time submitted, size, and checksum.

SUBSCRIBER is responsible for supporting any technical issues associated with Electronic Recording. **SUBSCRIBER** shall work, in good faith, with third party electronic service provider and **CLERK** to resolve issue with the Electronic Recording process.

SUBSCRIBER shall provide end user support to both third party electronic recording service provider and **CLERK** through which problems or issues can be reported and addressed. In the event that problem is determined to be with the Electronic Recording software and not the infrastructure provided, the **SUBSCRIBER** shall work to resolve issues with **CLERK** and third party electronic recording service provider.

SUBSCRIBER is solely responsible for any and all costs of the system or services that enable **SUBSCRIBER** to meet the Electronic Recording Program requirements.

SUBSCRIBER is responsible for coordinating all technical problems and issues through **CLERK**.

General Understandings

CLERK will not incur any liability for the information electronically transmitted by the **SUBSCRIBER** to **CLERK**. **CLERK** will incur any liability for any breach of security, fraud, or deceit as a result of Electronic Recording.

Neither **CLERK** nor **SUBSCRIBER** shall be liable for any special, incidental, exemplary, or consequential damages arising from or as a result of any delay, omission, or error in the Electronic Recording transmission or receipt.

CLERK and **SUBSCRIBER** will attempt in good faith to resolve any controversy or claim arising out of or relating to Electronic Recording through either negotiation or mediation prior to initiating litigation.

Either party may terminate this Memorandum of Understanding for any reason by providing 30 days written notice of termination.

CLERK and **SUBSCRIBER** acknowledge that the Electronic Recording process is an emerging technology and that State and National standards will continue to evolve.

Agreed and Accepted:

TARRANT COUNTY CLERK

SUBSCRIBER

Mary Louise Nicholson, Tarrant County Clerk

Subscriber Representative

Date: _____

Date: _____

APPROVED AS TO FORM (By law, the Criminal District Attorney's Office may only approve contracts for its clients. We reviewed this document as to form from our client's legal perspective. Other parties may not rely on this approval. Instead, those parties should see review from independent counsel.)

Tarrant County Criminal District Attorney's Office

Date: _____

Attachment A

Technical Specifications

Format of the Transmitted File

Property Records Industry Association (PRIA) file format standard will be used. Images will be in multi-page Group IV TIFF format. **CUSTOMER** can work with third party electronic recording service provider and **COUNTY** to provide additional fields (extensions) to the current PRIA standard.

Communications Protocol and Options

TCP/IP, HTTP, and HTTPS

Security Framework

Encryption will be 128 bit file and image encryption. SSL and user login/password will be employed. User passwords will be changed on a quarterly basis.

Returned File Format

PRIA file format standard will be used. Images will be in multi-page Group IV TIFF format.

Levels of Electronic Recording Supported

Level 2 and 3

Electronic Signatures and Use of Digital Certificates

The use of Electronic or Digital signatures, notary seals, and notary signatures are supported but are not required. **SUBSCRIBER** must work with the **CLERK** to accommodate their use. Digitized signatures, notary signatures, and notary seals are immediately acceptable.

Imaging Standard

Minimum 2" margin at top page

Documents will be scanned at a minimum of 300dpi.

Documents will be scanned in portrait mode.

Plats will be scanned at 300dpi, or higher.

Plats will be scanned in landscape mode.

All images will be captured as multi-page GROUP IV TIFF images.

Images will be legible. Legible in this instance means a clear, readable image – including signature and notary seals – and in which all portions of each page are captured.

Document font size must meet PRIA minimum standards.

Attachment B

Documents and Indexing Specifications

Documents shall be accepted for filing according to the provision of Texas law and PRIA standards.

Notary Requirements per Document

It is the responsibility of the **SUBSCRIBER** to confirm that original notary signatures and seals are present on all documents that require them.

Inked notary seals of a scannable color are strongly recommended, in place of embossed notary seals which require “darkening” by the **SUBSCRIBER** prior to submittal.

Eligible Document Batches

In no event will electronic document batches exceed 25 documents in any batch.

Indexing Requirement

Company Name must be indexed in the Returnee field.

Notary Name must be indexed in the Notary field.

Rejection Comments back to Customer

Any documents rejected will have a comment/reason field completed. These comments must be sent to the customer in their entirety in an effort to eliminate unnecessary phone calls between the customer and the Recording Division.

Attachment C

Service Offering

Hours of Operation

Documents may be submitted at any time during the week. Documents will only be processed on those days and hours that the **CLERK** Recording Office is open to the public for business. Documents will not be processed on county holidays, weekends, “snow days”, on days on which the county is closed to due emergency public necessity, etc., or in the event of network or equipment failure. **CLERK** will attempt to notify **SUBSCRIBER** of any disruption in service if known in advance.

Processing Schedules

Documents received prior to 3:00 PM CST will be processed the same business day. Documents received after 3:00 PM CST may be processed the next working day.

Turnaround Timeframe

Documents received prior to the times listed above will be processed (accepted or rejected) the same business day.

Alternate Delivery Options

There are no other electronic delivery options at this time. Traditional recording methods are available.

Return to Options

Submitted documents that are accepted for recording will be provided to **SUBSCRIBER** in electronic format after acceptance. Confirmation of acceptance and recordation will be provided to **SUBSCRIBER** in electronic format after recordation is complete. This confirmation will include the document image and **CLERK** indexing data. **CLERK** reserves the right to make changes to the index at a later date.

Submitted documents that are rejected will be returned to **SUBSCRIBER** in electronic format after rejection, along with a description of the reason(s) for rejection.

Attachment D

Payment Options

Payment Options

SUBSCRIBER initiated ACH or Escrow Account.

Account Setup Procedures

Upon execution of the MOU, **SUBSCRIBER** must contact the County Clerk Accounting department at 817-884-2580 to setup an account. **CLERK** will provide electronic ACH or Escrow deposit instructions necessary for funds settlement. Account must be in place in advance of any Electronic Recording submissions.

Payments

SUBSCRIBER agrees to settle account the same day Electronic Recordings are submitted by established Escrow Account or by sending one payment via ACH to the designated **CLERK** bank account. Account settlement will be for the full amount of daily Electronic Recordings. **SUBSCRIBER** will provide **CLERK** with fiscal documentation to support each payment in electronic format at time of daily settlement. Fiscal documentation must contain the document number, document date and document amount for each transaction associated with the payment.

Reporting and Reconciliation

Electronically Recorded documents will not be accepted if prior day's ACH settlement is not complete. **CLERK** will be responsible for maintaining and reconciling **CLERK** records. **SUBSCRIBER** will be responsible for submitting account information with each document batch and for reconciling **SUBSCRIBER** records.

Exception Handling

Discrepancies in fees discovered by **CLERK** after document acceptance will be corrected by **CLERK** within five county business days. **SUBSCRIBER** will be provided notification of the error.

Service Support Contact Information

COUNTY CLERK RECORDING CONTACT:

Manager, Recording and Records Preservation

David Matthews

(817) 884-1061

Email: damatthews@tarrantcountytexas.gov

ELECTRONIC RECORDING SERVICE PROVIDER:

Kofile, Inc.

6300 Cedar Springs

Dallas, TX 75235

Customer Care: 888-608-1808

Support email: gssupport@kofile.us

SUBSCRIBER BUSINESS CONTACT:

Subscriber Name Contact

Name

Telephone

Alt Telephone

Email

SUBSCRIBER TECHNICAL CONTACT:

Subscriber Name

Contact Name

Telephone

Alt Telephone

Email

Any changes to the above Subscriber contacts, must be provided to the Tarrant County Clerk Recording contacts within 10 business days.