

ELECTRONIC IMAGE AND TEXT DATA TRANSFER USING FILE TRANSFER PROTOCOL MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is between Mary Louise Garcia, Tarrant County Clerk, (“**CLERK**”), Tarrant County (“**COUNTY**”) and SUBSCRIBER (“**SUBSCRIBER**”) with offices at

Tarrant County 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 and 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 of the transactions.

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

Level 1 – Submitting organizations transmit scanned image copies of ink signed documents to the county. The county 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 the county. The county 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. The county 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.

Level 4 – Submitting organizations transmit “Smart” documents which are a single object containing the electronic version of the document in such a way that enables the electronic extraction of data from the object. Smart documents are required to be

signed and notarized electronically. The Smart document is endorsed electronically by the county and returned in Smart documents format to the submitting organization.

Program Eligibility

Title Insurance Companies, Mortgage Bankers, Full Service Banks, and other trusted entities may, directly or through a trusted third party provider, submit real property records for Electronic Recording. Electronic Recording mandates a close working relationship as well as mutual trust between the **COUNTY AND SUBSCRIBER**. All parties of 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.

County Requirements

The Electronic Recording Program of Tarrant County 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 **COUNTY**. **SUBSCRIBER** agrees to provide the transmission to **COUNTY** following the specifications outlines. **SUBSCRIBER** understands that the specification may change from time to time. In the event changes to the specification are required, **COUNTY** will provide a written notice to **SUBSCRIBER** within a reasonable timeframe.

Attachment B contains the document and indexing specification for the Electronic Recording Program. For each document, a **COUNTY** specific document code is provided along with the required indexing information. Any **COUNTY** 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 **COUNTY** system causes delays or power failures interfere with the normal course of business. By the agreement, **COUNTY** 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.

County Responsibilities

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

COUNTY shall work with **SUBSCRIBER** to install, configure, and administer necessary infrastructure components to facilitate Electronic Recording.

COUNTY shall test and maintain Electronic Recording software and hardware required to operate the Electronic Recording capability. **COUNTY**, 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.

COUNTY shall apply the level of diligence in handling documents submitted electronically as those submitted through the manual process.

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 the document or records shall be considered as the “original” record of the transaction in substitution for and with the same intended effect as paper documents and in the case that such documents bear a digital or electronic signature paper documents bearing handwritten signatures.

By the use of electronic or digital certificates to sign documents, **SUBSCRIBER** intends to be bound to those documents for all purposes as fully as if paper versions of the documents had been manually signed.

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, the COUNTY will be held harmless and not liable for any damages.**

SUBSCRIBER is responsible for receiving receipt of documents recorded by **COUNTY** ensuring that the source of the receipt is known to be the **COUNTY**. **SUBSCRIBER** is responsible for forwarding these documents to **COUNTY** 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 **COUNTY** without modification. **SUBSCRIBER** must maintain an audit trail of all activity available to **COUNTY** at their 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 **COUNTY**, 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 **COUNTY** to resolve issue with the Electronic Recording process.

SUBSCRIBER shall provide end user support to **COUNTY** 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 **COUNTY**.

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 **COUNTY**.

General Understandings

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

Neither the **COUNTY** nor **SUBSCRIBER** shall be liable to the other 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.

The **COUNTY** 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.

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

The **COUNTY** 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

SUBSCRIBER

B. Glen Whitley, Tarrant County Judge

Date: _____

Date: _____

Mary Louise Garcia, Tarrant County Clerk

Date: _____

County Administrator's Office

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.)

Criminal District Attorney's Office

Date: _____

ADDENDUM

Form 1295 Acknowledgement

Covered Entity acknowledges that it is a governmental entity and not a business entity as those terms are defined in Tex. Gov't Code 2252.908, and therefore, no disclosure of interested parties pursuant to Tex. Gov't Code Section 2252.908 is required.

Subscriber Representative

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. **SUBSCRIBER** can work with **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 (File Transfer Protocol - FTP)

Electronic Signatures and Use of Digital Certificates

The user of Electronic Signatures and Digital Certificates will not be used at this time. However, **COUNTY** reserves the right to revisit this at a later date with **SUBSCRIBER**. **SUBSCRIBER** acknowledges that Electronic Signatures and Digital Certificates will be used in the future and will work with **COUNTY** to accommodate their use.

Imaging Standard

Documents will be scanned at 200dpi.

Documents will be scanned in portrait mode.

Plats will be scanned at 300dpi.

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, except to the extent that PRIA standards may contradict Texas law.

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 **COUNTY** Recording Office is open to the public for business. Documents will not be processed on **COUNTY** holidays, weekends, “snow days”, etc., or in the event of network or equipment failure. **COUNTY** will attempt to notify **SUBSCRIBER** of any disruption in service.

Processing Schedules

Documents received prior to 3PM Central will be processed the same business day. Documents received after 3PM Central may be processed the next business 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.

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 **COUNTY** indexing data. **COUNTY** 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.

Service Help Contact Information

COUNTY CLERK RECORDING CONTACT:

Michelle Moore
Manager, Recording and Records Preservation
(817)884-1061
mmoore@tarrantcounty.com

SUBSCRIBER BUSINESS CONTACT:

Company Name
Contact Name
Telephone
Alt Telephone
Email

SUBSCRIBER TECHNICAL CONTACT:

Company Name
Contact Name
Telephone
Alt Telephone Email

Attachment D

Payment Options

Payment Options

SUBSCRIBER initiated ACH or Escrow Account.

Account Setup Procedures

Upon execution of the MOU, **SUBSCRIBER** must contact County Clerk Accounting to establish 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, transaction ID, date and time recorded, submitted name, document type, and document amount for each transaction associated with the payment.

Reporting and Reconciliation

Electronically Recorded documents will not be accepted if prior day's financial 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.