

ELECTRONIC RECORDING VENDOR MEMORANDUM OF UNDERSTANDING

THIS VENDOR MEMORANDUM OF UNDERSTANDING (hereinafter referred to as MOU) dated _____, is between the office of the Register of Deeds of Wake County, North Carolina (“**COUNTY**”), and _____ (“**VENDOR**”), with offices at _____.

Wake 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 MOU, *Electronic Recording* is defined to be the electronically based submitting of documents from **VENDOR** to **COUNTY** and electronically based receipt of confirmation of recording from **COUNTY** to **VENDOR**.

All parties of the Electronic Recording transaction desire to operate and maintain a secure recording system that minimizes the risk of fraud during the electronic transmission of documents. This MOU outlines the procedures and rules for the trusted relationship between the parties involved in Electronic Recording.

The **VENDOR** shall be responsible for assuring that the electronic version of the recorded document and electronic recording data, including endorsement and receipt, is returned or otherwise made available to the **SUBMITTER**.

Neither the **COUNTY** nor **VENDOR** 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.

Neither party shall be liable for any failure to perform processing of the transactions and documents where such failure results from any act of God 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.

Either party may terminate this MOU for cause at any time and without cause by providing 30-days' written notice to the other party, requiring the **VENDOR** to notify all **SUBMITTERS**. In addition, **COUNTY** may immediately suspend acceptance of electronic recordings from **VENDOR** if **VENDOR**'s ACH payment for any given day does not result in **COUNTY** receiving good funds for any recording fees associated with an accepted recording for that day.

There will be no added fees or costs of any kind charged by or to the **COUNTY** for Electronic Recording services provided by the **VENDOR**; provided that nothing herein shall be construed to prevent **COUNTY** from charging and receiving uniform fees of register of deeds as set forth in

N.C.G.S. 161-10 as now existing or as may be amended from time to time. **VENDOR** is responsible for the costs of the system or services that provide a submitter the ability to use their services to submit electronic documents to the **COUNTY**.

COUNTY shall test and maintain their Electronic Recording software and hardware required to operate the Electronic Recording system. **COUNTY**, however, shall be held harmless and not liable for any damages resulting from the unavailability of the electronic recording system due to software or equipment failure or incompatibility, failure of utilities, or other reasons beyond the control of the **COUNTY**.

VENDOR shall insure that all security measures and credentials implemented are protected from unauthorized access. **VENDOR** assumes all responsibility for the security and integrity of all documents submitted through **VENDOR** for the purposes of engaging in Electronic Recording.

VENDOR must maintain an audit trail of all submission activity. Should a dispute or legal action arise concerning an electronic transaction, the **COUNTY** will be held harmless and not liable for any damages.

VENDOR shall be diligent in ensuring that images are present and applicable indexed data is complete as required by the **COUNTY**.

VENDOR is responsible for supporting any technical issues associated with Electronic Recording. **VENDOR** shall work, in good faith, with the **COUNTY** to resolve issues with the Electronic Recording process.

VENDOR shall provide an effective mechanism to the **COUNTY** through which issues can be reported and addressed. In the event that such an issue is determined to be with the **VENDOR** and their system software, including but not limited to the infrastructure provided, the **VENDOR** shall be responsible for resolving such issues and will enlist the assistance of the **COUNTY** as necessary.

VENDOR is responsible for coordinating all administrative and technical problems through the **SUBMITTER** and/or the **COUNTY**.

VENDOR will maintain a qualified technical staff, responsible for developing, maintaining and enforcing security, technical and administrative procedures of their system.

COUNTY will not incur any liability for the information electronically transmitted by the **VENDOR** through their system to **COUNTY**.

COUNTY will not incur any liability for any breach of security, fraud or deceit as a result of Electronic Recording.

VENDOR may not assign or transfer all or any part of this Memorandum of Understanding, including the privilege of electronic recording granted hereunder, to any other party.

Absent gross negligence or willful misconduct, **VENDOR** agrees to release the **COUNTY** from any liability in connection with the electronic filing and recordation of documents under this Agreement. **VENDOR** understands that there are no warranties, express or implied, in connection with such transactions.

The **COUNTY** and **VENDOR** 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; provided that nothing herein shall prevent **COUNTY** from immediately seeking injunctive relief from a court of proper jurisdiction if deemed proper or necessary, or be construed to deny any legal or equitable relief available to either party.

The **COUNTY** and **VENDOR** acknowledge that the electronic recording process is an emerging technology and that State and National standards will continue to evolve. To further the technology and the Electronic Recording process, all parties agree to meet to discuss modifications and additions to this MOU.

All documents subject to this agreement in the custody of the vendor shall be considered confidential. The vendor is only authorized to release said documents to parties designated by the trusted submitter unless compelled by a court of competent jurisdiction.

Insurance

VENDOR shall maintain, at their sole expense, all insurance required in the following paragraphs and provide each year to **COUNTY**'s Risk Manager an insurance industry standard certificate of insurance evidencing such coverage:

Workers' Compensation Insurance, with limits for Coverage A: Statutory for State of North Carolina, and Coverage B - Employers Liability: \$500,000 each accident/disease each employee/disease policy limit.

Commercial General Liability - with limits no less than \$1,000,000 per occurrence and \$2,000,000 aggregate, including contractual liability assumed within the indemnity section of this Agreement.

Commercial Automobile Liability, with limit no less than \$1,000,000 per occurrence for bodily injury and property damage insuring any vehicle used during performance of contract services, including owned, hired and non-owned vehicles. Evidence of commercial automobile coverage is only necessary if vehicles are used in the provision of services under this Agreement.

Professional Liability (Errors & Omissions) Insurance, applicable to any professional services provided under this Agreement, with limits of no less than \$1,000,000 per claim and \$2,000,000 aggregate.

Privacy and Network Security (Cyber-Liability) Insurance, with limits of no less than \$1,000,000 per claim and \$2,000,000 aggregate. Shall include coverage for breach or loss of **COUNTY** data arising from either negligent or intentional acts of Provider's employees or an outside source, and shall include breach response expenditures and defense costs. A copy of **VENDOR'S** cyber-liability policy shall be produced upon request.

Fidelity bond/crime policy with limit of \$1 million per loss, including third-party coverage.

If any coverage is on a claims-made basis, **VENDOR** agrees to maintain a retroactive date prior to or equal to the effective date of this Agreement and to purchase and maintain Supplemental Extended Reporting Period or 'tail coverage' with a minimum reporting period of not less than three (3) years if the policy expires or is cancelled or non-renewed. If coverage is replaced, the new policy must include full prior acts coverage or a retroactive date to cover the effective dates of this Agreement. **VENDOR** shall provide a Certificate of Insurance annually to **COUNTY** indicating any claims made coverage and respective retroactive date. The duty to provide extended coverage as set forth herein survives the effective dates of this Agreement.

Upon request of the **VENDOR**, the **COUNTY** may in its discretion waive the requirement of Supplemental Extended Reporting Period or "tail coverage" for any required Professional Liability and Privacy and Network Security (Cyber-liability) insurance policies maintained on a claims made basis provided that 1) if coverage is replaced, the new policy must include full prior acts coverage or a retroactive date to cover the effective date of this Agreement and 2) the **VENDOR** is able to provide proof of self-insurance satisfactory to the **COUNTY's** Risk Manager.

All insurance companies must be authorized to do business in North Carolina and have an AM Best rating of A-/VII or better, or have reasonable equivalent financial strength to the satisfaction of the **COUNTY'S** Finance Office. Proof of rating shall be provided to the **COUNTY** upon request.

Insurance with limits no less than those specified above shall be evidenced by a Certificate of Insurance issued to the **COUNTY** by a duly authorized representative of the insurer.

VENDOR shall be responsible for providing immediate notice of policy cancellation or non-renewal during the term of this Agreement to the Wake **COUNTY** Finance Office. **VENDOR** shall indemnify and hold **COUNTY** harmless against any and all liabilities, costs, expenses, damages, and losses (including penalties and legal or other reasonable professional costs and expenses) suffered or incurred by **COUNTY** arising out of or in connection with breach of any condition of this Agreement, but only to the extent that such claims would be covered by any insurance coverage or self-insurance required by this Agreement. Notwithstanding anything in this Agreement, it is not the intent of the Parties to create liabilities for the **VENDOR** that would be construed to be excluded from any insurance coverage or self-insurance required by this Agreement.

Right to Audit

The **COUNTY** and its authorized representatives shall in the sole discretion of the **COUNTY** have the right to audit, examine, and make copies of or extracts from all financial and related records, in whatever form they exist, relating to or pertaining to recording fees submitted or any other requirements of **VENDOR'S** performance under the terms of this MOU. **VENDOR** authorizes access to such records maintained by or under the control of **VENDOR**, including, but not limited to those maintained by **VENDOR**, its employees, agents, assigns, successors and subcontractors for the limited purpose of audit pursuant to this Section. Such records shall include, but not be limited to, accounting records, written policies and procedures and other information or verifications requested by the **COUNTY**. Upon two (2) business days' notice, or as otherwise reasonably agreed by the parties, such records shall be made available to the **COUNTY** during normal business hours at

VENDOR'S office, place of business or the physical location of the records. **VENDOR** shall ensure the **COUNTY** has these rights with **VENDOR'S** employees, agents, customers, assigns, successors, and sub-contractors and the obligation of these rights shall be explicitly included in any subcontracts or agreements formed between **VENDOR** and any party to the extent that those subcontracts or agreements relate to fulfillment of **VENDORS'** obligations to the **COUNTY**.

In the event that **COUNTY** requests any records protected by a Confidentiality Agreement, or any claimed privilege of confidentiality, then and in that event, the **COUNTY** must provide a business justification for needing the information. If the **COUNTY** in its sole discretion determines that it is unable to procure the information from any other source without undue burden or that the information is needed from the **VENDOR** to expedite the audit, then the **VENDOR**, to the extent permitted by law, shall identify such records as "Confidential" prior to production and may require **COUNTY** to sign a non-disclosure agreement consistent with the **COUNTY's** contract control policy. Upon request, the **VENDOR** shall produce a copy of the Confidentiality Agreement pertaining to the records. Costs of any audits conducted under the authority of this right to audit are the responsibility of **VENDOR** at the discretion of the **COUNTY**, cost not to exceed **VENDOR'S** revenues unless a material breach is detected.

VENDOR shall, at all times during the term of this Agreement and for a period of five years after the completion of this Agreement, maintain such records together with such supporting or underlying documents and materials, subject to the right to audit outlined herein.

ATTACHMENTS

Attachment A defines the technical specifications including models of recording supported, format, and transmission protocols of the electronic records required by **COUNTY**. The **VENDOR** agrees to adhere to the transmission protocol of the **COUNTY** following the specifications outlined. **VENDOR** understands that the specifications may change from time to time. In the event changes to the specifications are required, the **COUNTY** will provide a written notice to the **VENDOR** within a reasonable timeframe.

Attachment B contains the document and indexing specifications for the Electronic Recording program.

Attachment C contains the processing schedules and hours of operation for the Electronic Recording program and contact names for all parties.

Attachment D provides the Agreement to Pay, Payment Threshold, and Fee Schedule.

Agreed and Accepted:

(VENDOR)

By: _____ (Authorized Signature)

Name _____

Title _____

Date: _____

(COUNTY)

By: _____ (Authorized Signature)

Name: Tammy L. Brunner _____

Title: Register of Deeds _____

Date: _____

Attachment A

Technical Specifications

Electronic Recording is defined based on the level of automation and structure of the transaction. The three models of automation are as follows:

Model 1 SUBMITTERS transmit scanned image copies of ink signed documents to the **COUNTY** with required submitter endorsement according to G. S. §47-14(a1)(5). The **COUNTY** completes the recording process in the same way as paper using the imaged copy as the original document. The electronic version of the recorded document is returned electronically to the **SUBMITTER** by the **VENDOR** along with the electronic recording data.

Model 2 SUBMITTERS transmit scanned images of ink signed documents along with electronic indexing information with required submitter endorsement according to G. S. §47-14(a1)(5) to the **COUNTY**. The **COUNTY** performs an 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 **SUBMITTERS** by the **VENDOR** along with the electronic recording data.

Model 3 SUBMITTERS transmit documents which have been created, signed and notarized electronically along with the electronic indexing information as well as with required submitter endorsement according to G. S. §47-14(a1)(5). The **COUNTY** performs an examination of the electronic documents and indexing information as well as with required submitter endorsement according to G. S. §47-14(a1)(5) and then completes the recording process using the electronic documents. The electronic version of the recorded document is returned electronically to the **SUBMITTERS** by the **Vendor** along with the electronic recording data.

Application of UETA and URPERA

The parties agree that, unless otherwise specified herein, the provisions of North Carolina's Uniform Electronic Transactions Act (hereafter "UETA") (66 Article 40) and North Carolina's Uniform Real Property Electronic Recording Act, codified at Article 1A in Chapter 47 of the General Statutes, (hereafter "URPERA") shall apply to the automated transactions contemplated by this Agreement.

Format of the transmitted File

PRIA file format standard will be used. At this time, images will be in multi- page Group IV TIFF format with 300 DPI or in PDF format. The **COUNTY** may work with the **VENDOR** to provide additional fields (extensions) to the current PRIA standard. All documents shall have a 3" top margin and a 0.25" side margin on the first page. All Submissions will require an XML digital signature to ensure privacy, tamper-proofing, and non-repudiation, and will also require a submitter identifier provided by the **COUNTY**. If a valid identifier is not provided, the submission will be rejected. All documents must be submitted in the correct orientation and will be rejected if they are sideways or upside down. **VENDOR** shall provide a method to verify the size of each instrument presented to the Register of Deeds electronically.

Communications Protocol and Options

TCP/IP and HTTPS

Models of Electronic Recording Supported

Model 1 and Model 2 after **COUNTY** approves eligibility, and Model 3.

Attachment B

Indexing Fields for each Document Code

All documents submitted will require the minimum index:

Grantor(s)

Grantee(s)

Document Type and/or Document Code

Number of Pages

Recording Fee (or \$0.00 if none)

Excise Tax (if required)

Related Reference (original document number, in the case of releases, assignments, amendments).

Legal Description Fields

Subdivision Name (if in a subdivision)

Parcel Number (where required on Deeds)

Grantee's Legal Mailing Address (which includes street or post office box, city, state and zip code, MUST be clearly identified on any transfer deed.

Notary Requirements per Document

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable laws, is attached to or logically associated with the signature or record.

Attachment C

Service Offering

Hours of Operation

Documents may be submitted in accordance to **COUNTY** guidelines and will only be processed on those days and hours that the **COUNTY** Recording Office is open to the public for business, Monday through Friday, 8:30 am to 4:45 pm, Eastern Time. Documents will not be processed on **COUNTY** holidays, weekends, etc., or in the event of network or equipment failure.

VENDOR acknowledges that all documents electronically submitted to the **COUNTY** for recording shall only become part of the public record and considered properly recorded after the **COUNTY** accepts, records, and indexes each document in the public record pursuant to N.C.G.S. 161-22.

Return to Options

Confirmation of acceptance and recordation will be provided to the **VENDOR** in electronic format after recordation is complete. This confirmation will include the document image and **COUNTY** indexing and endorsement data, including a receipt for fees paid.

Rejections

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

Contacts for users

All parties shall provide the **COUNTY** with an Administrative Contact (an individual familiar with the process of executing and filing documents) and a Technical Contact (an individual familiar with the **VENDOR** computing environment and capable of resolving or reporting any technical issues):

VENDOR

Administrative Contact Name: _____

- Phone Number: _____
- Fax Number: _____
- E-mail Address: _____
- Other Contact Number(s): _____

Technical Contact Name: _____

- Phone Number: _____
- Fax Number: _____
- E-mail Address: _____
- Other Contact Number(s): _____

COUNTY

Administrative Contact Name: Luther Snyder

- Phone Number: 919-856-5462
- Fax Number: 919-856-5467
- Mailing Address: P.O. Box 1897, Raleigh, NC 27602
- E-mail Address: Luther.Snyder@wakegov.com
- Other Contact Number(s):

Technical Contact Name: Craig Anderson

- Phone Number: 919-856-5631
- Fax Number: 919-856-5467
- Mailing Address: P.O. Box 1897, Raleigh, NC 27602
- E-mail Address: Craig.Anderson@wakegov.com
- Other Contact Number(s):

Attachment D

Agreement To Pay, Payment Threshold, and Fee Schedule

Agreement To Pay

VENDOR agrees to pay such filing fees as required by N.C.G.S. 161-10 and other applicable statutes, on the same or next business day that the documents are electronically filed. The electronic filing system will advise **VENDOR** of the fees required for recordation.

The **VENDOR** and the **COUNTY** agree the method of payment for each document presented for recording is an ACH transaction. **VENDOR** shall not be permitted to submit payment to **COUNTY** in any form other than ACH payment absent written agreement between **VENDOR** and **COUNTY**.

VENDOR agrees to send a daily report of all transactions to the **COUNTY**. The **COUNTY** will provide the **VENDOR** the requirements for the report.

Payment Threshold

VENDOR is required to provide a payment threshold with each document submitted. The threshold is the amount a **SUBMITTER** is authorizing the **COUNTY** to charge above the specified recording fees, to prevent rejection for incorrect fee specification by the **SUBMITTER**.

Fee Schedule

Fees are set by N.C.G.S. 161-10 and shall apply to all counties in North Carolina. Pursuant to N.C.G. S. 105-228.30, excise stamp tax is levied on each instrument by which any interest in real property is conveyed.