

Electronic and Digital Recording Use Agreement

THIS Electronic and Digital Recording Use Agreement (AGREEMENT), dated _____, 20____ is between The Register of Deeds of Jefferson County, Kansas and _____ (Company).

This AGREEMENT shall become effective on the date of execution by all parties, subject to any approvals provided for in the AGREEMENT and shall continue in force until modified amended or terminated.

WHEREAS, County desires to offer recording of real property documents by electronically receiving and transmitting 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 for the mutual benefit of the parties of the transactions; and

WHEREAS, County and company acknowledge that this AGREEMENT is subject to the Kansas Electronic Recording Standards, as adopted by the Kansas Electronic Recording Commission, and as subsequently amended. This AGREEMENT shall be construed and interpreted to be consistent with and in conformance to those standards;

NOW THEREFORE, in consideration of the mutual undertakings and the promises contained herein, the parties agree as follows:

- 1. Electronic Recording:** For purposes of the AGREEMENT, Electronic Recording is defined based on the level of automation and structure of the transaction. (See attachment A for Accepted Levels for Electronic Recording). The three levels of automation are as follows:

Level 1: Submitting organizations transmit scanned image original 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 organizations 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 made available to the submitting organization.

Level 3: Submitting organization transmit documents which have been created, signed and notarized electronically along with the electronic indexing information or a 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. Electronic signatures must comply with the Uniform Electronic Transaction Act

(UETA), K.S.A. 16-1601, et seq. The County performs an electronic examination of the electronic documents and indexing information then completes the recording process using the electronic documents. Electronic and Smart documents are made available to the submitting organization.

2. **Program Eligibility:** Electronic Recording mandates a close working relationship as well as mutual trust between the County and the submitting entity. 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 AGREEMENT outlines the procedures and rules for the trusted relationship between the County and Company to facilitate a safe and secure Electronic Recording relationship. Participation in the Electronic Recording program is voluntary and the decision to do so is a business judgment. There will be no added fees or costs of any kind charged by the County for Electronic Recording.
3. **County Requirements:** The electronic Recording Program of Jefferson County is defined by the requirements attached to this AGREEMENT.

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

Attachment B contains the document acceptance and indexing specifications for the Electronic Recording program. For each document, the County specific document code is provided along with the required indexing information. Any County specific editing rules will also be described in the attachment. All indexing specifications must follow the Property Records Industry Association (PRIA) standards as set out on their website. www.pria.us

Attachment C contains the processing schedules and hours of operation for the Electronic Recording Program. Neither 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. County will use its best efforts to provide electronic notification of filing within 24 hours after submission of the document. If Company does not receive electronic notice by that point, Company should contact County to verify filing.

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

- 4. Company Responsibilities:** Company acknowledges that Electronic Recording permits them to prepare, sign, and/or transmit in electronic formats documents and business records and the documents 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, all to the extent permitted by applicable law.

Company shall ensure that only original documents are used to create the electronic documents. Company 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 deficiencies that would affect the Recorder’s ability to record the document and the public notice created thereby.

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

Should a dispute or legal action arise between the parties hereto or between a third party and County concerning an electronic transaction, the County will be held harmless by Company and not liable for any damages, costs and fees for any kind whatsoever, including but not limited to attorney fees. For purposes of this provision, a document is considered recorded when it has been assigned a document number by the County and notification of recording has been transmitted back to the submitter.

The Company 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.

Once a document is recorded in the County, the original recorded document resides in the County records electronically.

Company is responsible for the costs of the system or services provided by a third party that enables Company to meet the Electronic Recording Program requirements.

Company will immediately notify County of any security incident, including but not limited to attempts to or actual unauthorized access to Company's pathway, which could compromise or otherwise adversely affect the County's data systems.

Company shall work to insure that all security measures and credentials implemented are protected. Company assumes all responsibility for documents submitted through unique credentials provided to Company for the purpose of engaging in Electronic Recording.

Company is responsible for receiving receipt of documents recorded by County insuring that the source of the receipt is known to be the County. Company is responsible for forwarding these documents to County insuring that the source of the documents is known to be the Company who has been authenticated and that the documents to be recorded pass from Company to County without modification. Company must maintain an audit trail of all activity, available to County, at its 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 Company, submitted content as at point of delivery to County, dates and times submitted, size and check sum.

Company is responsible for supporting any technical issues associated with Electronic Recording. Company shall work, in good faith, with County to resolve issues with the electronic Recording process.

Company shall provide end user support to County through which problems or issues can be reported and addressed. In the event that a problem is determined to be with the Electronic Recording software and not the infrastructure provided the Company shall work to resolve issues with County.

Company is responsible for coordinating all technical problems and issues through County.

5. **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 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 same level of diligence in handling documents submitted electronically as those submitted through normal manual process.

6. **General Provisions:** The County will not incur any liability for the information electronically transmitted by the Company included but not limited to any breach of security, fraud or deceit. Company agrees to hold County harmless for all claims, damages, costs and fees of any kind whatsoever, including but not limited to attorney fees, related to or resulting from

Electronic Recording. County expressly disclaims any express or implied warranties or representations regarding any information, products or services provided pursuant to this AGREEMENT.

Neither the County nor Company shall be liable to the other for any special, incidental, punitive, 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 Company will attempt in good faith to resolve any controversy or claim arising out of or relating to electronic recording through negotiation prior to initiating litigation.

Either party may terminate this AGREEMENT for any reason by providing thirty (30) days written notice of termination.

The County and Company 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 electronic recording process, the County and Company will meet as needed to discuss changes and additions to the AGREEMENT.

The County and Company understand that submission, acceptance and recording of any document must comply with all other applicable federal, state and local laws.

Document may be rejected in accordance with Kansas law, including, but not limited to the following reasons: Document errors, failure to pay the filing or other fees due, the document is not a type the Register of Deeds is authorized to accept for recording, or the documents fails to meet any other applicable requirement.

Company's right to submit documents under this AGREEMENT is subject to County's review and acceptance of Company's pathway standards and procedure. Such approval will not be unreasonable withheld by County. This review will be directed to confirming the company's pathway is secure and meets all requirements imposed by Kansas law or this AGREEMENT. Company agrees that following initial approval by County of Company's pathway, if Company materially modifies its pathway standards and procedures, County will be notified within a reasonable time, and County will be able to review and approve said material modifications.

County may suspend Company's right to electronically submit documents for recording for good cause, including, but not limited to failure to comply with any obligations imposed by Kansas law or this AGREEMENT. Notice of suspension will be immediately provided to Company by County. Company may be reinstated upon satisfactory resolution of County's concern.

Any amendments or modification to the AGREEMENT shall be in writing duly executed by each party's authorized official, which shall become effective at a time mutually agreed upon by the parties.

No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or AGREEMENT not incorporated herein shall be binding on either party.

This AGREEMENT is not assignable by the Company either in whole or part, without the written consent of the County.

The Company agrees that all personal information which is considered privileged and confidential under Kansas law contained within the documents will not be released by the Company to any individual or other legal entity that would not otherwise have access to such information. Any release of information by the Company to any unauthorized individual or other legal entity may result in the County terminating this AGREEMENT. Notwithstanding any other time limits herein, County may terminate this AGREEMENT for unauthorized use or disclosure by written notice to the Company. Written notice to be effective upon facsimile (FAX) transmission to Company or five (5) days from the date of mailing such notice.

Except for payment and indemnity obligations hereunder, neither party shall be deemed in default, nor shall it hold the other party responsible for, any cessation, interruption or delay in the performance of its obligation hereunder, due to earthquake, flood, fire storm, natural disaster, act of God, war, armed conflict, terrorist action, labor strike, lockout, boycott, provided that the party relying upon this paragraph: (a) shall have given the other party written notice thereof promptly and, in any event, within (5) days of discovery thereof and, (b) shall take all reasonable steps reasonably necessary under the circumstances to mitigate the effects of the force majeure event upon which such notice is based; provided further, that in the event the force majeure event described in this paragraph extends for a period in excess of thirty (30) days in aggregate, the other party immediately may terminate this agreement.

This AGREEMENT is entered into in the State of Kansas and governed by the provisions of the State of Kansas.

If any provision of this AGREEMENT, or the application thereof, is for any reason and to any extent found to be invalid or unenforceable, provision to the other persons or circumstances shall not be affected by such finding of invalidity or unenforceability, and shall be interpreted in a manner that shall reasonably carry out the intent of the AGREEMENT.

Any party wishing to challenge any or all conditions of the AGREEMENT must do so in a court located in Jefferson County, State of Kansas.

Agreed and Accepted:

By: _____ (Company)

Name: _____

(PRINT NAME)

Signature: _____

Address: _____

Phone: _____

Date: _____

E-mail address: _____

E-Record Company Using: _____

Simplifile or CSC

Date _____

By _____ (County)

Delia Heston, Register of Deeds

Jefferson County, Kansas

RETURN TO:

Delia Heston

Register of Deeds

P O Box 352

Oskaloosa, KS 66066

Phone: 785-403-0000 option 5

Attachment A

Technical Specifications

- Format of transmitted File
Property Records Industry Association (PRIA)/Mortgage Industry Standards Maintenance Organization (MISMO) file format standard will be used. Any multi-page storage format as specified by the County.
- Communications Protocol and Options
Transmission Control Protocol/Internet Protocol (TCP/IP) and HTTPS.
- Security Framework
Encryption will be a minimum 128 bit file and image encryption. Secure Socket Layer (SSL) and user login/password will be employed. User passwords will be changed on a monthly basis.
- Returned File Format
Property Records Industry Association (PRIA)/Mortgage Industry Standards Maintenance Organization (MISMO) file format standard will be used. Any multi-page storage format as specified by the county. PRIA format standard will be used. Images will be in multi-pages Group IV TIFF format.
- Levels of Electronic Recording Supported
Levels 1, 2 and 3 or as allowed by current technology. Currently, the County supports Level 1 plus electronic indexing information consisting of the first and second parties' names and document type. Additional levels may be supported in the future.
- Electronic Signatures and Use of Digital Certificates
The use of Electronic Signatures and Digital Certificates will need to adhere to the guidelines set out in any applicable Kansas Secretary of State administrative rules.
- Imaging Standards
**Documents will be scanned at a minimum of 300dpi
Documents will be scanned in portrait mode.
Document images will be captured in as multi page Group IV TIFF images.
Scanned documents will be legible and reproducible – including signatures and notary seals.
Document details, such as margins, font size and other similar requirements, must meet all applicable state and local standards.
Documents must be scanned to original size.**

Attachment B

Document Acceptance and Indexing Specifications

- Eligible Document Types
A list of all eligible document types is available upon request from the County. It is the County's intention to not reject documents based on "incorrect or non-County specific document types. The County will correct the document type as part of the acceptance process.
- Indexing Fields for each document Code
All Documents submitted will require the minimum index fields unless otherwise agreed upon between County, eRecording vendor, and the Company.
Grantor(s) or equivalent
Grantee(s) or equivalent
Document Type
Number of Pages
Recording Fee
Associated Document Number (original document number or book and page in the case of releases, assignments, mortgage modifications, etc.)
Return To Party Name (which will be the Submitting Party Name)
- Legal Description Fields as specified by County
Legal description (Subdivision, Block, Lot and/or Section, Township, and Range are required only if noted on documents).
- Document Imaging Quality Control Standards
The html document must display in W3C (World Wide Web Consortium) Standards.
- Notary Requirements per document
It is the responsibility of the Company to confirm that notary signatures and seals are present on all documents that require them.
Inked notary seals are strongly recommended, in place of embossed notary seals, which require "darkening" by the Company prior to submittal.
All electronic notaries must adhere to the Kansas Secretary of State Standards for electronic notaries.
- Eligible Document Batches
Document batches will be submitted by a standard naming convention as specified by the County.
The maximum size of electronic document batches will be determined by the County.

- Margins and Paper Size

Pursuant to K.S.A. 28-115, the Register of Deeds has authority to establish requirements for margins. Therefore, for the purpose of providing sufficient space for recording information and to insure that the document will be clear and legible when reproduced, page one must have a top margin of three (3) inches and one (1) inch margin on each of the three remaining sides. All subsequent pages must have one (1) inch margin on all four sides.

If a document does not comply with such requirements, then K.S.A.28-115 authorizes either the use of an additional sheet or cover page for recording. The additional sheet shall be counted and charged as an additional page.

Attachment C

Service Offering

- Hours of Operation

Documents may be submitted at any time during the week. Document will only be processed between 8:00 a.m. and 4:00 p.m., Central Standard Time, on those days that the County Recording Office is open to the public for business.

Documents will not be processed on County holidays, weekends, snow days, declared emergencies, etc. Or in the event of network or equipment failure.

- Processing Schedules

Document batches must be received by 4:00 p.m., Central Standard Time, on those days that the Register of Deeds Office is open to the public for business in order to be recorded or rejected on the date received.

- Alternative Delivery Options

There are no other electronic delivery options at this time.

- Return Options

Submitted documents that are accepted for recording will be returned to the COMPANY in electronic format after acceptance. Confirmation of acceptance and recordation will be returned to the COMPANY in electronic format after recordation is complete. COUNTY reserves the right to make changes to the index at a later date. Submitted documents that are rejected will be made available to the COMPANY in electronic format after rejection, along with a description of the reason(s) for rejection.

- Service Help Contact Information

Fidlar Technologies at 1-800-747-4600

Or

Register of Deeds Jefferson County, Kansas 785-403-0000 option 5

Or

deeds@jfcountryks.com

Attachment D

Payment Options

- Payment Options
An agreement with a County-approved third-party vendor is required for making payments for Electronic Recording. A current list of approved third-party vendors is available upon request. Company is responsible for entering into such third-party agreement with an approved vendor. Company is responsible for and agrees to pay all charges due under any such third-party vendor agreement. The County expressly disclaims any express or implied warranties, representations, or endorsements regarding the products or services provided by the third-part vendor. Company assumes the sole responsibility for all use of the third-party vendor and agrees to indemnify and hold the County harmless from any liability or claim of any nature arising out of or resulting from such use.