

**ELECTRONIC RECORDING
MEMORANDUM OF UNDERSTANDING
CSC Version**

THIS MEMORANDUM OF UNDERSTANDING, dated _____ ,
is between the City of Chesapeake, Virginia Clerk of Circuit Court office (“**CLERK**”), and

NAME OF BUSINESS/ COMPANY/FIRM (“**COMPANY**”) with offices located at

ADDRESS(ES)
_____ .

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 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, *Electronic Recording* is defined to be the electronically based submitting of documents from **COMPANY** to **CLERK** and electronically based receipt of confirmation of recording from **CLERK** to **COMPANY**.

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. Participation in the Electronic Recording program is voluntary.

COMPANY and **CLERK** recognize the need to ensure that only original documents holding signatures that are properly notarized are submitted for electronic recording. Electronic signatures, including electronic notarization, are acceptable as long as such electronic signatures comply with all relevant Virginia statutes.

CLERK performs an electronic examination of the electronic documents and indexing information then completes the recording process using the electronic documents.

COMPANY acknowledges that Electronic Recording permits them to prepare, sign and transmit in electronic format documents and business records, and that 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 use of electronic or digital certificates to sign documents, **COMPANY** 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. **COMPANY** will comply with all applicable Virginia statutes, including those regulating electronic signatures.

If accepted for recordation, the electronic version of the recorded document and electronic recording data, including endorsement and receipt, is returned to the **COMPANY**.

CLERK shall not be liable to **COMPANY** 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 shall not 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 **CLERK**'s reasonable control including, without limitation, any mechanical, electronic or communications failure which prevents the parties from transmitting or receiving the electronic recording transactions.

NOTICE: For all instances and/or purposes in which Notice is required in this agreement, Notice can be made by US Mail or e-mail to the contact representative listed under the signatures in this agreement. For **CLERK**, notice shall be given to the Clerk unless otherwise specifically designated to be another person. If sent by e-mail, notice is deemed effective when sent, as proved by confirmation. If sent by US mail, notice is deemed effective five business days after postmark. If notice is provided by two or more methods, it is deemed effective at the earliest possible date.

Either party may terminate this Memorandum of Understanding for any reason at any time by providing Notice to the other party. Once terminated, all submissions by **COMPANY** to **CLERK** that have been completely processed (recorded at **CLERK**), will remain covered by the terms of this agreement.

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.

IMPORTANT NOTE REGARDING ORDER OF FILING: Documents that are electronically submitted are not deemed filed until accepted by **CLERK**. **CLERK** currently processes documents in the following order:

- In-person filings
- Electronic recordings
- Overnight delivery services (i.e. Federal Express, UPS, DHL, etc.)
- Mail

Therefore, it is possible that an instrument submitted for Electronic Recording before the category above with a higher filing priority could be recorded **AFTER** one of these instruments.

CLERK will from time to time process multiple electronic recording packages at the same time. Some recordings are rejected and returned to the submitter. Because the recording is not deemed filed until accepted, it is possible that a package that was presented or received after another electronic recording package could be accepted before that package. There is no guarantee that electronic recording packages will be processed in order of presentation or receipt at all times.

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** makes no guarantee as to the timeliness of processing of electronic recording packages.

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.

CLERK shall apply the same level of diligence in handling documents submitted electronically as those submitted through the normal manual paper process.

COMPANY Responsibilities:

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

COMPANY shall be diligent in ensuring that documents submitted for Electronic Recording have been checked before submission for errors, omissions, and other deformities that would impact the validity of the document. This includes adherence to Virginia indexing standards.

COMPANY acknowledges that Electronic Recording permits them to prepare, sign and transmit in electronic formats documents and **CLERK** approved attachments, and the document or attachments 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 use of electronic or digital certificates to sign documents, **COMPANY** 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.

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

COMPANY must maintain an audit trail of all Electronic Recording activity.

COMPANY is responsible for supporting any technical issues associated with Electronic Recording. **COMPANY** shall work in good faith with any Electronic Recording Provider, if applicable, and **CLERK** to resolve issues with the Electronic Recording process. **COMPANY** shall provide an effective mechanism to both an Electronic Recording Provider and **CLERK** 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 **CLERK** and any Electronic Recording Provider.

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

COMPANY is responsible for coordinating all technical problems and issues through any Electronic Recording Provider and **CLERK**.

COMPANY will appoint a representative, whose name will be given to **CLERK** in writing, who is responsible for enforcing the security procedures. **CLERK** will be notified in writing of staff changes at **COMPANY** in this role.

In the event of a reorganization or change of **COMPANY's** name, corporate format, or legal structure of any kind such that **COMPANY** would be known by a new name (including but not limited to acquisition, merger, addition of new partner to a partnership), **COMPANY** must execute a new Electronic Recording Submitter Agreement in its new identity before it may continue to submit documents for Electronic Recording. If **COMPANY** fails to execute a new Electronic Recording Submitter Agreement in its new identity, all liability waivers by **CLERK** are still in effect for the new entity.

General Understanding

CLERK will not incur any liability for the information electronically transmitted by the **COMPANY** to **CLERK**, or by **CLERK** to **COMPANY**.

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

CLERK shall not be liable to **COMPANY** 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 Electronic Recording Provider, **CLERK**, and **COMPANY** 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.

CLERK, **COMPANY**, and any Electronic Recording Provider acknowledge that the electronic recording process is an emerging technology and that State and National standards will continue to evolve.

Except as expressly provided otherwise herein, this Agreement represents the entire agreement between the parties.

Either party may terminate this Agreement without cause by providing Notice as defined above. **COMPANY** remains responsible for payment of fees for the filing and recordation of all accepted documents.

Absent gross negligence or willful misconduct, **COMPANY** agrees to release **CLERK** from any liability in connection with Electronic Recording of documents under this Agreement. **COMPANY** understands that there are no warranties, express or implied, in connection with such transactions.

ATTACHMENTS

Attachment A defines the technical specifications including format, models of recording supported, and transmission protocols of the electronic records required by **CLERK**. **COMPANY** agrees to provide the transmission to the **CLERK** following the specifications outlined. **COMPANY** understands that the specifications may change from time to time. In the event changes to the specification are required, the **CLERK** will provide a Notice to the **COMPANY** 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.

Agreed and Accepted:

(COMPANY)

By: _____ (Authorized Signature) Date: _____
Name: _____
Title: _____
Administrative Contact Name: _____
Address: _____
Address Continued: _____
Phone Number: _____ Fax Number: _____
E-mail Address: _____

(CLERK)

By: _____ (Authorized Signature) Date: _____
Name: _____
Title: _____
Administrative Contact Name: _____
Address: _____

Phone Number: _____

Attachment A

Technical Specifications

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

Model 1 COMPANY transmits 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 to append that information to the original paper document.

Model 2 COMPANY transmits 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 COMPANY along with the electronic recording data.

Model 3 COMPANY transmits documents which have been created, signed and notarized electronically along with the electronic indexing information. 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 document and electronic recording data is returned to COMPANY.

Application of UETA and Format of the transmitted File

The parties agree that, unless otherwise specified herein, the provisions of Virginia's Uniform Electronic Transactions Act (hereafter "UETA") (66 Article 40) shall apply to the automated transactions contemplated by this Agreement.

PRIA file format standard will be used. Images will be in multi- page Group IV TIFF format. COMPANY can work with an Electronic Recording Provider and CLERK to provide additional fields (extensions) to the current PRIA standard.

Communications Protocol and Options

TCP/IP, HTTP and HTTPS

Models of Electronic Recording Supported

Model 1 will not be supported - no indexing information is provided.
Model 2 and Model 3 will be supported.

Attachment B

Indexing Fields for each Document Code

All documents submitted will require the following minimum indexing information:

Grantor(s)

Grantee(s)

Document Type and/or Document Code

Number of Pages

Tax map or PIN number

Consideration and/or value as applicable

Any tax exemptions

Legal Description Fields (including Related Reference)

The instrument itself should have on its face:

Recording Return to Address, which includes Street or Post Office Box, City, State and ZIP Code.

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

Excluding legal holidays, **CLERK**'s Electronic Recording System will be open for business during normal recording hours. These hours are subject to change. Documents may be submitted at any time during the week. Documents will only be processed on those days and hours that **CLERK** is open to the public for business. If a document is submitted **by 2:00 pm**, **CLERK** intends to process it the same business day. Any document submitted **after 2:00 pm may not be processed the same business day**. Documents will not be processed on **CLERK** holidays, weekends, etc., or in the event of network or equipment failure.

Alternative Delivery Options

There are no other electronic delivery options at this time.

Return To Options

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

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