

## ELECTRONIC RECORDING MEMORANDUM OF UNDERSTANDING

**THIS MEMORANDUM OF UNDERSTANDING** is between ELIZABETH MCGILL, TOM GREEN County Clerk, ("**CLERK**"), TOM GREEN County ("**COUNTY**"), Manatron, Inc. ("**ELECTRONIC RECORDING PROVIDER**"), and ACS COMMERCIAL SOLUTIONS, INC. ("**COMPANY**") with offices at 2828 N HASKELL AVENUE, BUILDING 5, FLOOR 1, DALLAS, TX, 75204.

TOM GREEN 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, *Electronic Recording* is defined to be the electronically based submitting of documents from **COMPANY** to **COUNTY** and electronically based receipt of confirmation of recording from **COUNTY** to **COMPANY** based on the level of automation and structure of the transaction and is characterized by four different 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 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 document 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 document format to the submitting organization.

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### 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, COMPANY, AND ELECTRONIC RECORDING PROVIDER**. 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 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 although **COMPANY** will be required to meet **COUNTY** requirements in order to record electronically.

### County Requirements

The Electronic Recording Program of **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**. Company agrees to provide the transmission to the **COUNTY** 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 **COUNTY** will provide a written notice to the Company within a reasonable timeframe.

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

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## 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 **ELECTRONIC RECORDING PROVIDER** and **COMPANY** 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 institute security to authenticate verbal communications with.

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

## Electronic Recording Provider Responsibilities

**ELECTRONIC RECORDING PROVIDER** is responsible for providing, supporting, and maintaining Electronic Recording Software and internal Recording Software to **COUNTY**.

**ELECTRONIC RECORDING PROVIDER** shall ensure that Electronic Recording Software is secure and that once documents are received, that they remain immutable until such time as they are recorded. Limited to software executable and not the network environment provided by the **COUNTY**.

**ELECTRONIC RECORDING PROVIDER** shall work with **COMPANY**, and **COUNTY** to resolve issues encountered in the Electronic Recording process that are within the scope of the **ELECTRONIC RECORDING PROVIDERS** software

**ELECTRONIC RECORDING PROVIDER**, through the Electronic Recording software, shall maintain an audit trail of documents received, ID received from, dates and times received, receipts received to **COMPANY** received, receipts transmitted, and any errors encountered.

## Company Responsibilities

**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 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, scanning defects, illegible areas, and other deformities that would impact the validity of the document.

**COMPANY** 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 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

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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 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 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 Users to comply with quality control procedures for assuring the accuracy and completeness of the electronic files.

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.**

**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** or **ELECTRONIC RECORDING PROVIDER**, 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 **COMPANY**, submitted content as at point of delivery to **COUNTY**, dates and times submitted, size, and checksum.

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

**COMPANY** shall provide end user support to both **ELECTRONIC RECORDING PROVIDER** and **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 **COMPANY** shall work to resolve issues with **COUNTY** and **ELECTRONIC RECORDING PROVIDER**.

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

**COMPANY** 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 **COMPANY** 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 **COMPANY**, nor **ELECTRONIC RECORDING PROVIDER**

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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.

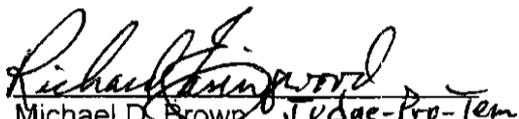
The **COUNTY** and **COMPANY** will attempt in good faith to resolve any controversy or claim arising out of or relating to Electronic Recording through either negotiation or mediation prior to initiating litigation.

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

The **COUNTY**, **ELECTRONIC RECORDING PROVIDER** and **COMPANY** acknowledges 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, the **COUNTY** and **COMPANY** will meet once at 30 days and again at 120 days to discuss changes and additions to this Memorandum of Understanding.

**Agreed and Accepted:**

**TOM GREEN COUNTY**

  
Michael D. Brown *Judge-Pro-Tem*  
Tom Green County Judge

Date: 07/14/09

**MANATRON, INC.**

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Date: \_\_\_\_\_

**ACS COMMERCIAL SOLUTIONS, INC.**

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Date: \_\_\_\_\_

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**Attachment A**  
**Technical Specifications**

**Format of the transmitted File**

PRIA file format standard will be used. Images will be in multi- page Group IV TIFF format. The can work with the ELECTRONIC RECORDING 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 128bit 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

**Electronic Signatures and Use of Digital Certificates**

The use 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 COMPANY. COMPANY acknowledges that Electronic Signatures and Digital Certificates will be used in the future and will work with COUNTY to accommodate their use.

**Imaging Standards**

Documents will be scanned at 200dpi.

Documents will be scanned in portrait mode.

Document images will be captured as multi- page Group IV TIFF images.

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

Document font size must meet PRIA minimum standards.

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**Attachment B**

**Documents and Indexing Specifications**

Documents shall be accepted for filing according to the provisions of TEXAS law and PRIA standards.

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## **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 COMPANY of any disruption in service.

#### **Processing Schedules**

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

#### **Turnaround Timeframe**

Documents received prior to the times listed above will be processed (accepted or rejected) at those times.

#### **Alternative 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 the COMPANY in electronic format after acceptance. Confirmation of acceptance and recordation will be provided to the COMPANY 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 the COMPANY in electronic format after rejection, along with a description of the reason(s) for rejection.

Initially, reasons for rejections will be tabulated and discussed at 30 days and 120 days with the COMPANY.

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## **Service Help Contact Information**

### **COUNTY RECORDING CONTACTS:**

CHERYL BRADLEY  
Tom Green County Deputy Clerk  
325-659-6552  
Cheryl.bradley@co.tom-green.tx.us

### **COMPANY BUSINESS CONTACT:**

ACS Commercial Solutions, Inc.  
Bryan W. Young  
214-887-7461  
Bryan.young@acs-inc.com

### **COMPANY TECHNICAL CONTACT:**

ACS Commercial Solutions, Inc.  
Bryan W. Young  
214-887-7461  
Bryan.young@acs-inc.com

### **COUNTY eRECORDING VENDOR:**

Manatron, Inc  
Vicki Bishop  
866-917-4354 x7026  
Vicki.Bishop@Manatron.com

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## Attachment D

### Payment Options

#### **Payment Options**

COMPANY initiated ESCROW ACCOUNT.

#### **Account Setup Procedures:**

Upon execution of the MOU, the COMPANY must contact County Clerk to establish account. The CLERK will provide escrow deposit instructions and minimum deposit amount necessary for account establishment. Account must be in place in advance of any Electronic Recording submissions.

#### **Payments:**

COMPANY agrees to deposit a mandatory minimum amount of \$1000 to establish the account.

#### **Reporting and Reconciliation:**

Company will be responsible for tracking escrow balance and replenishing account as necessary. If balance is not sufficient to cover submission, submission will be rejected, with an explanation to that effect.

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