

**ELECTRONIC RECORDING FOR AGENTS
MEMORANDUM OF UNDERSTANDING**

THIS MEMORANDUM OF UNDERSTANDING (“**MOU**” or “**Agreement**”), made and entered into on, _____, is between the counties of Los Angeles, Orange, Riverside, and San Diego that own the Statewide Electronic Courier Universal Recording Environment (“**SECURE**”) (individually, “**Owner**;” collectively “**Owners**”) with the Orange County Clerk-Recorder acting on behalf of Owners as the Lead County (“**Lead County Recorder**”) and _____ the submitting party (“**Agent**”), recording electronically through the SECURE system located in Orange County. The Owners and Agent are collectively referred to as the “Parties.”

RECITALS

WHEREAS, SECURE is owned by the counties of Los Angeles, Orange, Riverside, and San Diego; and

WHEREAS, SECURE is an electronic recording delivery system that is compliant with the Electronic Recording Delivery Act of 2004 for the electronic submission and subsequent recording of documents with county recorders; and

WHEREAS, SECURE allows recording of real property documents through electronic receipt and transmission in substitution for conventional paper-based document recording; and

WHEREAS, the Parties desire to ensure that transactions using electronically recorded documents are legally valid and enforceable for the mutual benefit of the parties to those transactions; and

WHEREAS, multiple California counties, in addition to the owner counties, utilize SECURE for the electronic recording of documents and through the SECURE portal server, which is located in Orange County; and

WHEREAS, the Lead County Recorder is acting on behalf of the owners of SECURE to manage and support the system and to execute agreements with Authorized Submitters for the electronic submission of documents through SECURE; and

WHEREAS, under California law, Agents may submit electronic documents through SECURE on behalf of Authorized Submitters only after entering into contract with a County Recorder; and

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WHEREAS, the Parties desire to set forth the Agent's rights and responsibilities for the electronic submission of documents for recording through SECURE to the California counties utilizing SECURE for electronic recording; and

WHEREAS, the Agent agrees to act in compliance with the specifications set forth in the SECURE Submitter User Manual and State of California Attorney General/Department of Justice Electronic Recording Delivery System (**ERDS**) Regulations.

NOW THEREFORE, the Parties, for and in consideration of the mutual promises and agreements herein continued, do agree to the following:

1. **Definitions**

- 1.1. **SECURE:** The Statewide Electronic Courier Universal Recording Environment system used by multiple participating counties to electronically receive and return documents for recording.
- 1.2. **Owners:** The owners of the SECURE system (Los Angeles, Orange, Riverside and San Diego Counties).
- 1.3. **Individual SECURE County Partner:** Any county, who is not an Owner that uses SECURE to electronically receive and return documents for recording.
- 1.4. **Authorized Submitter:** A company or individual who has authorized Agents to submit on their behalf and is authorized by Government Code section 27391 to enter into a contract with Lead County Recorder for electronic recording of documents and is not disqualified pursuant to Government Code section 27395.
- 1.5. **Agent:** A representative and his/her employees who are authorized to submit documents on behalf of an Authorized Submitter and who has met the requirements set forth in the regulations promulgated to effectuate ERDS as provided by Government Code section 27393.
- 1.6. **Operational Issues:** Issues regarding the business rules that dictate what can be recorded by an Owner or Individual SECURE County Partner.
- 1.7. **Technical Issues:** Issues regarding how SECURE electronically receives and returns recordable documents.
- 1.8. **Infrastructure:** The non-software components used to electronically receive and return recordable documents through the SECURE system.
- 1.9. **Company Representative:** The contact person for the Agent in charge of the scanning personnel used for electronic recording.
- 1.10. **User:** The person for the Agent who will be physically scanning and sending electronic instruments.

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- 1.11. **Pathway:** The path that the batch of documents takes through the computer network, starting at the creation of the batch by the Agent and ending with its delivery to the SECURE system.
- 1.12. **Computer Security Auditor:** (1) California Department of Justice (DOJ) approved computer security personnel hired by the Lead County Recorder to perform independent audits, and/or (2) A role assigned by the Lead County Recorder to an individual who is authorized to review transaction logs and conduct tests on computer security mechanisms.
- 1.13. **County Recorder Designee:** A Secure Access role assigned by the Lead County Recorder to retrieve, and, when applicable, return of submitted ERDS payloads.
- 1.14. **ERDS Account Administrator:** A Secure Access role assigned by the Lead County Recorder to an individual who is authorized to configure accounts, assign roles, and issue credentials.
- 1.15. **ERDS System Administrator:** A Secure Access role assigned by the Lead County Recorder to an individual who is authorized to configure hardware, software, network settings, and to maintain ERDS security functions.
- 1.16. **Certified Vendor of ERDS Software:** Personnel supporting and/or acting on behalf of the certified vendor of ERDS software that sells, leases, or grants use of, with or without compensation therefore, a software program for use by counties for establishing an ERDS.
- 1.17. **Secure Access:** A role assigned by the County Recorder to an individual which requires fingerprinting that includes an Authorized Submitter and Agent, if any, who are authorized to use an ERDS.

2. Purpose

The State of California Electronic Recording Delivery Act of 2004 mandates the county recorders and the submitting entities maintain a secure electronic recording environment. All parties of the electronic recording transaction desire to operate and maintain a secure recording system that safeguards parties that are recording documents from deceit, fraud and forgery. This Agreement outlines the procedures and rules for maintaining a secure electronic recording environment by the Agent and those California counties utilizing SECURE.

3. Term

This Agreement shall become effective upon the signature of the Parties and shall remain in effect for a term of 5 years, ending _____, unless terminated in writing by either party in accordance with this Agreement and concurrent with Owner or Individual SECURE County Partner MOU's.

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4. **Eligibility, Agent's Representation, and Warranty of Eligibility**

California Government Code Sections 27390(b)(1) and 27391(b) allow Agents to submit real property records for electronic recording on behalf of title insurers, underwritten title companies, and institutional lenders, as defined.

Agent represents and warrants that Agent and his/her employees are authorized to submit documents on behalf of an Authorized Submitter and are eligible to deliver, and, when applicable, return the submitted ERDS payloads via an ERDS. Agent further represents and warrants that it is not a Computer Security Auditor, County Recorder Designee, ERDS Account Administrator, ERDS System Administrator, or Certified Vendor of ERDS Software.

Agent with Secure Access warrants that it, and its appointed staff, as applicable, has submitted fingerprints to the DOJ and have obtained a clearance based on the state and federal criminal record checks prior to entering into this Agreement as required under California ERDS regulations as set forth in Section 6.24, below.

5. **Electronic Recording Requirements**

Electronic recording requirements and specifications are generally set forth in Attachment A of this Agreement. Agent shall comply with any and all such requirements and specifications. Agent understands Owners or Individual SECURE County Partners have set forth internal county specific policies and procedures for electronic recording that may change from time to time. Furthermore, Agent understands that the Owners or Individual SECURE County Partners may also have additional electronic recording requirements specific to that particular county. Agent acknowledges and assumes responsibility for knowing, understanding, and complying with the requirements and specifications in place for a county at the time of submitting documents for electronic recording. Each Owner or Individual SECURE County Partner may provide written notice to the Agent within a reasonable period of time if there are any changes to an individual Owner or Individual SECURE County Partner's specific requirements.

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6. **Agent Acknowledgements and Responsibilities**

6.1. Participation in the electronic recording program is voluntary and the decision to do so is a business decision. Agent must supply all electronic recording equipment i.e., computer, monitor, scanner, printer, and an internet connection. The authentication token shall be provided by the Owners for a fee. Under no circumstances are laptops and/or any other unauthorized equipment allowed to be used with the SECURE Software.

6.2. Electronic recording permits preparation, signature and/or transmission, in electronic format, of documents and business records. The electronic documents or

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

- 6.3. By use of electronic or digital certificates to sign documents, Agent is bound by those documents for all purposes as if paper versions of the documents had been manually signed.
- 6.4. By use of electronic or digital certificates to sign documents, Agent is bound by those electronic signatures affixed to any documents and the electronic signatures shall have the same legal effect as if the signatures were manually affixed to a paper version of the document.
- 6.5. Electronic signatures must comply with Uniform Electronic Transaction Act (UETA), 15 U.S.C. §§ 7001 to 7031, Electronic Signatures in Global and National Commerce Act (E-Sign) Pub. L. No. 106-229, 114 Stat. 464 (2000) (codified as 15 U.S.C. §§ 7001-7006, 7021, 7031) (enacted S. 761), and California Civil Code §§ 1633.1 to 1633.17 specifications.
- 6.6. Agent is responsible for the accuracy, completeness and content of documents submitted for electronic recording. Agent shall submit accurate and complete documents. In addition to any other requirements for a particular document, in order for a document to be accurate and complete, an image of the signature must appear.
- 6.7. Agent submitting the instruments electronically is certifying that the instruments meet recording requirements, including that it is digitized as required by statute and California regulations to avoid fraud. Agent shall not submit fraudulent documents. In the event such fraudulent or other non-compliant documents are submitted, Agent shall take full responsibility for the submission, ~~and will submit to any subsequent resulting disciplinary action by an individual county Owner~~, whether or not the fraudulent or noncompliant part of the document was the result of the action(s) or omission(s) of the Agent or the Authorized Submitter.
- 6.8. Agent shall immediately notify Owners of any security incident, including but not limited to attempts at or actual unauthorized access to Agent’s Pathway, which could compromise or otherwise adversely affect SECURE’s data systems.
- 6.9. Agent is responsible for providing original document(s) and/or original download data in a timely manner, upon request from the Lead County Recorder, in the event of a security incident or contract breach, to substantiate the authenticity of any document(s) in question.

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- 6.10. Agent shall ensure that all security measures and credentials implemented are protected. Agent assumes all responsibility for documents submitted through unique credentials provided to Agent for the purposes of engaging in electronic recording.
- 6.11. Agent shall submit to random audits without prior notice by Owners, of Agent's software, systems, Pathway, credentials and any other means or processes used by Agent for electronic recording.
- 6.12. Agent is responsible for receiving and verifying receipt of documents recorded to ensure that the source of the receipt is the county where the document was to be recorded.
- 6.13. Agent shall address all Operational Issues with the electronic recording process with the Owners or Individual SECURE County Partners utilizing SECURE.
- 6.14. Agent is responsible for supporting any Technical Issues associated with electronic recording. Agent is responsible for designating at least one technical individual to be available onsite for support of any technical issues associated with electronic recording. Agent shall notify Owners of any problems involving Technical Issues. Agent shall work in good faith with the Owners to resolve any Technical Issues.
- 6.15. Agent shall provide end user support to the Owners 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 by the Agent, then the Agent shall work to resolve issues with the Owners.
- 6.16. Agent's submission of a document to SECURE for transmission to a particular county for recording does not guarantee that a county will accept transmission from Agent. Each county utilizing SECURE reserves the right to determine which Agents will be allowed to electronically record documents for their county.
- 6.17. Agent shall comply with each county's recording requirements. Agent's submission of a document to SECURE for transmission to a particular Owner or Individual SECURE County Partner for recording does not guarantee the document will be recorded by that Owner or Individual SECURE County Partner. Each Owner or Individual SECURE County Partner utilizing SECURE may have its own specific requirements for the recordation of documents including, but not limited to, document types authorized for recording and payment methods. Documents not meeting Owner or Individual SECURE County Partner specific requirements for recording may be rejected by the respective county.
- 6.18. Following the electronic recordation of a document, Agent agrees to deliver the original document to the real party in interest.
- 6.19. Agent agrees to comply with Attorney General Acknowledgment of Responsibilities form #0012 that provides the password policy and protection standards.

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- 6.20. Agent agrees to provide a workstation that is exclusively dedicated to SECURE, that is to be located in a secure location, out of the sight of the public. The workstation may not be located in a place where the workstation can be tampered with or compromised by unauthorized individuals. The workstation must be accessible only to SECURE authorized individuals in compliance to the State of California Attorney General/Department of Justice ERDS Regulations. All workstations are subject to onsite inspections by the Lead County Recorder. The Agent must inform the Lead County Recorder of the exact location of the workstation. Agent shall inform the Lead County Recorder of any changes to the workstation, including location of subject workstation.
- 6.21. An Agent is prohibited from submitting documents for electronic recording through SECURE, on behalf of another Agent. An Agent may not share a SECURE workstation, tokens or passwords with another Agent; Agents are not able to engage in collaborative business operations with each other; each are to work as separate entities. An Agent may not provide third-party services on behalf of another Agent, such as quality control, scanning services, document recording or any other business process services.
- 6.22. As an Agent of instruments for electronic recording, individual Agent staff members have a Secure Access role and are required to submit to a "Live Scan" fingerprint submission. Using the Request for Live Scan Service form (BCIA 8016ERDS) and a service site (that can be found at <http://ag.ca.gov/fingerprints/index>), individual Agent staff members will pay the applicable fees in order to have their fingerprints submitted for approval to participate in the program. This process shall be coordinated through the Lead County Recorder in order to get the Live Scan Service form and to make sure the applicant copy is notarized before being sent to the ERDS Program as proof of submission.
- 6.23. Agents shall purchase an authentication token approved by the Lead County Recorder. One authentication token will be purchased for each individual Agent staff member. For use of the authentication token to submit documents for recording electronically, please refer to the SECURE Submitter User Manual.
- 6.24. Agent shall ensure that the Authorized Submitter assumes all the obligations found in this MOU through any and all agreements between the Agent and Authorized Submitter. The Authorized Submitter's assumption of such obligations shall explicitly include the responsibility to the Owners and Individual SECURE County Partners for payment of all recording fees associated with electronic recording pursuant to this Agreement in the event Agent fails to remit payment. Upon request from Lead County, Agent must provide a copy of any agreement between Agent and Authorized Submitter.
- 6.25. Agent shall provide evidence of eligibility for each Authorized Submitter on whose behalf Agent is intending to submit documents on behalf of, under this Agreement. Evidence of eligibility shall include Authorized Submitter's company information,

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such as physical address, contact information and type of business operation. Lead County reserves the right to verify the information found in the submitted documents and to require Agent provide additional information.

- 6.26. Agent acknowledges and agrees that if at least one electronic recording is not submitted by Agent in any two (2) month period, and if Agent's account shows no activity, Agent will be disabled from the SECURE system.
- 6.27. Agent shall notify Lead County when any approved users are on leave or out of the office for an extended period of time. Notification shall occur prior to an account being disabled for no activity.
- 6.28. Agent shall notify SECURE staff of any user changes which includes the removal, addition, and transfers of users.

7. Scope of Services

- 7.1. Lead County Recorder shall conduct ongoing monitoring of documents received and recorded through electronic recording means in an effort to protect the integrity of the recordation process.
- 7.2. Lead County Recorder shall test and maintain electronic recording software and hardware.
- 7.3. Lead County Recorder shall apply the same level of diligence in handling documents submitted electronically as those submitted through the normal manual process.
- 7.4. If SECURE causes delays or encounters power failures that interfere with the normal course of business, the Lead County Recorder, Owner or Individual SECURE County Partner, as applicable, shall notify the Agent with a choice of using the manual recording process or waiting until the problem has been remedied.

8. Owners' Review and Acceptance Required

Agent's right to submit documents under this Agreement is subject to Owners review and acceptance of Agent's Pathway standards and procedures. Such approval will not be unreasonably withheld by Owners. This review is to confirm that Agent's Pathway is secure and meets all requirements imposed by state law and this Agreement. Agent agrees that, following initial Owners approval of Agent's Pathway, if Agent materially modifies its Pathway, Owners will be notified within 24 hours.

9. General Recording Requirements

- 9.1. Submission, acceptance and recording of any document must comply with all applicable federal, state and local laws.

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- 9.2. Documents may be rejected in accordance with federal, state and local 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 of document a county recorder is authorized to accept for recording, or the document fails to meet any other applicable legal requirement(s).
- 9.3. Original documentation and/or original download data may be requested without prior notification by Lead County Recorder, an Owner, or Individual County Partner in the event of a security incident, investigation, contract breach or if documentation fails to meet any legal requirements, in order to substantiate the authenticity of the document(s) in question.

10. **Suspension**

Owners may suspend Agent's submission of documents to SECURE, restrict access, or deny access to Agent and any of Agent's individual staff members at any time in its sole discretion it deems necessary for the following:

- 10.1. To protect the public interest.
- 10.2. To protect the integrity of public records.
- 10.3. To protect real property owners from financial harm.
- 10.4. To prevent fraud.
- 10.5. For Agent's violation of, or to prevent the violation of, any federal, state, or local law.
- 10.6. For Agent's failure to notify Owners of material modifications to its Pathway within 24 hours.
- 10.7. For Agent's default of any provision of this Agreement including but not limited to Agent's failure to comply with the Agent Acknowledgements and Responsibilities contained in Sections 6.1 through 6.24.

Notice of suspension will be immediately provided to Agent by Owners. Agent may resume submission upon satisfactory resolution of the Owners' concern(s).

11. **Limitation of Liability**

- 11.1. Owners and Lead County Recorder shall be held harmless from and not incur any liability for any damages whatsoever caused either directly or indirectly for:
 - 11.1.1. Information electronically transmitted by the Agent.
 - 11.1.2. Any breach of security, fraud or deceit resulting from electronic recording.
 - 11.1.3. Damages resulting from software, hardware, or other equipment failure.

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- 11.1.4. Delays or power failures that interfere with the normal course of electronic recording.
 - 11.1.5. Restricting or terminating Agent's ability to electronically record documents.
 - 11.1.6. Claims, disputes, or legal actions concerning an electronic transaction, including, but not limited to, the accuracy, completeness or content of documents submitted for recording.
- 11.2. Agent, Owners, and Lead County Recorder shall not be liable to each other for:
- 11.2.1. 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.
 - 11.2.2. Any failure to perform processing of the transactions and documents where such failure is 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).
 - 11.2.3. Except for payment and indemnity obligations hereunder, any cessation, interruption or delay in the performance of an 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 five (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 the force majeure event described in this paragraph extends for a period in excess of 3 days.

12. **Indemnification:**

- 12.1. Owners and Individual SECURE County Partners (hereinafter collectively referred to as "County Parties") shall not be liable for, and Agent shall defend and indemnify County Parties against, any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to this Agreement and arising either directly or indirectly from any act, error, omission or negligence of Agent or its contractors, licensees, agents, servants or employees, including, without limitation, Claims caused by the concurrent negligent act, error or omission, whether active or passive, of County Parties. Agent shall have no obligation, however, to defend or indemnify County Parties from a Claim if it is determined by a

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court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of County Parties.

- 12.2. In the event of fraud that arises directly or indirectly from Agent's submission of a document for electronic recording that impacts the value of or title to real estate, Agent shall defend and indemnify the County Parties (as defined in section 12.1, above) against any Claims (as defined in section 12.1, above) for any electronic recording transaction in which the Agent engages.
- 12.3. With respect to claims arising as specified in Section 12.1, above, Agent will pass through to the County Parties such indemnity rights it receives from the Authorized Submitter ("**Third Party Obligation**") and will cooperate in enforcing them; provided that if the Authorized Submitter fails to honor the Third Party Obligation, Agent will provide the County Parties with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in Section 12.1.

13. Insurance:

- 13.1. Agent shall maintain and provide proof of financial responsibility in the form of a certificate of insurance evidencing \$1,000,000 of general liability coverage ("**Insurance Coverage Proof**") to protect against Agent's liability and to cover Agent's potential losses, pursuant to Government Code section 27391(c)(2). Agent's Insurance Coverage Proof shall be maintained for the entire term of this Agreement.
- 13.2. Agent shall also provide Insurance Coverage Proof for each and every Authorized Submitter on whose behalf Agent is submitting documents under this Agreement. Agent shall submit to Lead County Recorder Insurance Coverage Proof for Agent and each Authorized Submitter on whose behalf Agent is submitting documents under this Agreement.. Agent shall submit Insurance Coverage Proof prior to the expiration of its general liability policy and on behalf of each Authorized Submitter on whose behalf Agent is submitting documents under this Agreement. Failure to provide the Insurance Coverage Proof prior to the expiration of their current insurance certificate, shall result in suspension of Agent's submission of documents electronically through SECURE.
- 13.3. Agent's inability or Authorized Submitter's inability to continuously maintain Insurance Coverage Proof for the term of this Agreement constitutes an Agent default of this Agreement.

14. Termination

- 14.1. Either party may terminate this Agreement for any reason by providing 30 calendar days written notice of termination.

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- 14.2. Owners may terminate this Agreement immediately if Agent is in default of any of the terms of this Agreement including but not limited to Agent's failure to comply with the Agent Acknowledgements and Responsibilities contained in Sections 6.1 through 6.24.
- 14.3. Notwithstanding any other provision of this Agreement, the Owners may terminate this Agreement immediately at any time in its sole discretion it deems necessary for the following:
- 14.3.1. To protect the public interest.
 - 14.3.2. To protect the integrity of public records.
 - 14.3.3. To protect real property owners from financial harm.
 - 14.3.4. To prevent fraud.
 - 14.3.5. For Agent's violation of, or to prevent the violation of, any federal, state or local law.
- 14.4. The indemnification and limitation of liability provisions of this Agreement shall survive any termination of this Agreement.

15. **Dispute Resolution**

The Owner county or Individual SECURE County Partner from which the controversy arises and Agent shall be responsible for resolving any controversy or claim arising out of or relating to electronic recording and will attempt to do so in good faith prior to initiating any litigation.

16. **Governing Laws and Venue**

This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

17. **Amendment**

Any amendments or modifications to this 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 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.

18. **Assignment**

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This Agreement is not assignable by the Agent either in whole or part, without the written consent of the Owners.

19. **Entire Agreement**

This Agreement contains the entire and complete understanding of the Parties and supersedes any and all other agreements, oral or written, with respect to the terms under this Agreement.

20. **Parties in Interest**

None of the provisions of this Agreement or any other document relating hereto provides any rights or remedies to any person other than the Parties hereto and the Owners or Individual SECURE County Partners and their respective successors, transferees, assumers and assigns, if any.

21. **Privileged and Confidential Information**

The Agent agrees that all personal information, which is considered privileged and confidential under state law contained within the documents submitted for recording will not be released by the Agent to any individual or other legal entity who would not otherwise have authorized access to such information. Any release of information by the Agent to any unauthorized individual or other legal entity may result in the Owners terminating this Agreement. The Agent agrees to allow any audit the Owners deem necessary, without prior notification, to ensure privileged and confidential information is not released to an unauthorized party.

22. **Waiver**

No waiver of the breach of any of the covenants, agreements, restrictions, or conditions of this Agreement by Owners shall be construed to be a waiver of any succeeding breach of the same or other covenants, agreements, restrictions, or conditions of this Agreement. No delay or omission of Owners, in exercising any right, power or remedy herein provided in the event of default shall be construed as a waiver thereof or acquiescence therein, or be construed as a waiver of a variation of any of the terms of this Agreement.

23. **Severability**

If any term or portion of this Agreement is held to be invalid, illegal, void or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

24. **Sections and Exhibits**

All sections and exhibits referred to herein are attached hereto and incorporated by reference.

25. **Headings**

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The Agreement captions, clause, section and attachment headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit or affect the construction or interpretation of any term or provision hereof.

26. Recitals Incorporated

The recitals of this Agreement are incorporated by this reference as set forth herein and are agreed to by the Parties.

28. No Presumption Against Drafter

This Agreement is deemed to have been drafted jointly by the Parties. This Agreement shall be construed without regard to any presumption or rule requiring construction against or in favor of the party receiving a particular benefit under this Agreement. No rule of strict construction will be applied against any party or person.

29. Notices

Any notice requirement set forth herein shall be in writing and delivered to the appropriate party at the address listed in this subparagraph. Notice may be given by electronic email. Addresses for notice may be changed from time to time by written notice to the other party. All communications shall be effective when actually received; provided, however, that nonreceipt of any communication as the result of a change in address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.

Agent

[AGENT TO PROVIDE NOTICE CONTACT INFORMATION]

Lead County:

Orange County Clerk-Recorder
Attn: SECURE Coordinator
601 N. Ross Street
Santa Ana, CA 92701
Email: SecureSupport@rec.ocgov.com

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IN WITNESS WHEREOF, the Agent and Owners have executed this Agreement as of the date first written above.

-- SIGNATURE PAGES FOLLOW --

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Agent: _____

** If the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth. The first corporate officer signature must be one of the following 1) the Chairman of the Board 2) the President 3) any Vice President.*

In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

Print Name	Title
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Signature	Date
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Telephone number	Email Address
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The second corporate officer signature must be one of the following: a) Secretary; b) Assistant Secretary; c) Chief Financial Officer; d) Assistant Treasurer.

Print Name	Title
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Signature	Date
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Telephone number	Email Address
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LEAD COUNTY RECORDER:

HUGH NGUYEN, Orange County Clerk-Recorder

Date: _____

**THE OFFICE OF THE ORANGE COUNTY COUNSEL
APPROVED AS TO FORM**

Jacqueline
Guzman

 Digitally signed by Jacqueline Guzman
DN: cn=Jacqueline Guzman, o=County of Orange,
ou=Office of the County Counsel,
email=jacqueline.guzman@coco.ocgov.com, c=US
Date: 2023.03.29 10:46:07 -07'00'

Signature: _____

Title: Deputy County Counsel

Dated: _____

Attachment A

Technical Specifications

A. Submission Methods

SECURE ERDS User Interface (UI) – users who will be scanning paper or uploading image files directly into SECURE ERDS will receive recording confirmation via the SECURE ERDS UI. SECURE ERDS UI allows user to upload a pre-scanned 300 DPI TIFF Group IV image or use a browser scanner TWAIN plugin.

SECURE ERDS Web API – users that directly connect to the SECURE ERDS Web API must adhere to the XSD standard. The SECURE ERDS XML files that are uploaded must include Base64 encoded 300 DPI TIFF Group IV image files. This process does not require a user to be involved in the transfer; it is an automatic process that will be programmed by the submitter in conjunction with the County. Users will receive recorded information via XML return batch.

B. Communications Protocol

HTTPS is required for the submission of instruments.

C. Security Framework

The required security framework is provided in the SECURE ERDS software. The ERDS software shall use a minimum of 128 bit file and image encryption. Industry standard Secure Sockets Layer (SSL) and user login with password that is encrypted shall be employed. User passwords are controlled by the user and at a minimum changed at 90 day intervals to reduce security exposure.

a) Endpoint Security (Authentication Token)

One token will be required for each user that will be utilizing SECURE ERDS. For use of the token to submit documents for ERDS recording electronically, please refer to the SECURE ERDS User Manual.

b) Computers and User Accounts

Computers that connect to ERDS will have system and application logging enabled with a retention period of 3 months. Lead County may request reports of user access and transaction activity.

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Workstations used to submit, retrieve, or, when applicable, return ERDS payloads are protected from unauthorized use and access. As a minimum, workstations shall meet all of the following requirements:

- Anti-malware software configured to start on system boot-up.
- A Licensed and Supported Operating System and application software with the most up-to-date patches and hot-fixes.
- Validated system configuration in accordance with operating system, application, and firewall checklists available in the National Checklist Program (NCP) repository. Checklists published by the following government and private entities shall be used before any other: United States Government Configuration Baseline (USGCB), Defense Information Systems Agency (DISA), United States Department of Defense (DOD), National Security Agency (NSA), Center for Internet Security (CIS), and The MITRE Corporation. All non-compliance shall be documented in a manner that states the reason for non-compliance and a plan of action to obtain compliance, mitigation, or acceptance of the risk by the applicable counties.
- Installed applications shall be limited to the purpose of performing the necessary operational needs of the recording process as defined by the County Recorder.

Shared user accounts may not be issued. At no time shall more than one person be authorized access to SECURE ERDS using a single SECURE ERDS user account or set of identity credentials. Each person shall be uniquely identified. If a user's status changes, so that access to SECURE ERDS is no longer required, the user's SECURE ERDS account and identity credentials shall be disabled and revoked, but not deleted from the system. SECURE ERDS user accounts and identity credentials are non-transferable.

D. Imaging Standards

The following imaging standards shall be complied with:

- Documents must be scanned or uploaded at 300 DPI TIFF Group IV image or use a browser scanner TWAIN plugin.
- Documents will be scanned in portrait mode.
- All pages, including attachments, must be numbered sequentially.
- Documents must be scanned to original size.
Document details, such as margins, font size and other similar requirements, must meet all applicable state statute as set out in Government Code Section 27361 et seq.