



**Kofile Technologies, Inc. and
Williamson County, Texas
Service Agreement**

THIS SERVICE AGREEMENT (the "Agreement") is between **WILLIAMSON COUNTY, TEXAS** (hereinafter referred to as the "County"), an entity with administrative offices located at 405 Martin Luther King Street, Georgetown, Texas 78626 and **KOFIL TECHNOLOGIES, INC.**, a Delaware corporation, with a principal location at 6300 Cedar Springs Road, Dallas, TX 75235 (hereinafter referred to as "Kofile").

WHEREAS the County is committed to preserving and maintaining its records for the benefit and use of the County and the public and to certain of those needs issued an Request for Proposal for the Preservation, Imaging, and Indexing Services of District Clerk Case Files (the "RFP");

WHEREAS Kofile submitted its response to the RFP outlining its proposal to provide the RFP services (the "Proposal"); and the County determined it was in the County's best interest to award a contract for the provision of services to preserve, image, and index District Clerk Case files (the "Records");

NOW, THEREFORE, in consideration of the premises, covenants and undertakings contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. **Agreement for Services.** The RFP (including any issued addenda), Proposal, and this contract shall constitute the Agreement between the parties. The documents of the Agreement will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) the Agreement; (2) the RFP (and any addenda); and (3) the Proposal.
2. **Scope of and Timing of Services.** During the term of this Agreement Kofile will provide County with Services as set forth in the RFP and Proposal. Kofile shall arrange for the transport of the Customer records to and from Kofile's place of business. Kofile may use third parties to provide certain portions of the Services. Kofile shall use reasonable efforts to complete the Services within the time period(s) indicated in the RFP or the Proposal or as agreed to by the parties.
3. **Term.** This Agreement shall be in full force and effect as of the date of the last party's signature below ("Effective Date") and shall continue until the Project Completion Date or when terminated pursuant to this Agreement, whichever event occurs first. The Project Completion Date is defined as the date by which all services and obligations outlined in the RFP shall be fully performed and delivered to the satisfaction of the County. The parties acknowledge and agree that the Project Completion Date is initially set to be two (2) years from the Effective Date unless the date is amended at the sole discretion of the County. Upon successful completion of the services, this Agreement shall automatically terminate without further obligation from either party, except as otherwise expressly provided herein.



4. **Termination.** The County reserves the right to terminate the Agreement for default if Kofile breaches any of the Proposal specifications, terms and conditions, including warranties of Kofile, or if Kofile becomes insolvent or commits acts of bankruptcy. Such right of termination is in addition to and not in lieu of any other remedies the County may have at law or in equity or as may otherwise be provided hereunder. Default may be construed as, but not limited to, failure to deliver the proper goods and/or services within the proper amount of time, and/or to properly perform any and all other requirements to the County's satisfaction, and/or to meet all other obligations and requirements.

The County may terminate the Agreement for convenience and without cause or further liability, upon no less than thirty (30) calendar days written notice to Kofile. The County reserves the right to extend this period if it is in the best interest of the County. In the event the County exercises its right to terminate without cause, it is understood and agreed that only the amounts due to Kofile for goods, commodities and/or services provided, and expenses incurred to and including the date of termination, will be due and payable. No penalty will be assessed for the County's termination for convenience.

5. **Non-Performance.** It is the objective of the County to obtain complete and satisfactory performance of the requirements set forth herein. In addition to any other remedies available at law, in equity or that may be set out herein, failure to perform may result in a deduction of payment equal to the amount of the goods and/or services that were not provided and/or performed to the County's satisfaction.

In the event of such non-performance, the County shall have the right, but shall not be obligated, to complete the services itself or by others and/or purchase the goods from other sources. If the County elects to acquire the goods or perform the services itself or by others, pursuant to the foregoing, of Kofile shall reimburse the County, within ten (10) calendar days of demand, for all costs incurred by the County (including, without limitation, applicable, general, and administrative expenses, and field overhead, and the cost of necessary equipment, materials, and field labor) in correcting the nonperformance which Kofile fails to meet pursuant to the requirements set out herein. In the event Kofile refuses to reimburse the County as set out in this provision, the County shall have the right to deduct such reimbursement amounts from any amounts that may be then owing or that may become owing in the future to Kofile.

6. **Compensation and Invoicing.** County's will pay Kofile for services in the amount and rates set forth in the Proposal. County will make payment for work as it is completed and delivered to County and consistent with the Texas Government Code, Chapter 2251. Kofile shall submit an invoice to County for each payment due, and County agrees to pay each invoice within thirty (30) calendar days after receipt. Timely payment is a material term of the Agreement.

County acknowledges pricing is based upon a good faith estimate (the "GFE") of page counts and condition as understood by Kofile at the time of submitting the Proposal. Actual pricing may vary from the estimate based upon actual page counts and condition



of records. Kofile will communicate any changes to the GFE and will not exceed the GFE without advance written authorization from County.

7. Indemnification. Kofile shall indemnify, defend and save harmless, the County, its officials, employees, agents and agent's employees from, and against, all claims, liability, and expenses including reasonable attorneys' fees, arising from activities of the Respondent, its agents, servants or employees, performed hereunder that result from the negligent act, error, or omission of the Respondent or any of the Respondent's agents, servants or employees, as well as all claims of loss or damage to the Respondent's and the County's property, equipment, and/or supplies.

Furthermore, the County, its officials, employees, agents and agents' employees shall not be liable for damages to Kofile arising from any act of any third party, including, but not limited to, theft. Kofile further agrees to indemnify, defend and save harmless, the County from its officials, employee, agents and agents' employees against all claims of whatever nature arising from any accident, injury, or damage whatsoever, caused to any person, or the property of any person, occurring in relation to Kofile's performance of any services requested hereunder during the term of the Agreement.

8. Limitation of Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CLAIMS, PENALTIES OR DAMAGES, WHETHER IN CONTRACT, TORT, OR BY WAY OF INDEMNIFICATION, IN AN AMOUNT EXCEEDING TEN MILLION AND 00/100 DOLLARS (\$10,000,000).

UNDER NO CIRCUMSTANCES WILL EITHER PARTY TO THIS AGREEMENT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, INTRINSIC VALUE, OR SPECIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

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9. No Waiver of Sovereign Immunity or Powers. Nothing in this Agreement will be deemed to constitute a waiver of sovereign immunity or powers of the County, the Williamson County Commissioners Court, or the Williamson County Judge. Additionally, the parties agree that under the Constitution and laws of the State of Texas, the County cannot enter into an agreement whereby the County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding, or saving harmless Kofile for any reason are hereby deleted.

10. Insurance. Kofile shall maintain, at its own expense, in full force and effect, for the term of this Agreement, the following types of insurance: .

1. Worker's Compensation: Insurance in the amount and in compliance with the provisions as provided by State of Texas law;



2. Commercial General Liability: Vendor shall maintain commercial general liability insurance with a limit of not less than \$1,000,000.00 for each occurrence with a \$2,000,000.00 products/completed operations aggregate and \$2,000,000.00 general aggregate limit. The policy shall include coverage for bodily injury, broad form property damage, products, and completed operations and blanket contractual coverage;
3. Property of Others: Vendor shall maintain property of others insurance with a limit not less than \$1,000,000.00;
4. Commercial Automobile Liability Insurance: Vendor shall maintain commercial auto liability insurance covering all owned or hired vehicles used in connection with the work performed under the contract with limits of liability not less than \$1,000,000.00 each person, and \$300,000.00 each accident for bodily injury, and \$100,000.00 each occurrence for property damage, or combined single limit for bodily injury and property damage liability of not less \$1,000,000.00;
5. Professional /Cyber Liability Insurance: Vendor shall maintain professional/cyber liability insurance not less than \$5,000,000.00 for each claim: Technology Services; Liability, Media Liability; Privacy/Network Security and Privacy; Privacy and Network Security Breach Costs; Direct Business Interruption Loss; Cyber Extortion Threat; and Contingent Business Interruption Loss; and
6. Valuable Papers: Vendor shall maintain valuable paper insurance not less than \$1,000,000.00 each claim. Vendor shall maintain valuable papers in transit insurance not less than \$500,000.00 each claim.

11. Fiscal Funding. The County intends to budget and make sufficient funds available and authorize funds for expenditure to finance the costs of the Contract. Kofile understand and agree that the County's payment of amounts under the Contract shall be contingent on the County receiving appropriations or other expenditure authority sufficient to allow the County, in the exercise of reasonable administrative discretion, to make payments under this Contract.

12. Independent Contractor. Kofile shall be an independent contractor and shall assume all of the rights, obligations, liabilities, applicable to it as such independent contractor hereunder and any provisions herein which may appear to give the County the right to direct Kofile as to details of doing work herein covered, or to exercise a measure of control over the work, shall be deemed to mean that Kofile shall follow the desires of the County in the results of the work only. The County shall not retain or have the right to control Kofile's means, methods or details pertaining to the Kofile's performance of the work. The County and Kofile hereby agree and declare that Kofile is an independent contractor and as such meets the qualifications of an "Independent Contractor" under Texas Workers



Compensation Act, Texas Labor Code, Section 406.141, that Kofile is not an employee of the County, and that Kofile and its employees, agents and subcontractors shall not be entitled to workers compensation coverage or any other type of insurance coverage held by the County.

13. Taxes. The County is a body, corporate and politic, under the laws of the State of Texas and claims exemption from sales and use taxes under Texas Tax Code, Section 151.309, as amended, and the services and/or goods subject hereof are being secured for use by the County.

14. Corporate Good Standing. Kofile represents and warrants that it: (a) is a corporation duly incorporated, validly existing and in good standing; (b) has all requisite corporate power and authority to execute, deliver, and perform its obligations hereunder; and (c) is duly licensed, authorized, or qualified to do business and is in good standing in every jurisdiction as necessary to perform its obligations hereunder.

15. No Actions, Suits, Proceedings or Debarment. Kofile warrants that there are no actions, suits, or proceedings, pending or threatened, that will have a material adverse effect on Kofile's ability to fulfill its obligations under this Agreement. Kofile certifies that as of the date of this Agreement, Kofile has not been and is not on the federal government's list of suspended, ineligible, or debarred Kofile. Kofile will notify County if it becomes suspended, ineligible or debarred.

16. Professional Quality. Kofile warrants to the County that all preservation Services provided under this Agreement will be performed in a manner consistent with or greater than that degree of care, qualification and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. If any work is reasonably determined by County to be less than professional quality, Kofile will correct such work without charge. This warranty extends for ninety (90) business days past termination or expiration of this Agreement. This warranty is limited to reworking of the unsatisfactory product without change to the original specifications and without regard to the amount of effort expended on the original work product.

17. Ownership of County Records. All of the Records shall remain the property of the County. The Records shall not be used by Kofile other than in connection with providing the Services pursuant to this Agreement. Kofile shall not destroy any original Records except as directed by County. At no cost to County, Kofile shall upon request: (a) promptly make a copy of a Record or other record and send it to the County, or (b) promptly return to County, any Records or other documents of County that it may possess or control. Kofile may destroy any electronic images of records ninety (90) days after the completion of the Services under any Schedule unless otherwise agreed upon by the parties.

18. Notices. Any notice or certification required or permitted to be delivered under this Agreement shall be deemed to have been given when personally delivered, or if mailed, three (3) business days after deposit of the same in the United States Mail, postage prepaid,



certified, or registered, return receipt requested, properly addressed to the contact person shown at the respective addresses set forth below, or at such other address as shall be specified by written notice delivered in accordance herewith:

If to the County:
Williamson County Purchasing Dept.
100 Wilco Way, Suite P101
Georgetown, TX 78626
Attention: Purchasing Agent

If to Kofile
Kofile Technologies
6300 Cedar Springs Road
Dallas, TX 75235
Attention: Legal department
LEGAL@Kofile.com

19. Assignment. Kifle will not assign, sell, or otherwise transfer the Agreement or any other rights or interests obtained under the Agreement written permission of the County the Commissioners Court. The Agreement shall be binding upon and inure to the benefit of the contracting parties hereto and their respective successors and permitted assigns

20. Amendments and Changes in the Law. No modification, amendment, notation, renewal, change order, or other alteration of this Agreement shall be effective unless mutually agreed upon in writing and executed by the parties hereto.

21. Confidentiality. Information disclosed by a party to the other for purpose of work to be performed under this Agreement or information that comes to the attention of a party during the course of performing such work, which is not considered to be in the public domain, is to be kept strictly confidential. Each party agrees to use each other's confidential information only for the purposes of this Agreement and shall not disclose confidential information to any third-party except as provided for by law.

22. Access to Records - County, or any of their authorized representatives, shall have access to any documents, papers, or other records of the Provider which are pertinent to the Award, in order to make audits, examinations, excerpts, and transcripts.

23. Governing Law; Forum. The parties agree venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in either Williamson County, Texas or in the Austin Division of the Western Federal District of Texas, and the parties hereto expressly consent and submit to such jurisdiction. Furthermore, except to the extent the Agreement is governed by the laws of the United States, the Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.

24. Force Majeure. If the party obligated to perform is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of said party, the other party shall grant such party relief from the performance. The burden of proof for the need for such relief shall rest upon the party obligated to perform. To obtain release based on force majeure, the party obligated to perform shall file a written request with the other party.



25. Entire Agreement. This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings and Agreements between the parties, whether written or oral, relating to the same subject matter. This Agreement and all of its provisions shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

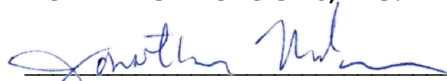
26. Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof, but rather the entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligation of the parties shall be construed and enforced in accordance therewith. The parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is the desire and intention of each that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Agreement and be deemed to be validated and enforceable

27. Counterparts; Number and Electronic Signatures. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Signatures delivered by email in .pdf format shall be deemed original signatures for purposes of this Agreement.

28. Signatory Warranty and Binding Effect. The undersigned signatories for the parties hereby represent and warrant that they are officers of their respective organizations for which they have executed this Agreement and that they have full and complete authority to enter into this Agreement on behalf of their respective organizations and that the executions hereof are the acts of the parties involved and constitute legal, valid and binding obligations of the respective parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

KOFIL TECHNOLOGIES, INC.



Jonathan Mohn
CEO & President

WILLIAMSON COUNTY

Name:

Title: