



**Kofile Technologies, Inc. and
Baldwin County, Alabama
Service Agreement**

THIS SERVICE AGREEMENT FOR Preservation of Deed Volumes (the "Agreement"), effective as of February __, 2022 (the "Effective Date"), is between **BALDWIN COUNTY, ALABAMA**, a political subdivision of the State of Alabama, by and through the Baldwin County Commission (hereinafter referred to as the "County"), an entity with administrative offices located at 220 Courthouse Square, Bay Minette, AL 36507, and **KOFILE 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 is in need of preservation services for its records to further those preservation efforts;

WHEREAS the County desires to retain Kofile for certain preservation services related to certain County records as set forth in a Schedule to this Agreement (collectively the "Records");

WHEREAS Kofile is qualified and desires to perform preservation services for County including those more specifically identified in a Schedule to this Agreement. Preservation Services may include conservation, deacidification, encapsulation, rebinding, re-creation, image capture, image processing, indexing and microfilming, and other related services as the parties may agree from time to time in a Schedule to this Agreement (the "Preservation Services");

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. Scope of and Timing of Services. During the term of this Agreement, and consistent with the terms and conditions set forth herein, Kofile will provide County with Preservation Services (the "Services") as set forth in one or more Schedules to this Agreement. Schedule A attached hereto is effective upon the execution of this Agreement. Future Schedules, if any, will be effective upon their execution by both parties.

Unless otherwise specific in a Schedule, Kofile shall arrange for the transport of the Records to and from Kofile's place of business as mutually agreed to by the parties. Upon receiving the Records, or each batch of the Records (as the case may be), at Kofile's place of business, Kofile shall use reasonable efforts to complete the Preservation Services upon the Records and deliver the Preserved Data, or each batch of Preserved Data, to the County within the time period(s) indicated in a Schedule or as agreed to by the parties for each project.

2. Term. This Agreement will become effective on the Effective Date set forth above and will remain in effect for one (1) year unless terminated as set forth herein. This Agreement will automatically renew for up to three (3) one (1) year terms unless a party provides no less than sixty (60) days-notice of non-renewal to the other party. The Termination rights sets forth in Section 3 will be applicable to this Agreement or any individual current or future Schedule thereto.



The termination of any particular Schedule will not terminate this Agreement or another Schedule. Termination of the Agreement will terminate all Schedules.

3. Termination. This Agreement is subject to termination for convenience and without penalty by either party upon not less than ninety (90) days written notice to the other party. Either party may terminate this Agreement or any Schedule thereto, for a material breach if such breach remains uncured after ten (10) days written notice by the other party. Unless provided for otherwise therein, each Schedule to this Agreement is subject to termination for convenience and without penalty upon not less than ninety (90) days written notice to the other party. Kofile will use reasonable efforts to cease efforts upon notice of termination. County will be responsible for payment of all Preservation Services completed through the termination date.

4. Compensation and Invoicing. County agrees to pay Kofile for the Preservation Services in accordance with the payment provisions set forth in each Schedule to this Agreement. 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. The date of payment shall be the date the check is mailed, as evidenced by the postmark. Timely payment is a material term of the Agreement.

5. Indemnification. Kofile shall defend, indemnify, and hold harmless the County and its commissioners, officers, agents, and employees, from any and all losses, claims, demands, damages, injuries, causes of action, assessments, penalties, costs, expenses, judgments or other liabilities arising out of Kofile's negligent performance of any Preservation Services provided pursuant to this Agreement. Nothing in this Agreement shall be construed to require Kofile to provide indemnification for losses, claims, demands, damages, injuries, causes of action, assessments, penalties, costs, expenses, judgments, or liabilities **(a)** arising out of or otherwise related to, in whole or in part, the negligence or willful misconduct of the County or **(b)** concerning or otherwise related to the accuracy or inaccuracy, content, or omission of any information in any of the Records.

6. Limitation of Liability. EXCEPT FOR LIABILITY ARISING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY TO THIS AGREEMENT BE LIABLE TO THE OTHER PARTY HEREUNDER FOR ANY CLAIMS, PENALTIES OR DAMAGES, WHETHER IN CONTRACT, TORT, OR BY WAY OF INDEMNIFICATION, IN AN AMOUNT EXCEEDING FIVE-HUNDRED THOUSAND AND 00/100 DOLLARS (\$500,000.00). EXCEPT FOR LIABILITY ARISING FROM GROSS NEGLIGENCE OR WILFULL MISCONDUCT, NEITHER 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.

7. Insurance. Kofile shall maintain in full force and effect, for the term of this Agreement, the following types of insurance: (a) Commercial General Liability insurance of not less than \$1,000,000.00 each occurrence, and \$2,000,000.00 in the aggregate, (b) Automobile Liability insurance of not less than \$1,000,000.00 combined single limit, (c) Umbrella Liability insurance of not less than \$5,000,000.00, (d) Workers' Compensation insurance meeting or exceeding the



statutory requirements, and (e) Errors and Omissions insurance of not less than \$1,000,000.00. A Certificate of Insurance confirming such insurance and limits will be provided to the County upon request. Kofile shall cause insurer to furnish to County future certificate(s) evidencing the insurance described herein at any time upon request. Kofile will provide County with no less than thirty (30) days-notice of any material change, notice of non-renewal or cancellation.

8. Fiscal Funding. Notwithstanding any provisions contained herein, the obligations of County under any Schedule to this Agreement are expressly contingent upon the availability of funding for each item and obligation contained herein for the term of the Agreement and any extensions thereto. In the event County is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding, or if funds become unavailable, County, at its sole discretion, may provide funds from a separate source or may terminate any Schedule to this Agreement by written notice to Kofile at the earliest possible time prior to the end of its fiscal year. Upon County's termination for lack of sufficient funding, each party shall return all products, documentation, and other information disclosed or otherwise delivered to the other party prior to such termination. County shall pay for all services performed up through and including the date of termination, and any licenses granted hereunder shall terminate.

9. Independent Contractor. Kofile, including its agents or employees, is an independent contractor and not an agent, servant, joint enterpriser, joint venture or employee of the County, and is responsible for its own acts, forbearance, negligence and deeds, and for those of its agents or employees in conjunction with the performance of work under this Agreement. Nothing herein shall be deemed to establish a partnership, joint venture, association, or employment relationship between the parties.

10. Taxes. County represents as an entity of the State it is exempt from the payment of state and local sales, excise, and use tax and federal excise tax, and it shall therefore not be liable or responsible to the Kofile for the payment of such taxes under this Agreement.

The fees paid to Kofile pursuant to this Agreement are inclusive of any applicable sales, use, personal property or other taxes based upon or measured by Kofile's cost in acquiring materials and supplies or providing Preservation Services including all personal property and use taxes, if any, due on equipment owned by Kofile.

Kofile accepts full and exclusive liability for the payment of any and all contributions or taxes Including for Social Security, Workers' Compensation Insurance, and Unemployment Insurance, imposed under any state or federal laws based upon by the wages, salaries, or other remuneration paid to persons employed by Kofile for work performed under the terms of this Agreement and agrees to indemnify and save harmless the County from any such liability.

11. 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.



12. 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 at the time of this Agreement, Kofile was not on the federal government's list of suspended, ineligible, or debarred contractors and that Kofile has not been placed on this list at the time of the contract execution. Kofile will notify County if it becomes suspended, ineligible or debarred.

13. 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 rework of the unsatisfactory product without change to the original specifications and without regard to the amount of the effort expended on the original work product.

14. 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 Preservation Services pursuant to this Agreement. Kofile shall not destroy any Records. 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.

15. 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:

If to Kofile

Baldwin County
 220 Courthouse Square
 Bay Minette, AL 36507
 Attention: Hon. Harry D'Olive, Jr.

Kofile Technologies
 6300 Cedar Springs Road
 Dallas, TX 75235
 Attention: Legal department
 Michael.strachan@Kofile.com

16. Order of Precedence of Related Documents. In the event of a conflict or ambiguity within, between or among the provisions of this Agreement and/or any of the referenced or incorporated documents, all parties agree that the provisions of this Agreement shall take precedence.

17. Assignment. Kofile will not assign, transfer, or convey its interest in this Agreement without the prior written consent of the County. Notwithstanding the foregoing, Kofile may freely assign this Agreement to a corporate affiliate or in the event of the sale of all, or substantially all, of its assets. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns.



18. 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.

19. 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, that 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 required by law or with the other party's prior written consent.

20. Governing Law; Forum. This Agreement shall be construed and enforced in accordance with the substantive and procedural laws of the State of Alabama, without reference to its principles of conflict of laws with proper venue for any action arising hereunder lying in Baldwin County, Alabama.

21. 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.

22. Severability. If any provision of the Agreement is constructed to be illegal or invalid, this will not affect the legality of validity of any of the other provisions in this Agreement. The illegal or invalid provision will be deemed stricken and deleted, but all other provisions shall continue and be given effect as if the illegal or invalid provisions had never been incorporated.

23. 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.

24. 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.

25. Attorney Fees. In the event County is forced to employ an attorney to enforce any of the terms of this Agreement as a result of a breach of this Agreement by Kofile, the County shall be entitled to recover from Kofile its reasonable costs and expenses, including a reasonable attorney's fees, incurred in connection therewith.

**** Signature Page below ****



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

KOFIE TECHNOLOGIES, INC.

Jonathan Mohn
President

Baldwin County Commission, AL

Baldwin County Commission Chair

ATTESTED TO:

By: Wayne Dyess
Its: County Administrator





SCHEDULE A- 2022 Preservation and Archival Imaging of County Records

A. Records Volumes and Pricing:

Kofile will perform the preservation services and archival imaging for the County Deed Books identified by Volume below in Section D of this Schedule. County acknowledges pricing set forth herein is based upon a good faith estimate of page counts and condition. Actual pricing will be based upon actual page counts, condition of records and the applicable unit pricing such that actual billing may vary from the estimate provided.

B. Payment Terms:

Payment to Kofile will be due in three (3) equal monthly payments of \$142,505.75 based upon the estimated total of \$427,517.25. Kofile will invoice County for the first payment upon execution of the Agreement. Payment terms are net 30 from the receipt of each invoice. Kofile will issue a final invoice or refund to County based upon actual final total cost with thirty (30) days of project completion. Each invoice will be provided to the County as directed or otherwise will be mailed directly to:

Baldwin County
220 Courthouse Square
Bay Minette, AL 36507
Attention: Hon. Harry D'Olive, Jr.

C. Project Schedule:

1. Kofile will pick-up the Records from the County within forty-five (45) days of the execution of the Agreement between the parties.
2. County will be responsible to provide Records to be preserved and imaged in organized and labeled boxes;
3. Kofile will use commercially reasonable efforts to complete preservation and imaging of the Records within one hundred and eighty (180) days of retrieving the Records from the County.
4. While the Records are in Kofile's possession, County may access the records by sending an e-mail request to imagerequests@kofile.com with a subject line of "Book__/Page__." County will provide the Case(s) and Box/Book that holds the case/document in the body of the Records request e-mail.
5. Kofile will research and respond to the Records request within eight (8) business hours.
6. Kofile and County will mutually agree to schedule the return of the physical Records to County.
7. The preserved and digitized Records will be returned to County upon completion as agreed upon by the parties.



D. Deed Record Project Specifications and Estimates

BALDWIN COUNTY, AL PRESERVATION AND IMAGING OF DEED RECORDS						
VOLUME	PAGE COUNT	SHEET SIZE	DESCRIPTION	(PRV) PRESERVATION	(IM) ARCHIVAL IMAGING	LINE-ITEM TOTAL
56-90	20,885	17" x 11"		\$104,425.00	\$17,752.25	\$122,177.25
91-169	47,400	14" x 10"		\$237,000.00	\$40,290.00	\$277,290.00
TOTAL DEED RECORDS				\$341,425.00	\$58,042.25	\$399,467.25

BALDWIN COUNTY, AL DSB SHELVING			
QUANTITY	DESCRIPTION	UNIT PRICE	LINE-ITEM TOTAL
17	Shelving units for DSB Binders	\$1,650.00	\$28,050.00
1	Preservation of Old Map	No Charge	\$0.00
1	Preservation of Book "Jim and Jess" and rebind	No Charge	\$0.00
PRESERVATION, IMAGING, AND SHELVING UNITS			\$427,517.25