

SUBORDINATE AGREEMENT

CONTRACT NO. MA-042-17011455

FOR

SCANNING, INDEXING, AND IMAGING SERVICES

This contract number MA-042-17011455 ("Contract"), is made or entered into this 7TH day of May, 2017. Matrix Imaging Products Inc ("Contractor"), with a place of business at 20512 Crescent Bay Dr Ste 100, Lake Forest, CA 92630-8847 and the County of Orange/Health Care Agency ("County"), a political subdivision of the State of California, with a place of business at 200 W. Santa Ana Blvd., Ste. 650, Santa Ana, CA 92701-7506, which may also be referred to herein individually as "Party" or collectively as "Parties".

ATTACHMENT

This Contract is comprised of this document and the following Attachment, which is incorporated by reference into this Contract:

Attachment A – Health Care Agency Scope of Work

Attachment B – Payment/Compensation

Attachment C – Business Associate Contract

Attachment D – Regional Cooperative Agreement (RCA) No. RCA-017-17010009

RECITALS

WHEREAS, the County, desires to enter into a Contract with Contractor for Scanning, Indexing and Imaging Services; and

WHEREAS, the County of Orange, County Procurement Office has issued RCA No. RCA-017-17010009, now in effect from May 7, 2017 through May 6, 2022; and

WHEREAS, the Contractor is willing to provide the services in accordance with the Terms & Conditions of RCA No. RCA-017-17010009 and subordinate Contract MA-042-17011455; and

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

- 1. Term of Contract:** This Contract shall be in effect from ~~May 7, 2017~~ **May 7, 2020** through and including ~~May 6, 2018~~ **May 6, 2021**, unless otherwise terminated by the Parties. This Contract may be renewed for ~~four (4)~~ **one** additional one year term, thereafter in accordance with RCA No. RCA-017-17010009 upon mutual concurrence of both Parties. The County does not have to give a reason if it elects not to renew this Contract.
- 2. Scope of Contract:** Contractor shall provide the County with Scanning, Indexing and Imaging Services in accordance with Attachment A, as modified herein by this reference.

3. **Compensation:** This is a fixed price Contract not to exceed ~~\$225,000~~ \$350,000 per year between County and Contractor.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder.

4. **Precedence:** The Contract documents consist of this Contract, and its Attachment. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the Attachment.
5. **Notices:** Any and all notices, requests, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the Parties' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than five (5) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Parties at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

For Contractor:	Name: Attention: Address: Telephone: Facsimile: E-mail:	Matrix Imaging Products, Inc. Brian Einbund 20512 Crescent Bay Dr Ste 100 Lake Forest, CA 92630-8847 (714) 556-5600 brian.enbund@matriximaginginc.com
-----------------	--	---

For County:	Name: Attention: Address: Telephone: Facsimile: E-mail:	County of Orange HCA/Purchasing Dept. Roland Tabangin 200 W. Santa Ana Blvd., Ste. 650 Santa Ana, CA 92701 (714) 834-3151 (714) 834-2657 rtabangin@ochca.com
-------------	--	--

CC:	Name: Attention: Address: Telephone: Facsimile: E-mail:	County of Orange HCA/ COR Adrienne Billiter 200 W. Santa Ana Blvd., Ste. 125 Santa Ana, CA 92701 (714) 834-3079 (714) 835-9312 Abilliter@ochca.com
-----	--	--

6. **Invoicing and Payment Instructions:** Invoice shall be mailed to the following address for payment processing:
County of Orange

HCA/Accts Payable
P.O. Box 689
Santa Ana, CA, 92702-0689

Acceptable Invoicing Format: Contractor may bill on any standard invoice form, but the following references must be made:

- a. County Contract Number **MA-042-17011455**
- b. Contractor's Federal I.D. Number and California Board of Equalization Permit Number
- c. Description of Services and Location
- d. Date(s) of Performance of Services
- e. Total Amount of Payment Requested
- f. Remittance Address

The responsibility for providing acceptable invoice(s) to the County for payments rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

-Signature Page Follows-

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

Contractor's name: Matrix Imaging Products, Inc.

Print Name Title

Signature Date

Print Name Title

Signature Date

If the firm is a corporation two signatures are required: one signature by the Chairman of the Board, President, or any Vice President; and one signature by the Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. If signed by one authorized individual only, a copy of the corporate resolution or by-laws whereby the board of directors has empowered said authorized individual to act on its behalf by his or her signature alone is required.

County of Orange, a political subdivision of the State of California

Print Name Deputy Purchasing Agent
Title

Signature Date

Approved as to Form
Office of the County Counsel
County of Orange, California

County Counsel Deputy

ATTACHMENT A
SCOPE OF WORK

Paper Scanning/Conversion:

- A. Contractor shall convert paper pages/images to digital images as needed within the Contract period for the County.
- B. Contractor shall pick up documents (pre-boxed) on a weekly basis from various County locations. The documents will be prepared in advance by County personnel including the removal of all staples, paper clips, sticky notes, etc. along with the insertion of pre-printed bar codes, which will include unique record/patient information. All pages less than standard 8.5 x 11" in size will need to either be properly prepared by organizing them to have a common top edge with the standard 8.5 x 11" pages in the file or taped to a blank piece of paper. (Contractor shall train County personnel on this process at no additional cost).
- C. For each box of documents, County/Program staff will prepare a manifest, signed by the County personnel, indicating the contents of the documents contained in the box. The manifest will also be signed by the Contractor when picking up the box. Both County and Contractor will keep a copy of the manifest.

Also indicating on the manifest is the abbreviation of the Program and Unit the documents belong to, such as BH-CYS. County and Contractor will agree on the standards of the abbreviation before the commencement of the Contract.

- D. Contractor shall provide bar-coding services for the County - Employee Health Program for the first year at no additional charge.
- E. Document conversion shall be performed at the Contractor's facility. Services include scanning, indexing, and quality control of images scanned at the industry standard 200 dpi resolution in B&W mode and stored as PDF images or Tiff images if requested by the County. Each file will be automatically indexed using the combination of a leading bar code, which contain unique record/patient information, and a database look up provided by County.
- F. Indexing will include the following eight (8) index fields or equivalent:
 - 1. Identifier 1 (20 characters, left justified)
 - 2. Identifier 2 (20 characters, left justified)
 - 3. Scan Job Number (20 characters, left justified)
 - 4. Last Name (35 characters, left justified)
 - 5. First Name (25 characters, left justified)
 - 6. Middle Name (20 characters, left justified)
 - 7. Date of Birth (10 characters, mm-dd-yyyy)
 - 8. Social Security Number (11 characters, xx-xxx-xxxx)
 - 9. Last Date of Services (10 characters, mm-dd-yyyy)

There will be no additional charge if County chooses to include additional index fields as long as Contractor is able to easily/automatically obtain this information from the database look up configuration.

- G. The scanned documents shall be destroyed by Contractor at no additional charge to the County.
- H. As agreed upon by both parties, no media (Hard Drive, DVD's, CD's, etc.) will be transferred from Contractor to the County. If the County decides to have Contractor host the images for them on Contractor's Hosting System, Contractor will be responsible for uploading the images/index data on a weekly basis to the Application/Web Xtender database and available for access by the County within fifteen (15) business days. The images will then be backed up by Contractor on unalterable media in

order to meet the County's backup requirements. However, if the County decides to purchase the Application/Web Xtender software and manage the imaging system on-site County will be responsible for downloading the images/index data from a secured FTP site that Contractor will upload to weekly. County will then also be responsible for backing up the images and database on unalterable media in order to meet their requirements.

- I. If the County decides to manage the imaging system on-site but installs a different imaging software, Contractor will be responsible for providing County with the latest images files and a comma delimited text file containing image file names and the corresponding indexing data.
- J. Once the images/index data are uploaded to Application/Web Xtender, the images would be available to authorized users as long as they have access to County's network. The user would simply log in to Application/Web Xtender and enter information in one or multiple index fields (Name, SS#, etc.). The images would then be displayed on the screen and be available for viewing, printing, e-mailing, etc.
- K. Contractor shall provide training necessary to bring Custodian of Records (COR) staff to a proficient level of expertise in the operation of the hosted site.
- L. In the event that County receives an urgent request, Contractor will arrange for immediate conversion of the Paper Chart and will make those images available within 1-2 business days on the hosted site.
- M. If a supplemental document needs to be added to a patient file, which is already on the hosted site, Contractor will schedule the pick-up of the document and scan/append the document as the first page in the digital file on the hosted site. There will be no additional charge for this work.
- N. Contractor shall add Additional Indexing to Paper/Scanning Conversion, Microfiche On-Demand, and Bulk Conversion to reflect "Scan Job Number." (All hosted site charts must have a scan job number)

Microfiche On-Demand / Bulk Conversion and Hosting Service:

- O. Contractor will provide scanning, indexing, and quality control of On-Demand and Bulk microfiche at 200 dpi resolution in B&W mode, stored as PDF files.
- P. Contractor will use a delivery service to handle weekly pickups from various County locations and will be responsible for covering all costs associated with this service.
- Q. Contractor will convert the weekly "On Demand" volume of microfiche to digital images and make the images available from Contractor's hosted site via the existing 3 Web Xtender Concurrent Licenses within five (5) business days.
- R. Contractor will convert the weekly "Bulk Conversion" volume of microfiche to digital images and make the images available from Contractor's hosted site via the existing 3 Web Xtender Concurrent Licenses within fifteen (15) business days.
- S. In the event that County cannot locate the scanned images on the Contractor's hosted site, Contractor will respond by having the images available within 1-2 business days.
- T. Once the images are available on the hosted site, Contractor will destroy the microfiche at no extra charge.
- U. In the event that County receives an urgent request, Contractor will arrange for immediate pickup of microfiche and will make those images available within 1-2 business days.

Annual EMC-Application/WebXtender Storage and Retrieval Software Services

- V. Images will be accessible via a 3-Concurrent User
- W. EMC Application/WebXtender License and reside on Contractor's Server.
(Allows for storage of up to 100 GB's)
- X. Includes standard storage and backup copies of files on WORM Dual-Layer Blu-ray DVD Unalterable Media.
- Y. Includes End User Training.
- Z. Includes Remote Technical Support Via Phone, Fax, E-mail and Remote Access.

**ATTACHMENT B
PAYMENT/COMPENSATION**

ITEM	DESCRIPTION	UNIT PRICE
01	<p>Annual Paper Scanning/Conversion Project</p> <ul style="list-style-type: none"> • Includes scanning and automatic indexing of pages/images scanned at 200 dpi resolution in B&W mode, stored as PDF files. • Includes indexing of up to 8 index fields. Price assumes Contractor will be able to utilize a database look-up configuration for automatic indexing and that all documents will be prepared in advance by the County including the removal of all staples, paper clips, etc. along with the insertion of preprinted bar codes. • Once the images are available on the hosted site and approved by the OCHCA Matrix Imaging will destroy the paper at no extra charge. • Includes the initial Project Set-Up and all pick-up/delivery charges on a weekly basis from one location. • In the event that County receives an urgent request, Contractor will make those images available within 1-2 business days. 	<p align="center">\$0.05 per image</p>
02	<p>On-Demand/Bulk Conversion Services:</p> <ul style="list-style-type: none"> • Contractor will provide scanning and indexing of on-demand and bulk microfiche at 200 dpi resolution in B&W mode, stored as PDF files. <p>(Price based on 4 index fields, an average of 15 characters per field and an average of 60 images per document.)</p> <ul style="list-style-type: none"> • Contractor will use a delivery service to handle weekly pick-ups from Custodian of Records office and will be responsible for covering all Costs associated with this service. • Contractor will convert the weekly volume of microfiche to digital images and make the images available from Matrix Imaging's hosted site via the existing 3 Web Xtender Concurrent Licenses within five (5) business days. • Once the images are available on the hosted site and approved by the OCHCA Matrix Imaging will destroy the microfiche at no extra charge. • In the event that County receives an urgent request, Contractor will arrange for immediate pick up of microfiche and will make those images available within 1-2 business days. 	<p align="center">\$0.11 per image</p>

03	<p>Annual Matrix Hosted Services- Storage and Retrieval</p> <p>Price includes the following:</p> <ul style="list-style-type: none"> • 10 concurrent User access • Includes standard storage and backup copies • Includes End User Training. • Includes Remote Technical Support Via Phone, Fax, E-mail and Remote Access 	\$ 10,399.98
04	<p>Annual Storage fee for Images that reside on the Hosting site in excess of the initial 100 GB's:</p> <ul style="list-style-type: none"> • Includes standard storage and backup copies of files in excess of 100 GB's up to 1.5TB on WORM (Unalterable Media). • Custom configuration includes: <ul style="list-style-type: none"> 1. Enabled SSL certificate 2. Filtered by IP Address 3. Isolated Configuration 4. Including managing users, permissions, retention policies 	\$ 42,000
05	<p>Annual Retention Policy Support</p> <ul style="list-style-type: none"> • Includes technical support via phone, e-mail, remote access and on-site regarding all items related to the OCHCA's retention policies. 	\$ 5,000
06	<p>Prep charge per box (\$25 per hour, 2 hours per box) (File preparation, cataloging, reassembly, staple removal, dividing sections, etc.)</p>	\$50/box
07	<p>Manual Indexing per box</p>	\$30/box

No pick-up/delivery charges or shipping costs shall be charged to the County.

Line items 3, 4, and 5 shall be payable in advance at the start of the contract period.

ATTACHMENT C
BUSINESS ASSOCIATE CONTRACT

A. GENERAL PROVISIONS AND RECITALS

1. The Parties agree that the terms used, but not otherwise defined below in Paragraph B, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and their implementing regulations at 45 CFR Parts 160 and 164 (“the HIPAA regulations”) as they may exist now or be hereafter amended.

2. The Parties agree that a business associate relationship under HIPAA, the HITECH Act, and the HIPAA regulations between the Contractor and County arises to the extent that Contractor performs, or delegates to subcontractors to perform, functions or activities on behalf of County pursuant to, and as set forth in, the Contract MA-042-17011455 that are described in the definition of “Business Associate” in 45 CFR § 160.103.

3. The County wishes to disclose to Contractor certain information pursuant to the terms of the Contract MA-042-17011455, some of which may constitute Protected Health Information (“PHI”), as defined below in Subparagraph B.10, to be used or disclosed in the course of providing services and activities pursuant to, and as set forth, in the Contract MA-042-17011455.

4. The Parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-042-17011455 in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they may exist now or be hereafter amended.

5. The Parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.

6. The Parties understand that the HIPAA Privacy and Security rules, as defined below in Subparagraphs B.9 and B.14, apply to the Contractor in the same manner as they apply to a covered entity (County). Contractor agrees therefore to be in compliance at all times with the terms of this Business Associate Contract and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended, with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-042-17011455.

B. DEFINITIONS

1. “Administrative Safeguards” are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of Contractor’s workforce in relation to the protection of that

information.

2. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

a. Breach excludes:

i. Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of Contractor or County, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.

ii. Any inadvertent disclosure by a person who is authorized to access PHI at Contractor to another person authorized to access PHI at the Contractor, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.

iii. A disclosure of PHI where Contractor or County has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

b. Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless Contractor demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:

i. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;

ii. The unauthorized person who used the PHI or to whom the disclosure was made;

iii. Whether the PHI was actually acquired or viewed; and

iv. The extent to which the risk to the PHI has been mitigated.

3. "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

4. "Designated Record Set" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

5. "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

6. "Health Care Operations" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

7. "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

8. "Physical Safeguards" are physical measures, policies, and procedures to protect

Contractor's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.

9. "The HIPAA Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

10. "Protected Health Information" or "PHI" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

11. "Required by Law" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.103.

12. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

13. "Security Incident" means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Security incident" does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by Contractor.

14. "The HIPAA Security Rule" shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.

15. "Subcontractor" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

16. "Technical safeguards" means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.

17. "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued on the HHS Web site.

18. "Use" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

1. Contractor agrees not to use or further disclose PHI County discloses to Contractor other than as permitted or required by this Business Associate Contract or as required by law.

2. Contractor agrees to use appropriate safeguards, as provided for in this Business Associate Contract and the Contract MA-042-17011455, to prevent use or disclosure of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County other than as provided for by this Business Associate Contract.

3. Contractor agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR Part 164 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County.

4. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to

Contractor of a Use or Disclosure of PHI by Contractor in violation of the requirements of this Business Associate Contract.

5. Contractor agrees to report to County immediately any Use or Disclosure of PHI not provided for by this Business Associate Contract of which Contractor becomes aware. Contractor must report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

6. Contractor agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Contractor agree to the same restrictions and conditions that apply through this Business Associate Contract to Contractor with respect to such information.

7. Contractor agrees to provide access, within fifteen (15) calendar days of receipt of a written request by County, to PHI in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under 45 CFR § 164.524.

8. Contractor agrees to make any amendment(s) to PHI in a Designated Record Set that County directs or agrees to pursuant to 45 CFR § 164.526 at the request of County or an Individual, within thirty (30) calendar days of receipt of said request by County. Contractor agrees to notify County in writing no later than ten (10) calendar days after said amendment is completed.

9. Contractor agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, County available to County and the Secretary in a time and manner as determined by County or as designated by the Secretary for purposes of the Secretary determining County's compliance with the HIPAA Privacy Rule.

10. Contractor agrees to document any Disclosures of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County, and to make information related to such Disclosures available as would be required for County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

11. Contractor agrees to provide County or an Individual, as directed by County, in a time and manner to be determined by County, that information collected in accordance with the Contract MA-042-17011455, in order to permit County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

12. Contractor agrees that to the extent Contractor carries out County's obligation under the HIPAA Privacy and/or Security rules Contractor will comply with the requirements of 45 CFR Part 164 that apply to County in the performance of such obligation.

13. Contractor shall work with County upon notification by Contractor to County of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph B.2.a above.

D. SECURITY RULE

1. Contractor shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR §

164.308, § 164.310, § 164.312, and § 164.316 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County. Contractor shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.

2. Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of Contractor agree through a contract with Contractor to the same restrictions and requirements contained in this Paragraph D of this Business Associate Contract.

3. Contractor shall report to County immediately any Security Incident of which it becomes aware. Contractor shall report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

E. BREACH DISCOVERY AND NOTIFICATION

1. Following the discovery of a Breach of Unsecured PHI, Contractor shall notify County of such Breach, however both Parties agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR § 164.412.

a. A Breach shall be treated as discovered by Contractor as of the first day on which such Breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor.

b. Contractor shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of Contractor, as determined by federal common law of agency.

2. Contractor shall provide the notification of the Breach immediately to the County Privacy Officer at:

County Privacy Officer		HCA Information Technology Security Officer
<p>Linda Le, CHPC, CHC, CHP County Privacy Officer OCIT CEO SECURITY 1501 E. St. Andrews Place Santa Ana, CA 92705 Office: (714) 834-4082 E-Mail: linda.le@ceoit.ocgov.com privacyofficerinbox@ceoit.ocgov.com</p>		<p>David Castellanos (714) 834-3433 200 W. Santa Ana Blvd., 10th Floor Santa Ana, CA 92701 dcastellanos@ochca.com</p>

a. Contractor’s notification may be oral, but shall be followed by written notification within twenty-four (24) hours of the oral notification.

3. Contractor’s notification shall include, to the extent possible:

a. The identification of each Individual whose Unsecured PHI has been, or is reasonably

believed by Contractor to have been, accessed, acquired, used, or disclosed during the Breach;

b. Any other information that County is required to include in the notification to Individual under 45 CFR §164.404 (c) at the time Contractor is required to notify County or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:

(1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;

(2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

(3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

(4) A brief description of what Contractor is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and

(5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

4. County may require Contractor to provide notice to the Individual as required in 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the County.

5. In the event that Contractor is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, Contractor shall have the burden of demonstrating that Contractor made all notifications to County consistent with this Paragraph E and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

6. Contractor shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.

7. Contractor shall provide to County all specific and pertinent information about the Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit County to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after Contractor's initial report of the Breach to County pursuant to Subparagraph E.2 above.

8. Contractor shall continue to provide all additional pertinent information about the Breach to County as it may become available, in reporting increments of five (5) business days after the last report to County. Contractor shall also respond in good faith to any reasonable requests for further information, or follow-up information after report to County, when such request is made by County.

9. Contractor shall bear all expense or other costs associated with the Breach and shall reimburse County for all expenses County incurs in addressing the Breach and consequences thereof,

including costs of investigation, notification, remediation, documentation or other costs associated with addressing the Breach.

F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

1. Contractor may use or further disclose PHI County discloses to Contractor as necessary to perform functions, activities, or services for, or on behalf of, County as specified in the Contract MA-042-17011455, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by County except for the specific Uses and Disclosures set forth below.

a. Contractor may use PHI County discloses to Contractor, if necessary, for the proper management and administration of Contractor.

b. Contractor may disclose PHI County discloses to Contractor for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, if:

i. The Disclosure is required by law; or

ii. Contractor obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and the person immediately notifies Contractor of any instance of which it is aware in which the confidentiality of the information has been breached.

c. Contractor may use or further disclose PHI County discloses to Contractor to provide Data Aggregation services relating to the Health Care Operations of Contractor.

2. Contractor may use PHI County discloses to Contractor, if necessary, to carry out legal responsibilities of Contractor.

3. Contractor may use and disclose PHI County discloses to Contractor consistent with the minimum necessary policies and procedures of County.

4. Contractor may use or disclose PHI County discloses to Contractor as required by law.

G. OBLIGATIONS OF COUNTY

1. County shall notify Contractor of any limitation(s) in County's notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Contractor's Use or Disclosure of PHI.

2. County shall notify Contractor of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Contractor's Use or Disclosure of PHI.

3. County shall notify Contractor of any restriction to the Use or Disclosure of PHI that County has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Contractor's Use or Disclosure of PHI.

4. County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by County.

H. BUSINESS ASSOCIATE TERMINATION

1. Upon County's knowledge of a material breach or violation by Contractor of the requirements of this Business Associate Contract, County shall:

a. Provide an opportunity for Contractor to cure the material breach or end the violation within thirty (30) business days; or

b. Immediately terminate the Contract MA-042-17011455, if Contractor is unwilling or unable to cure the material breach or end the violation within thirty (30) days, provided termination of the Contract MA-042-17011455 is feasible.

2. Upon termination of the Contract MA-042-17011455, Contractor shall either destroy or return to County all PHI Contractor received from County or Contractor created, maintained, or received on behalf of County in conformity with the HIPAA Privacy Rule.

a. This provision shall apply to all PHI that is in the possession of Subcontractors or agents of Contractor.

b. Contractor shall retain no copies of the PHI.

c. In the event that Contractor determines that returning or destroying the PHI is not feasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon determination by County that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Business Associate Contract to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for as long as Contractor maintains such PHI.

3. The obligations of this Business Associate Contract shall survive the termination of the Contract MA-042-17011455.