

# Attachment B



## Contract Number MA-017-13012098 Off-Site Data Storage and Retrieval Services

THIS Contract to provide off-site data storage and retrieval services, hereinafter referred to as ("Contract") is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, hereinafter referred to as "County" and Iron Mountain Information Management, LLC, with a place of business at PO Box 1119, Lake Forest CA.92630 hereinafter referred to as ("Contractor"), which are sometimes individually referred to as ("Party"), or collectively referred to as ("Parties").

### RECITALS

WHEREAS, Contractor responded to a Invitation For Bid (IFB) to provide off-site data storage and retrieval services as further set forth herein, hereinafter referred to as "off-site data storage and retrieval services".

WHEREAS, the Contractor responded and represented that its proposed services shall meet or exceed the requirements and specifications of the IFB; and

WHEREAS, the County of Orange Board of Supervisors has authorized the Purchasing Agent or his designee to enter into a Contract to obtain off-site data storage and retrieval services.

NOW, THEREFORE, the Parties mutually agree as follows:

### General Terms and Conditions

- A. Governing Law and Venue:** This Contract 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 Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.
- B. Entire Contract:** This Contract, including Attachments A, B, C, and D, which are attached hereto and incorporated herein by this reference, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing County's Purchasing Agent or his designee.
- C. Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. The Parties agree to take such action as is necessary to amend this Contract from time to time as is necessary for County to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub.L. No. 104-191, including but not limited to the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- D. Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
- E. Delivery:** Time of delivery of services is of the essence in this Contract. County reserves the right to refuse any services that do not conform to the prescribed Scope of Work. Delivery shall not be deemed to be complete until all services, have actually been received and accepted in writing by County.

# Attachment B

**F. Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the services have actually been received, and 2) payment shall be made in arrears after satisfactory acceptance and within 30 calendar days upon the Auditor-Controller's receipt of an approved invoice submitted in accordance with the terms set forth herein, unless otherwise stated. The invoice must be verified and approved by the County's Project Manager and is subject to routine processing requirements of the County.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the services.

**G. Warranty:** Contractor expressly warrants that the services covered by this Contract are fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in paragraph "P" below, and as more fully described in paragraph "P", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

**H. Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "P" below, it shall indemnify, defend and hold County and County INDEMNITEES harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.

**I. Assignment or Sub-contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or sub-contracted by the Contractor (other than to an affiliate of Contractor) without the express written consent of County. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Contract (other than to an affiliate of Contractor) without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

**J. Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any sub-contractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Anti-Discrimination Law or regulation, including but not limited to, Section 1720 et seq. of the California Labor Code.

**K. Termination:** In addition to any other remedies or rights it may have by law and those set forth in this Contract, County has the right to terminate this Contract without penalty immediately with cause or after thirty (30) days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations.

**L. Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

**M. Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.

# Attachment B

- N. Independent Contractor:** Contractor shall be considered an independent Contractor and neither the Contractor, employees nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.
- O. Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to sub-contract, shall be fully responsible for all work performed by sub-contractors.
- P. Indemnification and Insurance:**

## **INDEMNIFICATION PROVISIONS**

Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County INDEMNITEES") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County INDEMNITEES, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. (added) Nothing contained herein shall be construed as affecting the Contractor's limitation of liability for loss, damage or destruction of stored materials as set forth herein in Section GG.

## **INSURANCE PROVISIONS**

Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this Contract. In addition, all sub-contractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

If the insurance policies required by this Contract carry any deductibles or self insured retention, the Contractor may reserve disclosure of the amount of said deductible or self insured retention unless or until a claim or litigation arises from the acts or omissions of the Contractor related to this contract arises. Upon the County's notification to the Contractor of the receipt of any such claim or litigation, Contractor agrees at that time to disclose all deductibles or self insured retention applicable to any policies required under this contract."

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier).

Minimum insurance company ratings as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com shall be B+ (Secure Best's Rating) and VIII (Financial Size Category). As of the date of the signature of the Agreement, all of Iron Mountain's insurers are rate A- or above, and at no time during the term of this Agreement shall such insurers fall below a B+ rating".

If the carrier is a non-admitted carrier in the state of California, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings.

# Attachment B

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability with broad form property damage and contractual liability	\$1,000,000 combined single limit per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 combined single limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$1,000,000 per claims made or per occurrence

All liability insurance, except Professional Liability, required by this Contract shall be at least \$1,000,000 combined single limit per occurrence. Professional Liability may also be provided on a "Claims Made" basis. The minimum aggregate limit for the Commercial General Liability policy shall be \$2,000,000.

The County of Orange shall be added as an additional insured on all insurance policies required by this Contract with respect to work done by the Contractor under the terms of this Contract (except Workers' Compensation/Employers' Liability and Professional Liability). An additional insured endorsement evidencing that the County of Orange is an additional insured shall accompany the Certificate of Insurance.

All insurance policies required by this Contract shall be primary insurance, and any insurance maintained by the County of Orange shall be excess and non-contributing with insurance provided by these policies. An endorsement evidencing that the Contractor's insurance is primary and non-contributing shall specifically accompany the Certificate of Insurance for the Commercial General Liability.

All insurance policies required by this Contract shall give the County of Orange thirty (30) days notice in the event of cancellation. This shall be evidenced by an endorsement separate from the Certificate of Insurance. In addition, the cancellation clause must include language as follows, which edits the pre-printed ACORD certificate:

**SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT.**

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

If Contractor's Professional Liability policy is a "claims made" policy, Contractor shall agree to maintain professional liability coverage for two years following completion of Contract.

The Commercial General Liability policy shall contain a severability of interests clause.

The Contractor is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or be self-insured in accordance with provisions of that code. The Contractor will comply with such provisions and shall furnish the County satisfactory evidence that the Contractor has secured, for the period of this Contract, statutory Workers'

# Attachment B

Compensation insurance and Employers' Liability insurance with minimum limits of \$1,000,000 per occurrence.

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County. Changes to an insurance requirement shall be mutually agreed upon by Contractor and County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract.

The County of Orange Certificate of Insurance and the Special Endorsement for the County of Orange can be utilized to verify compliance with the above-mentioned insurance requirements in place of commercial insurance certificates and endorsements.

- Q. Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph "P" above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
- R. Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- S. Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County..
- T. Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within thirty-six (36) hours of the start of the delay and Contractor avails himself of any available remedies.
- U. Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- V. Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "P" above, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

# Attachment B

- W. Freight (F.O.B. Destination):** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- X. Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the scope of services attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
- Y. Waiver of Jury Trial:** Each Party acknowledges that it is aware of and has had the opportunity to seek advise of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and /or any other claim of injury or damage.
- Z. Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
- AA. Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- BB. Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- CC. Calendar Days:** Any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- DD. Attorneys Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney’s fees, costs and expenses.
- EE. Interpretation:** This Contract has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the Party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Contract. In addition, any ambiguity in this Contract shall be resolved to permit County to comply with Health Insurance Portability and Accountability Act of 1996, Pub.L. No. 104-191, including but not limited to the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- FF. Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
- GG. Value of Stored Materials and Limitation of Liability:** County declares, for the purposes of this Contract, that (a) with respect to hard-copy records, microfilm and microfiche stored pursuant to this Contract, the value of such stored items is \$1.00 per carton, linear foot of open-shelf files, container or other hard-copy storage unit, and (b) with respect to round reel tape, audio tape, video tape, film, data cartridges or data cassettes or other non-paper media stored pursuant to this Contract, the value of such stored items is limited to the cost of replacing the physical media.

# Attachment B

County acknowledges that it has declined to declare an excess valuation, for which an excess valuation fee would have been charged.

Contractor shall not be liable for any loss or destruction of, or damage to stored materials, however caused, unless such loss or damage resulted from the failure by Contractor to exercise such care as a reasonably careful person would exercise under like circumstances; Contractor is not liable for loss or damage which could not have been avoided by the exercise of such care. If liable, the amount of Contractor's damages is limited as provided above. Stored materials are not insured by Contractor against loss or damage, however caused. County may insure stored materials through third-party insurers for any amount, including amounts in excess of the limitation of liability. County shall cause its insurers of stored materials to waive any right of subrogation against Contractor. If materials are placed in the custody of a common carrier for transportation, the common carrier shall be solely responsible for any loss or destruction of, or damage to, such materials while in the custody of the common carrier.

**HH. Consequential Damages, etc.:** In no event shall either party be liable for any consequential, incidental, special or punitive damages, regardless of whether an action is brought in tort, contract or any other theory.

**II. Restrictions on Stored Material; County Premises.** County shall not store with Contractor any material that is highly flammable, explosive, toxic, radioactive, medical waste, organic material which may attract vermin or insects, or otherwise dangerous or unsafe to store or handle, or any material which is regulated under any federal or state law or regulation relating to the environment or hazardous materials. County shall not store negotiable instruments, jewelry, check stock or other items that have intrinsic value. All County's premises where Contractor's employees perform services or make deliveries hereunder shall be free of hazardous substances and any other hazardous or dangerous conditions.

**JJ. Lost or Damaged Orange County Media in the Possession of Iron Mountain:** Iron Mountain will contact the Orange County Helpdesk at 714-834-2449 as soon as they are aware of any lost or damaged Orange County media in the care of Iron Mountain whether the media be lost or damaged during transport or in storage. In addition to notification, Iron Mountain will send Orange County an inventory of all media that was lost indicating the case number and the media in the cases.

Any discussion of lost or damaged Orange County media is strictly limited to law enforcement, authorized County personnel and other Iron Mountain personnel/customers directly affected by the lost or damaged media.

Iron Mountain Data Security Policy is incorporated herein as follows in support of Lost or Damaged Orange County media clause as set forth herein in **Section JJ**:

1. Backup Tape Vaulting, Security Protection & Testing: Iron Mountain incorporates both electronic access controls and personal recognition for controlling access to its facilities. All facilities are required to maintain systems for employee and visitor identification. Iron Mountain personnel are required to wear identification badges while on Iron Mountain premises. Badges are color-coded to indicate access authorization levels. Unescorted access to our records centers is prohibited for all but Iron Mountain employees. Our facilities are equipped with intrusion detection systems that are monitored by an Underwriter Laboratories-listed central station for after-hours control. Alarm technology includes passive infrared motion detectors, dual technology glass break detection, photo-beam detectors, sound-activated microphones and magnetic door contacts. Alarm systems are individually designed to accommodate any specific site requirements and needs. Education and awareness training tools are used to ensure that all employees are aware of the methodologies and critical need for controlling access to our buildings.
2. Testing of Security Protection and Access Controls: Security procedures for visitor and employee identification, as well as our physical intrusion detection systems, serve to deny access to any unauthorized person. We further test these measures by employing "Integrity Audits" as a routine method of evaluating our security posture. We contract with a national security vendor and select

## Attachment B

one District per month for review. Undercover agents, supplied with letter of authority by the Director, Safety & Security for Iron Mountain, attempt to gain entry to all facilities located within the District. These agents may use any number of methods of subterfuge in their mission. After business hours, these agents return to the facility and check the physical integrity of the Iron Mountain facility. Results of these audits are evaluated and, if required, corrective measures employed. These audits, together with our Internal Audit, Traveler Audit and self-audit programs, help to maintain the physical integrity of our operations.

3. Backup Tape Vaulting, Loading/Unloading Procedures: Iron Mountain Divisional Security Processes for loading/unloading is permitted outside while at customer locations. While at an Iron Mountain Off-Site Data Protection facility, loading/unloading must take place inside an alarmed vehicle bay that is separated from any storage or office area by a four-hour fire wall and equipped with fire detection and suppression systems.
4. Backup Tape Vaulting, Media Transportation: We customize our pickup, delivery and tape rotation schedules around your backup schedules and business needs. Your tapes and off-site media are carefully placed in customized transport containers designed for media protection. We transport your data in Iron Mountain secure, climate-controlled vehicles. Iron Mountain also has access to a fleet of charter aircraft for long distance moves, as well as armed guards to accompany sensitive data. All activity is tracked and monitored and you are continuously updated with progress reports.

### Additional Terms and Conditions

1. **Scope of Contract:** This Contract specifies the Contractual terms and conditions by which the County will procure services from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as Attachments A, B, C & D .
2. **Contract Term:** This Contract shall commence upon execution of all necessary signatures, and continue in effect ~~July 1, 2013~~ July 1, 2014 through ~~December 31, 2013~~ December 31, 2014, unless otherwise terminated by County. The Contract shall not be effectively terminated until all of the Protected Health Information (“PHI”) provided by the County to Contractor is destroyed or returned to County, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions of this Contract. This Contract may be renewed as set forth in paragraph 3 below.
3. **Renewal:** ~~This Contract may be renewed, on an annual basis, by mutual written agreement of both Parties for four (4) additional one (1) year terms. The County does not have to give reason if it elects not to renew. Renewal periods may be subject to approval by the County of Orange Board of Supervisors.~~
4. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County, at prices listed in the Contract, regardless of quantity requested
5. **Fiscal Appropriations:** This Contract is subject to and contingent upon applicable budgetary appropriations being approved by the County of Orange Board of Supervisors for each fiscal year during the term of this Contract. If such appropriations are not approved, the Contract will be terminated without penalty to the County.
6. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may also be contingent upon the receipt of funds from, and/or appropriation of funds by, the state of California to County. If such funding and/or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.



# Attachment B

7. **Precedence:** The Contract documents consist of this Contract and its Attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be 1) the General Terms and Conditions, 2) the Additional terms and Conditions; and 3) the Attachments.
8. **Compensation:** The Contractor agrees to accept the specified compensation as set forth in Attachment C of 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.
9. **Project Manager – County:** The County shall appoint a Project Manager to act as liaison with Contractor during the term of this Contract. The County’s Project Manager shall coordinate the activities of the County staff assigned to work with the Contractor.  
The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s Project Manager and key personnel. The County’s Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within fourteen (14) calendar days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager and key personnel.
10. **Contractor’s Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. The Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County’s Project Manager.

The Contractor’s Project Manager shall be assigned to this project for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s Project Manager from providing services to the County under this Contract. The County’s Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager. The County is not required to provide any additional information, reason or rationale in the event it elects to request the removal of Contractor’s Project Manager from providing services to the County under this Contract.

11. **Contractor Personnel Uniforms/Badges/Identification:** All Contractor’s employees shall be required to wear uniforms, badges or other means of identification which are to be furnished by the Contractor and must be worn at all times while working on County property. The DPA must be notified in writing, within seven (7) days of notification of award of Contract, of the uniform and/or badges and/or other identification to be worn by employees prior to beginning work and notified in writing seven days prior to any changes in this procedure.
12. **Equal Employment Opportunity:** To the extent it applies, the Contractor shall comply with U.S. Executive Order 11426 entitled, “Equal Employment Opportunity” as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and

# Attachment B

found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

To the extent it applies, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act (ADA) enacted in 1990 as may now exist or be amended in the future.

- 13. Adjustments – Scope of Work:** Adjustments made to the Scope of Work will not be authorized or paid for without prior written approval of the County DPA, in accordance with Paragraph C Amendments. The County is not required to pay for any additional work which is not set forth in Attachment A--Scope of Work or a written Amendment as required by this Contract.
- 14. Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's project manager and the Contractor's project manager will meet on reasonable notice to discuss the Contractor's performance and progress under this Contract. If requested, the Contractor's project manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
- 15. Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of four years after final payment is received from the County. Storage of records in another County will require written approval from the County of Orange DPA.
- 16. Conflict of Interest – Contractor's Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; sub-tier Contractors; and third Parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.
- 17. Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
  1. County may terminate the Contract immediately without penalty.
  2. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
  3. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
  4. Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
- 18. Contract Disputes:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Project Manager and the County's Project Manager, such matter shall be brought to the attention of the County Purchasing Agent by way of the following process:
  - a. The Contractor shall submit to the agency/department DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
  - b. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith,

# Attachment B

that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If the County fails to render a decision within ninety (90) days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions.

- 19. Termination – Orderly:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.
- 20. 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' project managers' 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 four (4) 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 Party 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.

County: CEO/Purchasing  
Attn: Grace Scott  
1300 S. Grand Ave., Bldg. A  
Santa Ana, CA 92705

cc:  
Contractor: Iron Mountain Information Management, Inc.

- 21. Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of four (4) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any sub-contractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's project

# Attachment B

manager.

22. **Conditions Affecting Work:** The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
23. **Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract unless otherwise specified. The County will not provide free parking for any service in the County Civic Center.
24. **Gratuities:** The Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the County in procuring on the open market any goods or services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
25. **Authorization Warranty:** The Contractor represents and warrants that the person executing this Contract on behalf of and for the Contractor is an authorized agent who has actual authority to bind the Contractor to each and every term, condition and obligation of this Contract and that all requirements of the Contractor have been fulfilled to provide such actual authority.
26. **News/Information Release:** The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County's project manager.
27. **Data – Title To:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
28. **County of Orange Child Support Enforcement Requirements (Exhibit 3):**  
In order to comply with the child support enforcement requirements of the County of Orange, within ten (10) days of notification of selection of award of Contract but prior to official award of Contract, the selected Contractor agrees to furnish to the Purchasing Agent:
  - a. In the case of an individual Contractor, his/her name, date of birth, Social Security number, and residence address;
  - b. In the case of a Contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the Contracting entity;
  - c. A certification that the Contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and

# Attachment B

- d. A certification that the Contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure of the Contractor to timely submit the data and/or certifications required may result in the Contract being awarded to another Contractor. In the event a Contract has been issued, failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

- 29. EDD Independent Contractor Reporting Requirements (Exhibit 4):** Effective January 1, 2001, the County of Orange is required to file federal Form 1099-Misc for services received from a “ Contractor” to whom the County pays \$600 or more or with whom the County enters into a Contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term “Contractor” is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as “an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a Contract for services performed for that service recipient within or without the state.” The term is further defined by the California Employment Development Department to refer specifically to independent Contractors. An independent Contractor is defined as “an individual who is not an employee of the government entity for California purposes and who receives compensation or executes a Contract for services performed for that government entity either in or outside of California.”

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at [www.edd.ca.gov](http://www.edd.ca.gov)

To comply with the reporting requirements, County procedures for contracting with independent Contractors mandate that the following information be completed and forwarded to the Contracting agency/department immediately upon request:

First name, middle initial and last name  
Social Security Number  
Address  
Start and expiration dates of Contract Amount of Contract

- 30. Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees, consultants and subcontractors performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employee, consultants and subcontractors for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

- 31. Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.

## Attachment B

- 32. Lobbying:** On best information and belief, Contractor certifies no federal appropriated funds have been paid or will be paid by, or on behalf of, the Contractor to any person for influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- 33. Debarment:** Contractor shall certify that neither contractor nor its principles are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in the transaction by any Federal department or agency. Where contractor as the recipient of federal funds, is unable to certify to any of the statements in the certification, contractor must include an explanation with their bid/proposal. Debarment, pending debarment, declared ineligibility or voluntary exclusion from participation by any Federal department or agency may result in the bid/proposal being deemed non-responsible. All other terms and conditions of the Contract, except as amended, herein shall remain unchanged, in full force and effect.
- 34. Regional Cooperative Agreement (RCA) – County-Wide Use:** This Contract is to be used as a Regional Cooperative Agreement against which subordinate contracts will be created and issued by the user agencies/departments based on the fixed pricing, terms, and conditions of this RCA. Contractor will be required to fulfill all service order(s) placed by any County agency/department. For the contractor's full and complete performance of its obligations under this Contract, the County shall compensate the contractor the fixed prices set forth herein. This pricing shall remain firm for the first period of this Contract. County agencies/departments will make service requests in their own names, will have deliveries made to their facilities, and will be responsible for making and approving payments for routine processing by the County of Orange Auditor-Controller.

As required by County policy, some subordinate contracts created against the Regional Cooperative Agreement may require Board of Supervisors approval.

Invoices are to be submitted to the user agency/department to the bill-to address, unless otherwise directed in this Contract. The contractor shall reference the agency/department's subordinate agreement number on the invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility of providing an acceptable invoice rests with the contractor.

The contractor will be responsible for providing each agency/department a copy of the Regional Cooperative Agreement upon request.

The contractor is required to maintain a list of the agencies/departments that have used this Regional Cooperative Agreement, including a list of the dollar volumes spent, and shall provide this report on a quarterly basis to the originating County entity.

**Attachment B**  
**SIGNATURE PAGE**

The Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

**Iron Mountain Information Management, LLC \*:**

Print Name	Title
Signature	Date
Print Name	Title
Signature	Date

**\* 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.**

**The second corporate officer signature must be one of the following: 1) Secretary; 2) Assistant Secretary; 3) Chief Financial Officer; 4) Assistant Treasurer.**

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

# Attachment B

## Attachment A Scope of Work

The County of Orange Data Center outsources all disaster recovery and backup media and records to commercial vendors for off-site storage services. Typical storage and service requirements are described below. The numbers of tapes, cartridges, CDs, fiche, amounts of documentation, required deliveries, etc. fluctuate over time. The Vendor shall be capable of providing timely courier service, secure storage and appropriate containers for all media provided at all times during this Contract. The Vendor shall provide:

1. Vendor storage facility site for secure storage of all County of Orange Data Center media that is in excess of 10 miles from the County of Orange Data Center.
2. The storage facility must be reinforced for earthquakes and rated by an independent earthquake rating service. Proof of this rating may be requested by County prior to Contract Award.
3. The storage facility must be equipped with a fire suppression system.
4. The storage facility cannot be located on a known flood plain.
5. The storage facility must have a 24-hour, 7 day a week security system.
6. The storage facility must facilitate 24-hour access for pre-authorized County Data Center personnel to pick-up and/or deliver containers or media.
7. Provide adequate available capacity for storage within facility for all County Data Center provided containers and media. Periodically there may be sudden changes to the total media and types of media required to be stored as new storage technology is moved into production. Also, from time to time special backups may be required which may temporarily increase the normal total storage.
8. Containers suitable for handling computer tapes and cartridges, microfiche products, documents and any other media being transported.
9. Courier service to County Data Center one (1) time each week, currently on the first workday of the week. (Monday or Tuesday depending on County holidays). Normal delivery frequency and the number of specific locations may be changed as required by the County. All locations for normal deliveries shall be within central Orange County and primarily within the City of Santa Ana.
10. A 24-hour, 365 days per year emergency courier service that may be activated by the County as required.
11. Courier vehicles must be secure, have a reinforced body, be equipped with a fire extinguisher and communications system for voice communications with the vendor storage facility.
12. A minimum of two (2) alternate planned routes for the transportation of media to and from vendor storage facility to the Data Center.
13. Inventory system that provides the County with the capability for physical identification of all containers and an audit trail for control purposes.
14. Weekly reports indicating any discrepancies between the containers stored at the vendor storage facility and the containers reported stored by the County.
15. Updates of the inventory of stored containers shall be provided to the County with each monthly delivery.
16. Provide all support required for County personnel to conduct semi-annual audits of all media.



# Attachment B

17. Confidentiality of all programs and records pursuant to all statutory laws relating to privacy, confidentiality, HIPAA, and confidentiality as now in existence or as hereafter concerning any and all persons and data referred to the Vendor by the County shall be considered confidential and kept confidential by the Vendor and Vendor's staff, agents and employees. Upon request of County, Vendor's staff may be required to sign and return a confidentiality statement from each person having access to data while in Vendor's possession and beyond.
18. Vendor's facility must be temperature and humidity controlled with contamination-free air to ensure data storage devices will not be subject to undue stress and/or damage.

# Attachment B

## ATTACHMENT B PRICING (Effective 7/01/11)

The County will not reimburse vendor for any type of service that is not itemized in the purchase order Contract between the vendor and the County. Cost/unit on the following list of items as follow:

### List of Billable Items Off-Site Storage

#### A. OTHER MONTHLY FEES

Description	Unit	Cost
Administrative Fee	Acct Number	\$ 25.12
Minimum Monthly Fee	Acct Number	\$135.00
Transportation Fees <b><u>Fuel Surcharge Policy</u></b> A fuel Surcharge is applied monthly based upon changes in the price of diesel fuel as published by the US Department of Energy. This charge is calculated monthly and included as a percentage of transportation related service charges. The current monthly Fuel Surcharge information can be found on the website at <a href="http://cic.ironmountain.com/data/protection/fuel">http://cic.ironmountain.com/data/protection/fuel</a>	Fuel Surcharge	

#### B. VAULTING

##### Small Container Descriptions

Closed Container, 4mm, or comparable	Container	\$ 5.78
Closed Container, 8mm, or comparable	Container	\$ 5.78
Closed Container, Cartridge 3480 (capacity 10), or comparable	Container	\$ 5.78
Closed Container, Cartridge 3480 (capacity 20), or comparable	Container	\$ 5.78
Closed Container, CD-ROM, or comparable	Container	\$ 5.78
Closed Container, Data Cartridge/Streamer, or comparable	Container	\$ 5.78
Closed Container, DLT (capacity 10), or comparable	Container	\$ 5.78
Closed Container, DLT (capacity 14, turtle), or comparable	Container	\$ 5.78
Closed Container, DLT (capacity 20), or comparable	Container	\$ 5.78
Closed Container, DLT (capacity 5), or comparable	Container	\$ 5.78
Closed Container, Floppy Disk 3-1/2, or comparable	Container	\$ 5.78
Closed Container, Floppy Disk 8 (capacity 4)	Container	\$ 5.78
Closed Container, Multi Media, or comparable	Container	\$ 5.78
Closed Container, Multi Utility (med/small), or comparable	Container	\$ 5.78
Closed Container, Multi Utility (small/x-small), or comparable	Container	\$ 5.78
Closed Container, Single Tape, or comparable	Container	\$ 5.78
Closed Container, 5 ¼ Floppy (capacity = 4)	Container	\$ 5.78
Closed Container, Cardboard (small)	Container	\$ 5.78
Closed Container, Clipper 3480	Container	\$ 5.78
Closed Container, Iron Mountain Multimedia	Container	\$ 5.78
Closed Container, Microfilm (small)	Container	\$ 5.78
Closed Container, Tub (small)	Container	\$ 5.78
Container, other	Container	\$ 5.78

# Attachment B

## Medium Container Descriptions

Closed Container, Cartridge 3480 (capacity 40), or comparable	Container	\$ 10.59
Closed Container, DLT (capacity 32), or comparable	Container	\$ 10.59
Closed Container, DLT (capacity 40), or comparable	Container	\$ 10.59
Closed Container, Multi Utility (large/medium), or comparable	Container	\$ 10.59
Closed Container, Round Reel, or comparable	Container	\$ 10.59
Closed Container, Tub (medium), or comparable	Container	\$ 10.59
Closed Container, Double Insert Multimedia	Container	\$ 10.59
Closed Container, 5 ¼ Floppy (capacity 12)	Container	\$ 10.59
Closed Container, Floppy Disk 8 (capacity 6)	Container	\$ 10.59
Closed Container, Magstar	Container	\$ 10.59

## Large Container Descriptions

Closed Container, Cartridge 3480, (capacity 60), or comparable	Container	\$ 15.41
Closed Container, Disk Pack, or comparable	Container	\$ 15.41
Closed Container, Document, or comparable	Container	\$ 15.41
Closed Container, Laser Disk, or comparable	Container	\$ 15.41
Closed Container, Microfilm (large), or comparable	Container	\$ 15.41
Closed Container, Multi Utility, (x-large/large), or comparable	Container	\$ 15.41
Closed Container, Optical Disk, or comparable	Container	\$ 15.41
Closed Container, Plastic (large), or comparable	Container	\$ 15.41
Closed Container, Video Cassette, or comparable	Container	\$ 15.41
Closed Container, Aperture Card	Container	\$ 15.41
Closed Container, Cardboard (large)	Container	\$ 15.41
Closed Container, Forms Overlay	Container	\$ 15.41
Closed Container, Pendaflex	Container	\$ 15.41
Closed Container, Media Drawer (small)	Container	\$ 15.41

## Ex-Large Container Description

Closed Container, DLT (capacity 64), or comparable	Container	\$ 15.41
Closed Container, Plastic (x-large), or comparable	Container	\$ 15.41
Closed Container, Cardboard (x-large)	Container	\$ 15.41
Closed Container, Fiche Reader	Container	\$ 15.41
Closed Container, Modem	Container	\$ 15.41
Closed Container, Other	Container	\$ 15.41

## C. MISCELLANEOUS

### Various Items

Closed Storage Cabinet	Container	\$122.40
Transport Container	Container	\$ 5.78
Closed Cart	Cart	\$135.00
Slotted Media – Active	Slot	\$ 0.482
Slotted Media – Round Reel	Slot	\$ 1.13

**D. TRANSPORTATION AND SPECIAL SERVICES**

Scheduled Services	Per Trip	\$ 27.93
Scheduled Same Place/Same Floor	Per Trip	\$ 10.00
Scheduled Same Building/Campus	Per Trip	\$ 15.00
Standard Special	Per Request	\$ 86.67
Critical Special	Per Request	\$139.64
Holiday Service Premium	Per 1Request	\$139.64
Out of Service Territory Premium (applies when requested facility for storing/retrieval is outside of Mission Viejo Branch at Customer's request)	Per Mile	\$ 1.25

**E. MEDIA MANAGEMENT SERVICES**

Closed Container/Cart Handling	Per Item	\$ 0.96
Transport Container Handling	Per Item	\$ 0.96
Transport Rental Days (Charged per additional container outside existing inventory per day)	Per Day	\$ 1.00
Media Handling – Active (with electronic file provided through SecureSync)	Per Item	\$ 0.482
Media Handling Active (without electronic file)	Per Item	\$ 0.68

Standard Special (24 hours)

Critical Special (3 hours)

# Attachment B

## ATTACHMENT C

**PAYMENT – INVOICING INSTRUCTIONS:** The Contractor will provide an invoice on the Contractor’s letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. The invoice must have a unique number and must include the following information:

- a. Contractor’s name and address;
- b. Contractor’s remittance address, if different from 1, above;
- c. Name of County agency/department;
- d. Delivery/service address;
- e. Price Agreement number;
- f. Date of services rendered;
- g. Service description, including number of hours or fraction there of
- i. Total

**1. PAYMENT TERMS:** The Invoice is to be submitted in arrears to the user agency/department to the ship-to address, unless otherwise directed in this Contract. Contractor shall reference Contract number on invoice. Payment will be net thirty (30) days after receipt of the invoice in a format acceptable to the County and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.

**2. COMPENSATION:** 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.

**BUSINESS ASSOCIATE AGREEMENT**

**Amending a Customer Agreement**

**Iron Mountain Information Mangement, Inc. (check one)**

**Iron Mountain Information Management, LLC**

(Hereinafter referred to as “Iron Mountain”)

**Customer (Name, Address and Iron Mountain Account No.):**

**(Account No.)**

(Hereinafter sometimes referred to as a “County”)

**Effective Date: Date this Agreement and the Customer Agreement is executed by Customer.**

This Business Associate Agreement is hereby entered into by and between Iron Mountain and County, effective as of the Effective Date. This Business Associate Agreement amends the following-described agreement entered into between Iron Mountain and County pursuant to which Iron Mountain is providing certain records management, data management, record destruction services, consulting services, digital archiving services and/or certain fulfillment services (“Iron Mountain Services”) for County:

- County Agreement, dated
- Records Management and Service Agreement  
dated
- Data Storage and Service Agreement  
dated
- Correspondence Copying/Release of Information Services Agreement  
dated
- Coding Services Agreement  
dated
- Secure Shredding Service Agreement  
dated
- Electronic Vaulting Service Agreement  
dated
- Other:                      dated  
(Hereinafter, the “Agreement”)

Iron Mountain and County are entering into this Business Associate Agreement in order to comply, to the extent set forth herein, with HIPAA (hereinafter defined), under which County is a “Covered Entity” and Iron Mountain is a “Business Associate” of County. If and to the extent that County is not, or subsequently fails to continue to be, a covered entity (as defined in HIPAA), or Iron Mountain is not, or fails to continue to be, a business associate (as defined in HIPAA), this Business Associate Agreement shall be of no effect.

## Attachment B

**Iron Mountain Information Management, LLC maintains secure, limited-access storage facilities; it does not generally provide individuals with on-site access to records. Accordingly, all mandated duties of HIPAA's Privacy Rule and Security Rule requiring access to individually identifiable Protected Health Information ("PHI") and Electronic Protected Health Information ("EPHI) must be done through established channels and procedures involving a request by County and the retrieval by Iron Mountain for the specific record involved.**

### 1. Definitions:

"Business Associate" shall mean the Iron Mountain entity identified above.

"Covered Entity" shall mean the County identified above.

"Designated Record Set" means: (1) A group of records maintained by or for a covered entity that is: (i) the medical records and billing records about individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the covered entity to make decisions about individuals. For purposes of this paragraph, the term "*record*" means any item, collection, or grouping of information that includes protected health information in any format and is maintained, collected, used or disseminated by or for a covered entity.

"HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, as the same may, from time to time, be amended.

"Individual" shall have the same meaning as the term 'individual' in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

"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, as the same may relate to the relationship between a Covered Entity and a Business Associate as further described in this Business Associate Agreement.

"Security Rule" shall mean the standards for security of Electronic Protected Health Information promulgated pursuant to HIPAA, including but not limited to 45 CFR Part 160, Part 162, and Part 164, Subparts A and C, as the same may be amended from time to time.

"Protected Health Information" shall have the same meaning as the term 'protected health information' under 45 CFR 160.103, and shall be limited to the information created or received by the Business Associate from or on behalf of Covered Entity.

"Electronic Protected Health Information" shall have the same meaning as "electronic protected health information" under the Security Rules except shall be limited to information created, received, stored, maintained or transmitted by Business Associate from or on behalf of Covered Entity.

"Required by Law" shall have the same meaning as term 'required by law' in 45 CFR §164.103. .

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

# Attachment B

## 2. Obligations and Activities of Business Associate.

- (a) Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by this Business Associate Agreement, the Agreement or as Required by Law.
- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (c) Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information in accordance with the requirements of the Security Rule on and after the date that Covered Entity is required to comply with the Security Rule.
- (d) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Business Associate Agreement.
- (e) Business Associate agrees to report promptly to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Business Associate Agreement or the Agreement of which it becomes aware.
- (f) Business Associate agrees to report promptly to Covered Entity any Security Incident, as that term is defined in the Security Rule, that directly pertains to Covered Entity and occurs on or after the date that Covered Entity is required to comply with the Security Rule as soon as reasonably practicable after becoming aware of such Security Incident.
- (g) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information and/or Electronic Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- (h) Business Associate agrees to provide access to the Covered Entity to Protected Health Information in a Designated Record Set by retrieving the specified document, item of media identified by Covered Entity or the Designated Record Set in other available format, so that the Covered Entity may respond to an Individual in order to meet the requirements under 45 CFR 164.524.
- (i) Business Associate agrees that if an amendment to Protected Health Information in a Designated Record Set is required, then the Covered Entity shall instruct the Business Associate to retrieve the document, item of media identified by Covered Entity or Designated Record Set in such other available format so that the Covered Entity may make any such amendment to the Protected Health Information as may be required by either the Covered Entity or an Individual.
- (j) Business Associate agrees to make its internal practices, books and records relating solely to the use and disclosure of Protected Health Information, received from, or created or received by Business Associate hereunder, on behalf of Covered Entity, available to the Covered Entity, or at the request of the Covered Entity, to the Secretary, upon receiving not less than forty-eight (48) hours advance written notification by the Covered Entity.
- (k) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures (but only to the extent that Covered Entity has provided Business Associate with sufficient information to know that Protected Health Information may reside in the records or data stored by Covered Entity with Business Associate). Subject to Covered Entity providing Business Associate with sufficient information upon which to make a determination as to the existence of Protected Health Information in records or data stored by Covered Entity with Business Associate, the documentation of such disclosures shall contain such information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an



# Attachment B

accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

- (1) Business Associate agrees to provide to Covered Entity in a time and manner reasonably designated by Covered Entity, information collected in accordance with Section 2(i) of this Business Associate Agreement, to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

**3. Permitted Uses and Disclosures by Business Associate.** Except as otherwise limited in this Business Associate Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities or services for, or on behalf of Covered Entity, as specified in the terms of the Agreement.

**4. Obligations of Covered Entity.** Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under HIPAA if done by Covered Entity

## **5. Term and Termination.**

(a) Term. The Term shall commence as of the Effective Date set forth above, and, in connection with Business Associate obligations with respect to the Protected Health Information, shall terminate upon the later to occur of (i) the expiration of the Agreement or (ii) when all Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate, on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section 5.

(b) Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall have the right to 1) upon written notice, provide Business Associate with a thirty (30) day period in which to cure the breach, or 2) after a determination by the Covered Entity that a cure is not possible immediately terminate this Business Associate Agreement and the Agreement identified.

(c) Effect of Termination.

1. Except as provided in paragraph 2 of this section, upon termination of this Business Associate Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information
2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Business Associate Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

## **6. Miscellaneous.**

## Attachment B

- (a) Regulatory References. A reference in this Business Associate Agreement to a section in the Privacy Rule or the Security Rule means the section as in effect or as amended, and for which compliance is required.
- (b) Amendment. The parties agree to negotiate in good faith any amendment to this Business Associate Agreement that may be required from time to time as is necessary for the Covered Entity to comply with the requirements of the Privacy Rule and the Security Rule. If the parties cannot reach mutual agreement on the terms of any such amendment within sixty (60) days following the date of receipt of any such written request made by Covered Entity to Business Associate, then the Covered Entity shall have the right to terminate this Business Associate Agreement and the Agreement upon providing not less than thirty (30) days' written notice to Business Associate.
- (c) Survival. The respective rights and obligations of Business Associate under Section 5(c) above of this Agreement shall survive the termination of this Agreement.
- (d) Interpretation and Integration. If Covered Entity requires service outside the USA, then Covered Entity must set forth on an attached schedule any initial jurisdictions and type of service that they desire HIPAA compliance to apply thereto. Unless set forth on said attached schedule to this Business Associate Agreement that is approved by both parties hereto, this Business Associate Agreement shall only apply to EPHI stored by Business Associate in the U.S.A. for Covered Entity. If Covered Entity directs Business Associate to act in a manner that would not be compliant with the Security Rule and/or Privacy Rule, Business Associate shall not be responsible for any resulting liability.

# Attachment B

*COUNTY/Covered Entity:*

*IRON MOUNTAIN/Business Associate*

*By:*

*By:*

*Name:*

*Name:*

*Title:*

*Title:*

# Attachment B

## Exhibit 1

### CHILD SUPPORT ENFORCEMENT REQUIREMENTS

In order to comply with child support enforcement requirements of the County the required Contractor data and certifications must be submitted within ten (10) days of notification of award.

Failure of a bidder to submit the data and/or certifications required above shall result in the bid being deemed non-responsive and the bidder may be disqualified from being considered for Contract award. Subsequent to issuance of the Contract, failure to comply with all federal and state reporting requirements for Child Support Enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within sixty (60) calendar days of notice from the County shall constitute grounds for termination of the Contract.

The certifications will be stated as follows:

"I certify that *Iron Mountain Information Management, LLC* is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of Contract *X1000000356* with the County of Orange. I understand that failure to comply shall constitute a material breach of the Contract and that failure to cure such breach within sixty (60) calendar days of notice from the County shall constitute grounds for termination of the Contract.

It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders and for no other purposes and will be held confidential by those agencies.

Failure of the Contractor to timely submit the data and/or certifications required above or to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within sixty (60) calendar days of notice from the County shall constitute grounds for termination of the Contract.

# Attachment B

## CHILD SUPPORT ENFORCEMENT CERTIFICATION REQUIREMENTS

A. In the case of an individual Contractor, his/her name, date of birth, Social Security number, and residence address:

Name: \_\_\_\_\_  
D.O.B: \_\_\_\_\_  
Social Security No: \_\_\_\_\_  
Residence Address: \_\_\_\_\_

B. In the case of a CONTRACTOR doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the contracting entity:

Name: \_\_\_\_\_  
D.O.B: \_\_\_\_\_  
Social Security No: \_\_\_\_\_  
Residence Address: \_\_\_\_\_

Name: \_\_\_\_\_  
D.O.B: \_\_\_\_\_  
Social Security No: \_\_\_\_\_  
Residence Address: \_\_\_\_\_

Name: \_\_\_\_\_  
D.O.B: \_\_\_\_\_  
Social Security No: \_\_\_\_\_  
Residence Address: \_\_\_\_\_

C. A certification that the Contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and

D. A certification that the Contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

"I certify that *Iron Mountain Information Management, Inc.* is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of Contract# X100000035 with the County of Orange. I understand that failure to comply shall constitute a material breach of the Contract and that failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

---

Authorized Signature	Name	Title
----------------------	------	-------

---

Authorized Signature	Name	Title
----------------------	------	-------

\* If a corporation, this document must be signed by two corporate officers. The first signature must be either the Chairman of the Board, President, or any Vice President. The second signature must be the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer.

# Attachment B

## Exhibit 2

### EDD-INDEPENDENT CONTRACTOR REPORTING REQUIREMENTS

Effective January 1, 2001, California State Senate Bill 542 requires businesses and government entities to report specified information about independent Contractors to the Employment Development Department.

An Independent Contractor is defined as an individual who is not an employee of the Business or government entity for California purposes and who receives compensation or executes a Contract for services performed for that business or government entity either in or outside of California.

To comply with the reporting requirements of SB 542, County procedures for contracting with Independent Contractors have changed and now mandate that the following information be completed and forwarded to the requesting agency/department immediately upon request.

- First name, middle initial, and last name
- Social security number
- Address
- Start and expiration dates of Contract
- Amount of Contract

#### H. EDD Reporting Form

_____	_____	_____
First Name	Middle Initial.	Last Name
SSN _____	_____	
Contract No. _____	_____	
Start Date _____	Expiration Date _____	_____
Dollar value of Contract : _____	_____	