



**CONTRACT NUMBER MA-017-16010594  
BETWEEN  
COUNTY OF ORANGE, COUNTY PROCUREMENT OFFICE  
AND  
IRON MOUNTAIN INFORMATION MANAGEMENT, LLC  
OFF-SITE DATA STORAGE AND RETRIEVAL SERVICES**

This Agreement, 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 One Federal Street, Boston, MA 02110; hereinafter referred to as "Contractor," with County and Contractor sometimes referred to as "Party", or collectively as "Parties."

**ATTACHMENTS**

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

- Attachment A – Scope of Work
- Attachment B – Payment / Compensation
- Attachment C – Pricing
- Attachment D – HIPAA Business Associate Language

**RECITALS**

**WHEREAS**, Contractor represents that its goods and services shall meet or exceed the requirements and specifications contained herein; and

**WHEREAS**, the Contractor agrees to provide goods and services as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and

**WHEREAS**, the County of Orange Board of Supervisors has authorized the Purchasing Agent or designee to enter into a Contract for Off-Site Data Storage and Retrieval Services with Contractor; and

**NOW, THEREFORE**, the Parties mutually agree as follows:

**ARTICLES**

**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, 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 by County's Purchasing Agent or his designee, hereinafter "Purchasing Agent."

## ATTACHMENT A - SIGNED AGREEMENT

- 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.
- 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 and to cancel all or any part of the descriptions or services that do not conform to the prescribed statement of work. Delivery shall not be deemed to be complete until all services have actually been received and accepted in writing by County.
- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by the County, 1) acceptance shall not be deemed complete unless in writing and until all the services have actually been received to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- 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 "HH" below, and as more fully described in paragraph "HH", 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 "HH" below, it shall indemnify, defend and hold County and County Indemnities 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 Contractor (other than to an affiliate of Contractor) without the express written consent of County. An affiliate means any entity controlling, controlled by, under common control with, or having a common parent with Contractor. 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 subcontractors 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

## ATTACHMENT A - SIGNED AGREEMENT

this provision shall subject Contractor to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.

- K. **Termination:** In addition to any other remedies or rights it may have by law, 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, except for payment of fees due for services performed under this Agreement.
- 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.
- N. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither Contractor, its employees nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor 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 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 subcontract, shall be fully responsible for all work performed by sub-contractors.
- P. **Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors 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.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such

## ATTACHMENT A - SIGNED AGREEMENT

proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a zero (0) by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management upon review of Contractor's current audited financial report.

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

### **Qualified Insurer**

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<b><u>Coverage</u></b>	<b><u>Minimum Limits</u></b>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per occurrence

### **Required Coverage Forms**

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

### **Additional Requirements**

All certificates of insurance may name the County as an additional insured with respect to General Liability, Automobile Liability and/or Umbrella Liability coverages only. All certificates of insurance shall require that the County be provided with advance written notice of cancellation of the stated coverage, and Contractor shall request that its insurer or their agent use their best efforts to provide at least thirty (30) days' advance written notification of such cancellation.

With respect to the Commercial General Liability policy, Contractor shall add the County as an Additional insured on the Certificate of Insurance All insurance policies required by this

Contract (except for Workers' Compensation and Employers Liability Coverage) shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

All certificates of insurance shall require that the County be provided with advance written notice of cancellation of the stated coverage, and Contractor shall request that the insurer or their agent use their best efforts to provide such notice to the County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

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 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, nor act in any way to reduce the policy coverage and limits available from the insurer.

**\*Certificate Holder Information**

The County of Orange has contracted with Ebix RCS to monitor insurance certificates and endorsements for compliance with the above requirements. Upon initial award of a Contract, the certificate(s) and endorsement(s) should be forwarded to the agency/department address listed on the solicitation. The County will forward these documents to Ebix RCS on your behalf. Ebix RCS may contact you to advise you of deficiencies and request corrected documents. Please cooperate with their request for information or corrections in order for the County to continue your Contract through the expiration date.

- 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 "HH" below, 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

## ATTACHMENT A - SIGNED AGREEMENT

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:** Neither party shall be liable for delay or inability to perform caused by acts of God, governmental actions, labor unrest, acts of terrorism, riots, unusual traffic delays or other causes beyond its reasonable control, if written notice (within 36 hours during the business week or within 72 hours on a weekend) is provided.
- 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 "HH" below, Contractor agrees that it shall defend, indemnify and hold County and County Indemnities harmless from all liability, damages, costs, and expenses arising from or related to a violation of such laws.
- 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 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 work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
- Y. **Waiver of Jury Trial:** Intentionally left blank
- 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. **Attorney 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 or 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 affect the purpose of the parties and this Contract.

**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. 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.

**HH. 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 or demands for 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. 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 JJ.

**II. Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor- Controller's 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 final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three 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 subcontractor related to performance of this contract.

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

- JJ. 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 (each a "Declared Value"). County acknowledges that it has declined to declare an excess valuation for the items, 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 provider of media storage services 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 to the Declared Value 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. Notwithstanding the foregoing limitations of liability set forth in this Section JJ, Contractor shall be liable for any and all stored materials damages incurred by the County, and shall indemnify the County for any claims or demands against the County with respect to stored materials and the contents therein, to the extent such damages, claims or demands are caused by the Contractor's gross negligence or willful misconduct in providing the services under this Contract.

- KK. 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.

- LL. 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.

- MM. Lost or Damaged Orange County Media in the Possession of Contractor:** Contractor will immediately 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 Contractor whether



the media is lost or damaged during transport or in storage. In addition to notification, Contractor will send 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 County media by Contractor is strictly limited to law enforcement, authorized County personnel and other Contractor personnel/customers directly affected by the lost or damaged media.

Contractor Data Security Policy is incorporated herein as follows in support of Lost or Damaged County media clause as set forth herein in **Section MM**:

1. Backup Tape Vaulting, Security Protection & Testing: Contractor 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. Contractor personnel are required to wear identification badges while on Contractor premises. Badges are color-coded to indicate access authorization levels. Unescorted access to our records centers is prohibited for all but Contractor employees. Contractor's 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 Contractor employees are aware of the methodologies and critical need for controlling access to Contractor's buildings.
2. Testing of Security Protection and Access Controls: Security procedures for visitor and employee identification, as well as Contractor's physical intrusion detection systems, serve to deny access to any unauthorized person. Contractor further tests these measures by employing "Integrity Audits" as a routine method of evaluating its security posture. Contractor contracts with a national security vendor and selects one District per month for review. Undercover agents, supplied with letter of authority by the Director, Safety & Security for Contractor, 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 Contractor's facility. Results of these audits are evaluated and, if required, corrective measures are employed. These audits, together with Contractor's Internal Audit, Traveler Audit and self-audit programs, help to maintain the physical integrity of Contractor's operations.
3. Backup Tape Vaulting, Loading/Unloading Procedures: Contractor Divisional Security Processes for loading/unloading is permitted outside while at customer locations. While at a Contractor 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: Contractor customizes its pickup, delivery and tape rotation schedules around County's backup schedules and business needs. County's tapes and off-site media are carefully placed in customized transport containers designed for media protection. Contractor transports County data in Contractor's secure, climate-controlled vehicles. Contractor 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 County is 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 "Attachment A".
2. **Contract Term:** This Contract shall commence on January 1, 2016 or upon the approval of the Orange County Board of Supervisors, whichever occurs later, and continue for one (1) calendar year from that date, unless otherwise terminated by County. This Contract may be renewed as set forth in paragraph 3 below.
3. **Renewal:** This Contract may be renewed for two (2) additional one (1) year terms, by mutual written agreement of both Parties. 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. **Adjustments – Scope of Work:** No adjustments made to the scope of work will be authorized without prior written approval of the County assigned Deputy Purchasing Agent (DPA), and may require the approval of the County Board of Supervisors.
5. **Amendments – Changes/Extra Work:** The Contractor shall make no changes to this Contract without the County's written consent. In the event that there are new or unforeseen requirements, the County with the Contractor's concurrence has the discretion to request official changes at any time without changing the intent of this Contract.

If County-initiated changes or changes in laws or government regulations affect price, the Contractor's ability to deliver services, or the project schedule, the Contractor shall give the County written notice no later than seven calendar days from the date the law or regulation went into effect or the date the change was proposed by the County and the Contractor was notified of the change. Such changes shall be agreed to in writing and incorporated into a Contract Amendment; said Amendment shall be issued by the County-assigned DPA, shall require the mutual consent of all Parties, and may be prohibit the Contractor from proceeding with the work as set forth in this Contract.

6. **Americans with Disabilities Act (ADA):** Section 504 of the Rehabilitation Act of 1973 as amended; Title VI and VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act, 42 USC 12101; California Code of Regulations, Title 2, Title 22: California Government Code, Sections 11135, et seq; and other federal and state laws and executive orders prohibit discrimination. All programs, activities, employment opportunities, and services must be made available to all persons, including persons with disabilities.
7. **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 agreement and that all requirements of the contractor have been fulfilled to provide such actual authority.
8. **Authorized Agency/Department Personnel:** Each County Agency/Department will appoint authorized staff who may request Services in accordance with the pricing, terms, and conditions of this Contract. These staff will be identified in the subordinate contracts created by each user agency/department, and Contractor shall execute each subordinate contract separately. Authorized Agency Personnel will assign Contract Coordinators, defined in Attachment A, who will overseas the Services. Contractor shall not provide services to unauthorized requestors.
9. **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:

- a. Afford the contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this contract within which to cure the breach;
  - b. Discontinue payment to the contractor for and during the period in which the contractor is in breach; and
  - c. Offset against any monies billed by the contractor but yet unpaid by the County those monies disallowed pursuant to the above.
10. **CAL-OSHA:** All vehicles must meet California Motor Vehicle and Cal-OSHA regulations and all other applicable codes required for vehicle use on the roads or highways in the state of California.
  11. **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.
  12. **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.
  13. **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.
  14. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The contractor shall not, during the period of this contract, employ any County employee for any purpose.
  15. **Contingent Fees:** The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees of the contractor or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.
  16. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County’s Board of Supervisors for each fiscal

year covered by this contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this contract without penalty.

17. **Contractor – Change in Ownership:** The contractor agrees that if there is a change in ownership prior to completion of this contract, the new owner will be required, under terms of sale, to assume this contract and complete it to the satisfaction of the County.
18. **Contractor Personnel – Reference Checks:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility anticipated under this Contract. Contractor's employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.
19. **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.
20. **Contractor Personnel-Uniform/Badges/Identification:** The contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility under this Contract.

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 assigned buyer must be notified in writing, within seven days of notification of award of contract of the uniform and /or badges and/or other notification to be worn by employees prior to beginning work and notified in writing seven days prior to any changes in this procedure.

21. **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. This 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, whose consent shall not be unreasonably withheld.

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 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. Said approval shall not be unreasonably withheld. The County is not required to provide any additional information, reason or rationale in the event it elects to request the removal of Contractors Project Manager from providing services to the County under this Contract.

22. **Contractor Work Hours and Safety Standards:** The Contractor shall ensure compliance with all safety and hourly requirements for employees in accordance with federal, state and County's safety regulations and laws.
23. **Contractor's Power and Authority:** The Contractor warrants that it has the full power and authority to grant the rights herein granted. Further, the Contractor avers that it will not enter

into any arrangement with any third party which might abridge any rights of the County under this Contract.

24. **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 seven years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange assigned DPA.
25. **Cost/Price Data:** At all times during and following the period of Contract performance, the County may require Contractor to furnish such cost and pricing data as the County deems necessary to assess the reasonableness of Contract pricing, including the reasonableness of changes. Contractor agrees to maintain such records for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law.

26. **County Project Manager:** The County shall appoint a project manager to act as liaison between the County and the 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 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. Said approval shall not be unreasonably withheld.

27. **County Of Orange Child Support Enforcement:** 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 Contract administrator, the Purchasing Agent, or the agency/department deputy 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 ten (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
- 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 sixty (60) calendar days of notice from the County shall constitute grounds for termination of the Contract.

28. **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.

29. **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.
30. **Default - Reprourement Costs:** In case of default by Contractor, the County of Orange may procure the services from other sources.
31. **Delivery Location – No Loading Dock:** Delivery locations may not have loading docks. The contractor is required to make all necessary arrangements for lift trucks or other means necessary to complete delivery. Inside delivery to secured facilities may be required.
32. **Disputes – Contract:**
- a. 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:
    - i. The Contractor shall submit to the agency/department assigned 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.
    - ii. 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, 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.
  - b. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the provision of services under this Contract. 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. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for Cause or Terminate for Convenience as stated in Section K herein.
33. **Drug-Free Workplace:** The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:
- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying

## ATTACHMENT A - SIGNED AGREEMENT

actions to be taken against employees for violations, as required by Government Code Section 8355(a).

- b. Establish a drug-free awareness program as required by Government Code Section 8355(b) to inform employees about all of the following:
  - i. The dangers of drug abuse in the workplace;
  - ii. The organization's policy of maintaining a drug-free workplace;
  - iii. Any available counseling, rehabilitation and employee assistance programs; and
  - iv. Penalties that may be imposed upon employees for drug abuse violations.
- c. Provide as required by Government Code Section 8355(c) that every employee who works under this Contract:
  - i. Will receive a copy of the company's drug-free policy statement; and
  - ii. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County Contracts if the County determines that any of the following has occurred:

- a. The Contractor has made false certification, or
- b. The Contractor violates the certification by failing to carry out the requirements as noted above.

34. **Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by the County, state or federal government, this Contract may be subjected to unusual usage. The Contractor shall service the County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the Contractor shall apply to serving the County's needs regardless of the circumstances. If the Contractor is unable to supply the goods/services under the terms of the Contract, then the Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from the Contractor's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the Contractor shall show both the emergency purchase order number and the Contract number.
35. **Equal Employment Opportunity:** 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

## ATTACHMENT A - SIGNED AGREEMENT

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

Regarding Americans with disabilities, contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

36. **Firm Price Quotes:** Prices quoted herein shall be firm during the initial one (1) year term of the Contract.
37. **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 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.
38. **HIPAA:** 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 Contractor by the County shall be considered confidential and kept confidential by the Contractor and Contractor's staff, agents and employees. Upon request of County, Contractor's staff may be required to sign and return a confidentiality statement from each person having access to data while in Contractor's possession and beyond.
39. **Interpretation of Contract:** In the event of a conflict or question involving the provisions of any part of this contract, interpretation and clarification as necessary shall be determined by the County's assigned buyer. If disagreement exists between the contractor and the County's assigned buyer in interpreting the provision(s), final interpretation and clarification shall be determined by the County's Purchasing Agent or his designee.
40. **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.
41. **Nondiscrimination – Statement of Compliance:** The Contractor's signature affixed hereon and dated shall constitute a certification under penalty of perjury under the laws of the state of California that the Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12900 (a-f) and Title 2, California Code of Regulations, Section 8103.
42. **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 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.

For Contractor: Iron Mountain Information Management, LLC.  
Attention: Bart Evans  
One Federal Street  
Boston, MA 02110

For County: County of Orange  
County Procurement Office  
Attn: Duyen Lac  
1300 S. Grand Ave., Bldg. A, 2nd Floor  
Santa Ana, CA 92705-4434

43. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this contract by the contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the contractor without the express written consent of the County.
44. **Parking for Pick-Up and Delivery Services:** While the County will make every effort to provide parking locations for pickup and delivery, should those locations be unavailable, the County of Orange will not provide free parking for pick-up/delivery services.
45. **Precedence:** The Contract documents consist of this Contract and its attachments and exhibits. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the articles of this Contract, and then the exhibits and attachments.
46. **Price Increase/Decrease:** No price increases will be permitted during the initial term (first year) of the Contract. Price increases during any subsequent renewal terms shall not exceed three percent (3%) per contract year.
47. **Regional Cooperative Agreement:** Regional Cooperative Agreements (RCA) awarded by the County of Orange are intended to be used as cooperative agreements against which individual subordinate contracts may be executed by participating County departments and non-County public entities during the effective dates outlined herein. The RCA terms, conditions, and pricing shall be extended to all subordinate contracts issued in accordance with the RCA. Subordinate contracts shall be in full force and effect through their agreed upon termination date, unless otherwise terminated by the agency/department. County departments and non-County public entities shall issue subordinate contracts in their own names, and be solely responsible for all payment requirements. Contractor shall ensure that all subordinate contracts with non-County public agencies contain an indemnification clause in which the non-County agency indemnifies and holds harmless the County of Orange from all claims, demand actions, or causes of actions of every kind arising out of, or in any way connected with the use of County issued cooperative agreements. Failure to meet this requirement shall be considered a material breach of this RCA and grounds for immediate contract termination.

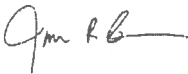
48. **Sub-Contracting:** No performance of this Contract or any portion thereof may be assigned or sub-contracted by the Contractor (other than to an affiliate of Contractor) without the express written consent of the County. Any attempt by the Contractor to assign or sub-Contract any performance of this Contract (other than to an affiliate of Contractor) without the express written consent of the County shall be invalid and shall constitute a breach of this Contract.

In the event that the Contractor is authorized by the County to sub-Contract, this Contract shall prevail and the terms of the sub-Contract shall incorporate by reference and not conflict with the terms of this Contract. In the manner in which the County expects to receive services, the County shall look to the Contractor for performance and not deal directly with any sub-Contractor. All matters related to this Contract shall be handled by the Contractor with the County; the County will have no direct contact with the sub-Contractor in matters related to the performance of this Contract. All work must meet the approval of the County of Orange.

49. **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 requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity of services requested.
50. **Usage Reports:** The Contractor shall submit usage reports as requested by County. Contractor shall provide usage reports within fourteen days of such request. The usage report shall include all information requested by County, in a format specified by County.
51. **Validity:** The invalidity in whole or in part of any provision of this contract shall not void or affect the validity of any other provision of the contract.
52. **Waivers - Contract:** The failure of the County in any one or more instances to insist upon strict performance of any of the terms of this contract or to exercise any option contained herein shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.

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

**IRON MOUNTAIN INFORMATION MANAGEMENT, LLC**

James Incavo	Territory Vice President
Print Name	Title
	
Signature	10/26/2015
	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 corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.*


\*\*\*\*\*

**COUNTY OF ORANGE, a political subdivision of the State of California**

	Deputy Purchasing Agent
Print Name	Title
Signature	Date

**APPROVED AS TO FORM**  
Office of the County Counsel  
County of Orange, California

	10-27-15
Deputy	Date

<p>Approved as to Form and Legal Content: Iron Mountain Legal Department</p>  <p>Name: Robert Liljedahl Customer: County of Orange Date: October 26, 2015</p>
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**ATTACHMENT A  
SCOPE OF WORK****1. INTRODUCTION**

The County of Orange outsources all disaster recovery and backup media and records to commercial Contractors 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. Services are on as needed basis and usage is not guaranteed. The Contractor(s) shall be capable of providing timely courier service, secure storage and appropriate containers for all media provided at all times during this Contract.

**2. GENERAL REQUIREMENTS:****2.1 Facilities**

- 2.1.1 The storage facility must meet the local city and/or state structural design standards for the Seismic Zone that the facility is geographically located in.
- 2.1.2 The storage facility shall be equipped with a fire suppression system.
- 2.1.3 The storage facility shall be located away from any known flood area.
- 2.1.4 Contractor'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.
- 2.1.5 Contractor's storage facility site shall be within a 100 mile radius from OC Data Center 1400 S. Grand Ave. 92705-4400 located on Grand Ave. (South) between Mc Fadden Ave. (East) and Wilshire Ave. (East).
- 2.1.6 Facility shall have automatically transferred back-up power.
- 2.1.7 Facility shall be a stand-alone facility.
- 2.1.8 Facility shall have concrete, steel reinforced vault construction with solid steel doors, bullet proof glass and man-trap entries is desired.
- 2.1.9 Facility shall have state of the art alarm system in place.
- 2.1.10 Construction type III (Per Standard Building Classification Code) is desired.
- 2.1.11 Continuous on and off-site station monitoring of security, alarm, and fire detection systems.
- 2.1.12 Uninterrupted and continuous exterior video surveillance.
- 2.1.13 Exterior and interior steel doors or equal is desired.
- 2.1.14 On-line, card key access system for all doors required.
- 2.1.15 Electronic gate entry to inside loading/unloading area is required.
- 2.1.16 Shall have alarm protection for fire, smoke detection, and suppression, magnetic door, window contact, window breakage and improper access code entry.
- 2.1.17 Alarm system access and video surveillance shall provide audit trail of activity.
- 2.1.18 Closed circuit television monitoring interior and exterior of facility.
- 2.1.19 Facility shall be designed to achieve non-combustibility.
- 2.1.20 Dock loading area has a secured entry system, video surveillance. It is desired that the loading dock not be visible from the street.

- 2.1.21 Hard lid rooms for the vaulted areas storing media or confidential data.
- 2.1.22 Internal and external video monitoring of facility is available for a standard 1 year period. Access control logs may be requested from alarm vendor.
- 2.1.23 All logs associated with the Video and Access Control systems must be routinely reviewed and acted upon in a timely fashion if exceptions are observed.
- 2.1.24 A record of log reviews must be kept on file for the duration of the contract.

## **2.2 Vault and Storage**

- 2.2.1 Administrative areas shall be separate from vaulting areas.
- 2.2.2 Alarm protection shall be in place for fire detection and suppression.
- 2.2.3 Proposed facility shall have a dedicated alarm for heat and fire suppression tied directly to fire stations.
- 2.2.4 Each vault shall be monitored 24-hours, 7- days per week to maintain acceptable temperature of 68 degrees to 72 degrees Fahrenheit, and acceptable humidity of 35% to 45% and reading record permanently kept.
- 2.2.5 No bulk paper shall be stored near media vaults.
- 2.2.6 Each vault must be in hard lid rooms with access control systems.

## **2.3 Access**

- 2.3.1 The storage facility shall have a 24-hour, 7 days a week security system, in addition to the guard service.

## **2.4 Services**

- 2.4.1 Scheduled Services – Routine scheduled services specified by the requesting agency/department.
- 2.4.2 Scheduled Same Place/Building with multiple pick-up/retrieval services – Some County facilities are multi-floor buildings. Contractor shall pick-up/retrieve media within the same place/building for the same account.
- 2.4.3 Contractor shall be required to deliver a media storage request within four (4) hours for an “Emergency Request”, twelve (12) hours for a “Rush Request”, and twenty-four (24) hours for a “Special Request”. The trigger for the Service Level is the time/date when a County administrator calls the vendor for service.
- 2.4.4 Holiday Service Premium is applicable to the following holidays: New Year’s Day, Martin Luther King Day, President’s Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

**2.5 Route**

2.5.1 Contractor shall provide a minimum of two (2) alternate planned routes for the transportation of media to and from Contractor's storage facility to the requesting agency/department.

**2.6 Vehicle Requirement**

2.6.1 Courier vehicles shall be secure, have a reinforced body, equipped with a fire extinguisher and alarm system, and communications system for voice communications with the Contractor's storage facility.

**2.7 Canister Specifications**

2.7.1 Contractor shall provide industry standard containers to handle computer tapes and cartridges, microfiche products, documents and any other media being transported.

**2.8 Inventory Management**

2.8.1 Contractor shall provide an inventory system to identify containers for purposes of audit trail.

2.8.2 Contractor shall provide weekly reports to reconcile the Contractor and the County records of stored containers at Contractor's storage facility.

2.8.3 Contractor shall provide updates of the inventory of stored containers to the County upon request.

2.8.4 Contractor shall provide all support required for County personnel to conduct semi-annual audits of all media in person/face to face and electronically.

2.8.5 Contractor shall have a web link for County to electronically manage media inventory, scheduled deliveries, authorized users contacts and security levels, transaction reports, disaster recovery information and special requests to transport from County and retrieval from Contractor.

2.8.6 Web-based electronic access to allow, but not limited to:

- Schedule canister pick up
- Schedule canister deliveries
- Recalls (if recalls are not requested for the same day)
- Canister Verification
- Verify the location of a canister (County site and Contractor site)
- Create reports for pick up and deliveries
- Correct delivery date for canisters if they are wrong

2.8.7 Contractor will provide a listing of all possible locations where County records may be stored.

2.8.8 In the event the Contractor finds it necessary to relocate County records to another location, the Contractor must obtain authorization from the County prior to relocating any county records. The Contractor will assume all related costs.

**2.9 Confidentiality**

2.9.1 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 Contractor by the County shall be considered confidential and kept confidential by the Contractor and Contractor's staff, agents and employees.

**3. SUPPORT SERVICES**

- 3.1 Contractor shall provide a single point of contact (account representative and one backup) to support County requirements in the administration and use of this Regional Contract Agreement (RCA), including any subordinate agreements issued against the RCA by County agencies/departments or other government entities.
- 3.2 Contractor shall have telephone and/or email support, a 24-hour, 365 days per year emergency courier service that may be activated by the County as required.
- 3.3 The County reserves the right to make changes to add/delete services to meet needs of agency/department under this Contract.

**4. COUNTY RESPONSIBILITIES**

- 4.1 Agency/Department shall provide their service location address, authorized personnel for contact and information, and service request information to the Contractor. Service requests may vary for each agency/department.
- 4.2 County will provide Contractor with name of CISO (Chief Information Security Officer) and his/her backup.

**5. CONTRACTOR RESPONSIBILITIES**

- 5.1 Contractor shall maintain good standing as determined by a SysTrust (SOC3) report on a continuous basis.
- 5.2 The Contractor is obligated to notify the County as soon as it is aware of a security breach, loss of information, or damage to County records which occurs at its facilities.
- 5.3 In the event a member of the Contractor's staff employment with Contractor is terminated, their access to the County's media shall be terminated prior to their employment termination.
- 5.4 Contractor agrees to include adequate supply of randomly serialized security clips to seal each container / canister.
- 5.5 Contractor agrees to document and notify the County Administrator for each instance of a broken container security clip while data is in Contractor's custody (including transport).
- 5.6 All County data must be only transported in vehicles equipped with an alarm and secure storage area. When the secure storage is ajar an alarm must be triggered and logged.

**6. TRANSITION**

- 6.1 Contractor shall be responsible for the transition of County's data/media from County's current contractor, under County oversight.
- 6.2 In the event a new contract is not awarded to the Contractor once this agreement has expired or is terminated by the County, the Contractor will be required to make media easily accessible to the new Contractor to ensure smooth transition.
- 6.3 Contractor may be required to sell sealed media canisters to new contractor.
- 6.4 County requires that the transition process be handled as a contractor to contractor transaction under County oversight.

- 6.5** There will be no “permanent removal charge” applied to any item removed from storage for any reason and not returned. The Contractor shall only charge for retrieval of the item and delivery of the item if applicable. The County department shall notify the Contractor of its intent to permanently remove the file or files and the Contractor will remove that file from the County department’s inventory listing at no charge.
- 6.6** At the end of the Contract; including situations where the Contract is terminated prior to the completion of the full term of the contract, the Contractor must work with the County or its designee to facilitate the orderly transfer of all county records to the County or its new contractor. Any fees associated with such transfer shall be at the rates and charges set forth in this Contract or as otherwise agreed upon by the County and Contractor. The Contractor must propose a process for preparing records for transfer to a new contractor. The proposal must address transfer of boxes and inventory control information.

**7. DISASTER RECOVERY PLAN REQUIREMENTS**

- 7.1** If the County activates its disaster plan and provides telephone notification to the Contractor, the Contractor shall immediately perform the required task.
- 7.2** Contractor agrees to securely transfer / transport any County data to County designated Disaster Recovery locations in:
- Within 250 Miles from 1400 S. Grand Santa Ana, CA (Transfer must be completed within 4 hours of a County Request)

**8. SECURITY**

- 8.1** Security / Badge Requirement: Some agencies may require specific issuance of security badge prior to performance of work agreement in a restricted facility. All personnel engaged in the performance of work under this proposed agreement shall have passed the Contractor’s background screening requirements. Contractor employee are made aware of his/her responsibilities regarding the privilege of access to restricted areas of certain agencies such as but not limited to John Wayne Airport, Youth Detention Facilities, Sheriff’s Department, and etc.

County agency/department is responsible for all costs related to security / badge requirements.

- 8.2** Security Requirements: The County operates several secured facilities: most notable are several Probation, Sheriff and Airport operated sites. Contractors and their employees who perform services in these facilities will be required to strict operation policies and may be required to pass a background check prior to their employment due to security requirements for certain facilities covered under this Contract. During performance of the work, especially at detention facilities, workers shall closely monitor all tools, equipment and other materials at all times. Workers shall have no contact verbal or physical, with any inmate of these facilities. These policies have been designed with the primary purpose of ensuring a safe and secure environment for all involved.

- (a) The Contractor will provide a list of all personnel/employees who will be directly performing tasks associated with the Contract. Contractor’s personnel/employees providing service in a secured detention facility, a Probation facility or a Sheriff’s facility will be expected to pass two (2) separate background checks performed by the Orange County Sheriff’s Department and the Orange County Probation Department. No changes shall be authorized to the approved list without a request in writing submitted by the Contractor and approved by the County Site Coordinator. At no time will unauthorized Contractor employees perform any task associated with this Contract. If this occurs, the Contractor will be notified that they have not complied with the terms of



this Contract and are subject to Contract termination. The list of all Personnel/Employees working on County projects shall be submitted prior to award of this Contract.

- (b) Contractor shall prepare and submit a Security Clearance form to the County Site Coordinator for all persons who will be working on or who will need access to secured facilities.
- (c) Security Clearance forms shall be submitted at least five (5) working days prior to the start of work or prior to the use of any person subsequent to the start of work.
- (d) Said Security Clearance forms shall be thoroughly and accurately complete. Omissions or false statements, regardless of the nature or magnitude, may be grounds for denying clearance.
- (e) No person shall be employed on this work who has not received prior clearance from the Probation Department, Sheriff's Department or John Wayne Airport.
- (f) The County, John Wayne Airport, the Probation Department and the Sheriff's Department are not under any obligation to give a reason clearance is denied.
- (g) The Contractor shall be responsible to sign in with the County Site Coordinator or designee, as required. Upon arrival at any secure facility (e.g., JWA, Probation) the Contractor shall report to the Central Control Center (Control). Contractor personnel shall have no contact, either verbal or physical, with internees in secured detention facilities.

Specifically:

- 1) Do not give names or addresses to internees.
- 2) Do not receive any names or addresses from internees.
- 3) Do not disclose the identity of any internee to anyone outside the facility.
- 4) Do not give any materials to internees.
- 5) Do not receive any materials from internees (including materials to be passed to another individual or internee).

*\*Failure to comply with these requirements could result in criminal prosecution.*

- (h) Any Contractor personnel/employee(s) engaged in the performance of work under this Contract shall be expected to pass the screening requirements and abide by all of the security requirements of the County of Orange, and if working at John Wayne Airport, the screening requirements and security requirements set forth by the Federal Aviation Administration (FAA).

*"The Federal Aviation Administration (FAA) approved security program for John Wayne Airport requires that each person issued a John Wayne Airport security badge is made aware of his/her responsibilities regarding the privilege of access to restricted areas of the airport".*

All persons within the restricted air operation areas of the airport are required to display, on their person, a John Wayne Airport security badge, unless they are specifically exempted for reasons or they are under escort by a properly badge individual. Each airport employee or airport tenant employee who has been issued a John Wayne Airport security badge is responsible for challenging any individual who is not properly displaying an airport issued or approved and valid identification badge. Any person

who is not properly displaying or who cannot produce a valid John Wayne Airport security badge must immediately be referred to the Sheriff's Department Airport Detail Office for proper handling.

The John Wayne Airport security badge is the property of the County of Orange and must be returned upon termination of employment at John Wayne Airport. The loss of a badge shall be reported within twenty-four (24) hours to the Sheriff's Department Airport Dispatch Center (949) 252-5000. A report shall be made before a replacement badge will be issued.

- (i) All vehicles parked on-site shall be locked and thoroughly secured at all times.
- (j) With respect to Sheriff's facilities, all equipment and materials shall remain in the Contractor's possession at all times and shall never be left unattended. All lost or misplaced equipment or materials shall be reported immediately to the (a) security staff or Control in secured detention facilities or (b) the escort or Control in Sheriff's facilities.
- (k) Personnel shall not smoke or use profanity or other inappropriate language while on-site.
- (l) Personnel shall not enter the facility while under the influence of alcohol, drugs or other intoxicants and shall not have such materials in their possession.
- (m) Personnel shall plan their activities to minimize the number of times they must enter and exit a facility, i.e., transport all equipment and materials needed for the day at the start of work and restrict all breaks to the absolute minimum.
- (n) Contractor employee(s) shall be well-disposed to the public and County staff utilizing the facilities but shall be responsive only to the requests of the County Site Coordinator unless otherwise directed and shall direct all inquiries or requests to the County Site Coordinator.

## **9. CONTINUOUS ASSURANCE**

**9.1** Contractor agrees to notify County CISO (Chief Information Security Officer) on file plus his/her backup) in writing about any risk to County data immediately and track such risks and remediation.

**9.2** Contractor agrees to notify County CISO (Chief Information Security Officer) on file plus his/her backup) in writing when law enforcement agencies are requesting any County data so the requesting agency may coordinate with the County CISO.

## **10. "DO NOT RETURN FOR RECYCLE" CANISTER AND STORED ITEMS**

**10.1** From time to time, the County agencies may mark a canister or package to be permanently stored offsite as "Do Not Return for Recycle". Contractor agrees to maintain a record of such items by agency.

## **11. DISTRIBUTED ACCESS CONTROL ADMINISTRATION, ACCOUNTS AND BILLING**

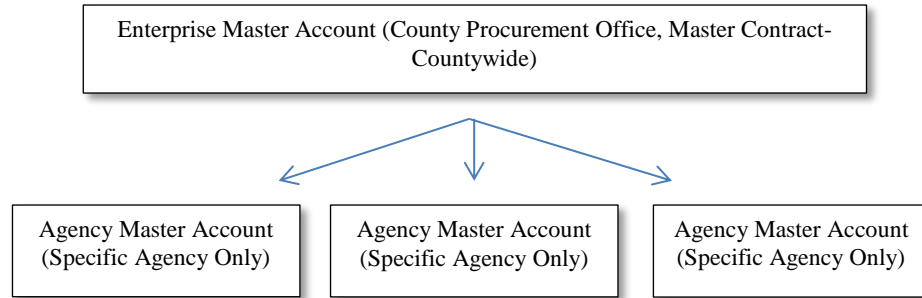
**11.1** Overall the County Account and Billing requirements are as follows:

- (a) Enterprise County Master Account that manages the overall program and master contract.
- (b) Agency Master Account that manages a single agency program and sub-contract.

An Enterprise Master Account has visibility, recall, reporting capability for the overall contract as well as agency level. It must contain the necessary roles to administer the

overall enterprise (County-wide) programs and ALL agencies data, including billing and Access Control reports available at the agency level.

An Agency-specific Master Account has visibility, recall, reporting capability for the specific Agency ONLY. It must contain the necessary roles to administer the agency program. These accounts may not have capability to manage, administer the County overall master accounts or other agencies. Each agency account must be compartmented enough to have no visibility beyond its own silo.



- (c) All Access Management tools, Service and Billing tools would be accessible via secure Web based (browser enabled) connection.

**ATTACHMENT B  
PAYMENT / COMPENSATION**

1. **Compensation:** This is a combined fixed fee/usage Contract between the County and Contractor for services as provided in this Contract. 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. The County shall have no obligation to pay any sum in excess of Contract price specified below unless authorized by amendment.
2. **Payment Terms – Payment in Arrears:** The invoice is to be submitted in arrears to the user agency/department to the bill-to address, unless otherwise directed in this Contract. Contractor shall reference Contract number on invoice. Payment will be net 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 not previously invoiced. The Contractor shall reimburse the County for any monies paid to the Contractor for services not provided or when services do not meet the Contract requirements.

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

3. **Taxpayer ID Number:** The contractor shall include its taxpayer ID number on all invoices submitted to the County for payment to ensure compliance with IRS requirements and to expedite payment processing.
4. **Payment– Invoicing Instructions:** The Contractor will provide an invoice on the Contractor's letterhead services rendered. Each invoice will have a number and will include the following information:
  - a. Contractor's name and address
  - b. Contractor's remittance address, if different from 1, above
  - c. Contractor's Taxpayer ID number
  - d. Name of County agency/department
  - e. Delivery/service address
  - f. Subordinate Agreement number
  - g. Department's Account Number
  - h. Date of invoice
  - i. Billing period
  - j. Date of service; location/route
  - k. Applicable Charges
  - l. Sales tax, if applicable
  - m. Total

**ATTACHMENT C  
PRICING**

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

**List of Billable Items**

**Off-Site Storage**

A. **ACCOUNT FEES**

Monthly Administrative Fee Per Agency/Department Account	\$26.38
Minimum Monthly Fee Per Agency/Department Account	\$141.75

B. **STORAGE CONTAINERS**

**B.1 Small Vaulting Container**

<b>Description:</b>	
Closed Container, 4mm, or comparable	
Closed Container, 8mm, or comparable	
Closed Container, Cartridge 3480 (capacity 10), or comparable	
Closed Container, Cartridge 3480 (capacity 20), or comparable	
Closed Container, CD-ROM, or comparable	
Closed Container, Data Cartridge/Streamer, or comparable	
Closed Container, DLT (capacity 10), or comparable	
Closed Container, DLT (capacity 14, turtle), or comparable	
Closed Container, DLT (capacity 20), or comparable	
Closed Container, DLT (capacity 5), or comparable	
Closed Container, Floppy Disk 3-1/2, or comparable	
Closed Container, Floppy Disk 8 (capacity 4)	
Closed Container, Multi Media, or comparable	
Closed Container, Multi Utility (med/small), or comparable	
Closed Container, Multi Utility (small/x-small), or comparable	
Closed Container, Single Tape, or comparable	
Closed Container, 5 ¼ Floppy (capacity = 4)	
Closed Container, Cardboard (small)	
Closed Container, Clipper 3480	
Closed Container, Iron Mountain Multimedia	
Closed Container, Microfilm (small)	
Closed Container, Tub (small)	
Closed Container, Small : Other	
<b>Monthly Price Per Container</b>	<b>\$6.07</b>

**B.2 Medium Vaulting Container**

<b>Description:</b>	
Closed Container, Cartridge 3480 (capacity 40), or comparable	
Closed Container, DLT (capacity 32), or comparable	
Closed Container, DLT (capacity 40), or comparable	
Closed Container, Multi Utility (large/medium), or comparable	
Closed Container, Round Reel, or comparable	
Closed Container, Tub (medium), or comparable	
Closed Container, Double Insert Multimedia	
Closed Container, 5 ¼ Floppy (capacity 12)	
Closed Container, Floppy Disk 8 (capacity 6)	
Closed Container, Magstar	
Closed Container, Banker Box	
Closed Container, Medium : Other	
<b>Monthly Price Per Container</b>	<b>\$11.12</b>

**B.3 Large Vaulting Container**

<b>Description:</b>	
Closed Container, Cartridge 3480, (capacity 60), or comparable	
Closed Container, Disk Pack, or comparable	
Closed Container, Document, or comparable	
Closed Container, Laser Disk, or comparable	
Closed Container, Microfilm (large), or comparable	
Closed Container, Multi Utility, (x-large/large), or comparable	
Closed Container, Optical Disk, or comparable	
Closed Container, Plastic (large), or comparable	
Closed Container, Video Cassette, or comparable	
Closed Container, Aperture Card	
Closed Container, Cardboard (large)	
Closed Container, Forms Overlay	
Closed Container, Pendaflex	
Closed Container, Media Drawer (small)	
Closed Container, Large : Other	
<b>Monthly Price Per Container</b>	<b>\$16.18</b>

**B.4 Ex-Large Vaulting Container**

<b>Description:</b>	
Closed Container, DLT (capacity 64), or comparable	
Closed Container, Plastic (x-large), or comparable	
Closed Container. Cardboard (x-large)	
Closed Container. Fiche Reader	
Closed Container. Modem	
Closed Container, Ex-Large: Other	
<b>Monthly Price Per Container:</b>	<b>\$16.18</b>

**C. MISCELLANEOUS**

Description	UOM	Monthly Fee
Close Storage Cabinet	Container	\$128.52
Transport Container	Container	\$6.07
Closed Cart	Cart	\$141.75
Slotted Media – Active	Slot	\$0.51
Slotted Media – Round Reel	Slot	\$1.19

**D. SERVICES**

Scheduled Services	Per Trip	\$29.33
Scheduled Same Place/Building with multiple pick-up/retrieval	Per Trip	\$10.50
Holiday Service Premium	Per Request	\$146.62
“Emergency Request” (required delivery within four hours)	Per Request	\$146.62
“Special Request” (required delivery within twenty-four hours)	Per Request	\$ 91.00

**E. MEDIA MANAGEMENT SERVICES**

Closed Container/Cart Handling	Per Item	\$1.00
Transport Container Handling	Per Item	\$1.00
Transport Rental Days (Charge per additional container outside existing inventory per day)	Per Day	\$1.10
Applicable Media Handling – Active (with electronic file provided through SecureSync)	Per Item	\$0.50
Applicable Media Handling Active (without electronic file)	Per Item	\$0.71

**F. FUEL SURCHARGE**

Applicable Fuel Surcharge: 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>	\$
<b>Other Applicable Charge(s)</b>	
	\$

**ATTACHMENT D  
BUSINESS ASSOCIATE TERMS AND CONDITIONS**

**A. GENERAL PROVISIONS AND RECITALS**

1. The parties agree that the terms used, but not otherwise defined below in Paragraph B, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and their implementing regulations at 45 CFR Parts 160 and 164 (“the HIPAA regulations”) as they may exist now or be hereafter amended.
2. The parties agree that a business associate relationship under HIPAA, the HITECH Act, and the HIPAA regulations between the Contractor and County arises to the extent that Contractor performs, or delegates to subcontractors to perform, functions or activities on behalf of County pursuant to, and as set forth in, the Agreement that are described in the definition of “Business Associate” in 45 CFR § 160.103.
3. The County wishes to disclose to Contractor certain information pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”), as defined below in Subparagraph B.10, to be used or disclosed in the course of providing services and activities pursuant to, and as set forth, in the Agreement.
4. The parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they may exist now or be hereafter amended.
5. The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.
6. The parties understand that the HIPAA Privacy and Security rules, as defined below in Subparagraphs B.9 and B.14, apply to the Contractor in the same manner as they apply to a covered entity (County). Contractor agrees therefore to be in compliance at all times with the terms of this Business Associate Contract and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended, with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement.

**B. DEFINITIONS**

1. “Administrative Safeguards” are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of Contractor’s workforce in relation to the protection of that information.
2. “Breach” means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.
  - a. Breach excludes:
    - i. Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of Contractor or County, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further



- use or disclosure in a manner not permitted under the Privacy Rule.
- ii. Any inadvertent disclosure by a person who is authorized to access PHI at Contractor to another person authorized to access PHI at the Contractor, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.
  - iii. A disclosure of PHI where Contractor or County has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
- b. Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless Contractor demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:
- i. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
  - ii. The unauthorized person who used the PHI or to whom the disclosure was made;
  - iii. Whether the PHI was actually acquired or viewed; and
  - iv. The extent to which the risk to the PHI has been mitigated.
3. “Data Aggregation” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.
  4. “Designated Record Set” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.
  5. “Disclosure” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.
  6. “Health Care Operations” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.
  7. “Individual” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
  8. “Physical Safeguards” are physical measures, policies, and procedures to protect CONTRACTOR’s electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.
  9. “The HIPAA Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
  10. “Protected Health Information” or “PHI” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.
  11. “Required by Law” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.103.
  12. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
  13. “Security Incident” means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an

information system. "Security incident" does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by Contractor.

14. "The HIPAA Security Rule" shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.
15. "Subcontractor" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.
16. "Technical safeguards" means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.
17. "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued on the HHS Web site.
18. "Use" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

**C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:**

1. Contractor agrees not to use or further disclose PHI County discloses to Contractor other than as permitted or required by this Business Associate Contract or as required by law.
2. Contractor agrees to use appropriate safeguards, as provided for in this Business Associate Contract and the Agreement, to prevent use or disclosure of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County other than as provided for by this Business Associate Contract.
3. Contractor agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR Part 164 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County.
4. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a Use or Disclosure of PHI by Contractor in violation of the requirements of this Business Associate Contract.
5. Contractor agrees to report to County immediately any Use or Disclosure of PHI not provided for by this Business Associate Contract of which Contractor becomes aware. Contractor must report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.
6. Contractor agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Contractor agree to the same restrictions and conditions that apply through this Business Associate Contract to Contractor with respect to such information.
7. Contractor agrees to provide access, within fifteen (15) calendar days of receipt of a written request by County, to PHI in a Designated Record Set, to County in order to meet the requirements under 45 CFR § 164.524.
8. Contractor agrees to make PHI in a Designated Record Set available to the County for amendment pursuant to 45 CFR § 164.526 at the request of County, within thirty (30) calendar days of receipt of said request by County.
9. Contractor agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, County available to County and the Secretary in a time and manner as

determined by County or as designated by the Secretary for purposes of the Secretary determining County's compliance with the HIPAA Privacy Rule.

10. Contractor agrees to document any Disclosures of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County, and to make information related to such Disclosures available as would be required for County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.
11. Contractor agrees to provide County, as directed by County, in a time and manner to be determined by County, that information collected in accordance with the Agreement, in order to permit County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.
12. Contractor agrees that to the extent Contractor carries out County's obligation under the HIPAA Privacy and/or Security rules Contractor will comply with the requirements of 45 CFR Part 164 that apply to County in the performance of such obligation.
13. Contractor shall work with County upon notification by Contractor to County of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph B.1.a above.

**D. SECURITY RULE**

1. Contractor shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR § 164.308, § 164.310, § 164.312, and § 164.316 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County. Contractor shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI. Notwithstanding the foregoing, it shall be the responsibility of the County and not Contractor to comply with any applicable requirements to implement encryption or decryption mechanisms for electronic PHI maintained on physical media (e.g. tapes) stored by Contractor on behalf of the County.
2. Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of Contractor agree through a contract with Contractor to the same restrictions and requirements contained in this Paragraph D of this Business Associate Contract.
3. Contractor shall report to County immediately any Security Incident of which it becomes aware. Contractor shall report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

**E. BREACH DISCOVERY AND NOTIFICATION**

1. Following the discovery of a Breach of Unsecured PHI, Contractor shall notify County of such Breach, however both parties agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR § 164.412.
  - a. A Breach shall be treated as discovered by Contractor as of the first day on which such Breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor.
  - b. Contractor shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of Contractor, as determined by federal common law of agency.

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

Linda Le, Deputy County Privacy Officer  
405 W. 5<sup>th</sup> Street  
Santa Ana, CA 92701  
(714) 834-4082  
[lile@ochca.com](mailto:lile@ochca.com)  
[HIPAA@ochca.com](mailto:HIPAA@ochca.com)

- a. Contractor's notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.
3. Contractor's notification shall include, to the extent possible:
  - a. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed during the Breach;
  - b. Any other information that County is required to include in the notification to Individual under 45 CFR §164.404 (c) at the time Contractor is required to notify County or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:
    - (1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
    - (2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
    - (3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
    - (4) A brief description of what Contractor is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and
    - (5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
4. In the event that Contractor is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, Contractor shall have the burden of demonstrating that Contractor made all notifications to County consistent with this Paragraph E and as required by the Breach

notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

5. Contractor shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.
6. Contractor shall provide to County all specific and pertinent information about the Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit County to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after Contractor's initial report of the Breach to County pursuant to Subparagraph E.2 above.
7. Contractor shall continue to provide all additional pertinent information about the Breach to County as it may become available, in reporting increments of five (5) business days after the last report to County. Contractor shall also respond in good faith to any reasonable requests for further information, or follow-up information after report to County, when such request is made by County.

#### **F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR**

1. Contractor may use or further disclose PHI County discloses to Contractor as necessary to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by County except for the specific Uses and Disclosures set forth below.
  - a. Contractor may use PHI County discloses to Contractor, if necessary, for the proper management and administration of Contractor.
  - b. Contractor may disclose PHI County discloses to Contractor for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, if:
    - i. The Disclosure is required by law; or
    - ii. Contractor obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and the person immediately notifies Contractor of any instance of which it is aware in which the confidentiality of the information has been breached.
  - c. Contractor may use or further disclose PHI County discloses to Contractor to provide Data Aggregation services relating to the Health Care Operations of Contractor.
2. Contractor may use PHI County discloses to Contractor, if necessary, to carry out legal responsibilities of Contractor.
3. Contractor may use and disclose PHI County discloses to Contractor consistent with the minimum necessary policies and procedures of County.

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

**G. OBLIGATIONS OF COUNTY**

1. County shall notify Contractor of any limitation(s) in County's notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Contractor's use or disclosure of PHI.
2. County shall notify Contractor of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Contractor's use or disclosure of PHI.
3. County shall notify Contractor of any restriction to the Use or Disclosure of PHI that County has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Contractor's use or disclosure of PHI.
4. County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by County.

**H. BUSINESS ASSOCIATE TERMINATION**

1. Upon County's knowledge of a material breach or violation by Contractor of the requirements of this Business Associate Contract, County shall:
  - a. Provide an opportunity for Contractor to cure the material breach or end the violation within thirty (30) business days; or
  - b. Immediately terminate the Agreement, if Contractor is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Agreement is feasible.
2. Upon termination of the Agreement, Contractor shall either destroy or return to Contractor all PHI Contractor received from County or Contractor created, maintained, or received on behalf of County in conformity with the HIPAA Privacy Rule.
  - a. This provision shall apply to all PHI that is in the possession of Subcontractors or agents of Contractor.
  - b. Contractor shall retain no copies of the PHI.
  - c. In the event that Contractor determines that returning or destroying the PHI is not feasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon determination by County that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Business Associate Contract to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for as long as Contractor maintains such PHI.
3. The obligations of this Business Associate Contract shall survive the termination of the Agreement.