

CONTRACT NO. MA-042-21010508

FOR

**SOFTWARE MAINTENANCE
AND
DATABASE HOSTING SERVICES**

BETWEEN

**THE COUNTY OF ORANGE HEALTH CARE
AGENCY**

AND

IMAGETREND, LLC.



CONTRACT NO. MA-042-21010508
FOR
SOFTWARE MAINTENANCE AND DATABASE HOSTING SERVICES
WITH
IMAGETREND, LLC.

This Contract Number MA-042-21010508 (“Contract”), is made and entered into this 1st day of November, 2020 (“Effective Date”) between ImageTrend, LLC. (“Contractor”), with a place of business at 20855 Kensington Blvd., Lakeville, MN 55044-7486 and County of Orange, a political subdivision of the State of California (“County”), through its Health Care Agency, with a place of business at 200 W. Santa Ana Blvd., Suite 650, Santa Ana, CA 92701-7506. Contractor and County may sometimes be referred to hereinafter individually as “Party” or collectively as “Parties”.

ATTACHMENTS

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

Attachment A – Scope of Work/Service Level Agreement
Attachment B – Compensation and Payment Terms
Attachment C – Business Associate Contract
Attachment D - OCHCA Security Requirements and Guidelines for Contractors and Application Service Providers

RECITALS

WHEREAS, County desires to enter into a Contract for Software Maintenance and Database Hosting Services with Contractor per the terms and conditions of Contract No. MA-042-21010508; and

WHEREAS, Contractor agrees to provide services to County as further set forth in Attachment A, Scope of Work/Service Level Agreement; and

WHEREAS, County agrees to pay Contractor based on the delivery schedule as set forth in Attachment B, Compensation and Payment Terms; and

WHEREAS, County of Orange Board of Supervisors has authorized the County Procurement Officer or designee to enter into this Contract with Contractor for obtaining said services; 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 conflict between this Contract and the Attachments, this Contract shall control. 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 adjudication to another county.

- B. **Entire Contract:** This Contract 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. 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 designee.
- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.
- E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.
- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made as referenced in Attachment B – Compensation and Payment Terms.
- G. **Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) 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 County Indemnities as identified in paragraph "Z" below, and as more fully described in paragraph "Z," harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/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 "Z" below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.

- I. **Assignment:** 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 by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract 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 this provision shall subject Contractor to penalties pursuant to Section 1741 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 for cause immediately or after a five (5) business day period to cure if for a curable material breach and without cause after thirty (30) calendar days' written notice, unless otherwise specified. Cause shall be defined as any material 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 obligation.
- 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. **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.
- N. **Performance Warranty:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, 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. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

- O. **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 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) shall be clearly stated on the Certificate of Insurance. Any SIR in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agent's, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

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 mbest.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:

<u>Coverage</u>	<u>Minimum Limits</u>
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
Technology Errors and Omissions	\$1,000,000 per claims made \$1,000,000 aggregate
Network Security & Privacy Liability	\$1,000,000 per claims made or 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.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

1. An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the ***County of Orange its elected and appointed officials, officers, agents and employees*** as Additional Insureds, or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT.***
2. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers, agents and employees*** or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT.***

All insurance policies required by this Contract 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.

Contractor shall notify 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.

If Contractor's Network Security and Privacy Liability, Technology Errors & Omissions is a "Claims Made" policy, Contractor shall agree to maintain coverage for two (2) years following the completion of the Contract.

The Commercial General Liability policy shall contain a severability of interest's 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 in Paragraph 19, Notices.

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, this Contract may be terminated without penalty pursuant to Paragraph K, Termination.

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

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.

- P. Changes:** Contractor shall make no changes in the work or perform any additional work without the Deputy Purchasing Agent's specific written approval. This requirement does not apply to improvements, upgrades, or enhancements for which there is no increase in price and no changes to the terms and conditions in this Contract.
- Q. Change of Ownership/Name, Litigation Status, Conflicts with County Interests:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and obligations contained in this Contract, and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

- R. Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
- S. 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.
- T. 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 "Z" below, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- U. Freight:** Prior to the County's express acceptance of delivery of products. 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.
- V. 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.
- W. Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each Party shall bear their own attorney's fees, costs and expenses.

- X. 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 had 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 effect the purpose of the Parties and this Contract.
- Y. 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 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 employees 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.
- Z. Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.
- AA. 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 County's project manager.

- BB. 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.

Additional Terms and Conditions

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County shall receive Software Maintenance and Database Hosting Services from Contractor as further detailed in the Scope of Work/Service Level Agreement, identified and incorporated herein by this reference as "Attachment A".
2. **Term of Contract:** This Contract shall commence on November 1, 2020 through and including October 31, 2025, non-renewable. Contract shall be in effect for the time periods specified, unless this Contract is earlier terminated by the Parties.
3. **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) Terminate the Contract pursuant to Paragraph K, Termination;
 - b) Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - c) Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
 - d) Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
4. **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.

5. **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 and the Contractor’s employees, agents, and subcontractors associated with accomplishing work and services hereunder. The Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.
6. **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.
7. **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, which consent shall not be unreasonably withheld, unless there is a change in employment status or similar situation that requires replacement. Any replacement Project Manager must have the same or similar skills, training and experience as the original Project Manager.

The Contractor’s Project Manager shall be assigned to this project for the duration of the 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 five (5) business days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor’s Project Manager from providing further services under the Contract.

8. **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 three (3) 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 Deputy Purchasing Agent.
9. **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.

10. **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.
11. **Default – Reprocurement Costs:** In case of Contract breach by Contractor, resulting in termination by the County, the County may procure the goods and/or services from other sources.
12. **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 Deputy Purchasing Agent by way of the following process:
1. The Contractor shall submit to the agency/department assigned Deputy Purchasing Agent 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.
 2. 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 performance of this Contract, including the delivery of goods and/or provision of services, which are not affected by the dispute. 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 Deputy Purchasing Agent or his designee. If the County fails to render a decision within 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 termination for convenience as stated in section K herein.
13. **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:
1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).

2. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace;
 - b. The organization's policy of maintaining a drug-free workplace;
 - c. Any available counseling, rehabilitation and employee assistance programs; and
 - d. Penalties that may be imposed upon employees for drug abuse violations.
3. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:
 - a. Will receive a copy of the company's drug-free policy statement; and
 - b. 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:

1. The Contractor has made false certification, or
 2. The Contractor violates the certification by failing to carry out the requirements as noted above.
14. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, the County of Orange is required to file in accordance with subdivision (a) of Section 6041A of the Internal Revenue Code for services received from a "service provider" to whom the County pays \$600 or more or with whom the County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

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

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

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

15. **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.

16. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as project manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.
17. **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable State of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

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

18. **News/Information Release:** The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under

this Contract without first obtaining review and written approval of said news releases from the County through the County's Project Manager.

19. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

For Contractor:	Name:	ImageTrend, Inc.
	Attention:	Contracts Department
	Address:	20855 Kensington Blvd. Lakeville, MN 55044-7486
	Telephone:	(952) 469-6206
	Cell:	(952) 283-2135
	E-mail:	contracts@imagetrend.com
For County:	Name:	County of Orange, Health Care Agency Purchasing & Contract Services
	Attention:	Roland Tabangin
	Address:	200 W. Santa Ana Blvd Ste. 650 Santa Ana, CA 92701
	Telephone:	(714)834-3151
	Facsimile:	(714)834-2657
	E-mail:	rtabangin@ochca.com
CC:	Name:	County of Orange HCA/Health Disaster Management Emergency Medical Services
	Attention:	Laurent Repass Project Manager
	Address:	405 W. 5 th Street, Room 301A Santa Ana, CA 92701
	Telephone:	(714)834-2964
	Facsimile:	(714)834-3125
	E-mail:	lrepass@ochca.com

20. **Precedence:** The Contract documents consist of this Contract and its Attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the Attachments.

21. **Termination – Orderly:** After receipt of a termination notice from the County of Orange, the Contractor may submit to the County a termination claim, if applicable. Such claim shall be

submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of performance of the Contract.

22. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at rates/prices listed in the Contract, regardless of quantity requested.
23. **Contractor Screening:** Throughout the term of this Contract, Contractor shall not be listed on any state or federal exclusionary rosters, listed below. County may screen Contractor on a monthly basis to ensure Contractor is not listed on the exclusionary rosters, listed below. If Contractor or its employee(s) are found to be included on any of the rosters indicated below, Contractor shall be deemed in default of its obligation under this Paragraph and shall constitute a cause for County to exercise its right to terminate this Contract immediately. County, in its sole discretion, may afford Contractor an opportunity to cure said default within a reasonable time.
- a. United States Department of Health and Human Services, Office of Inspector General (OIG) List of Excluded Individuals & Entities (LEIE) (<http://exclusions.oig.hhs.gov>).
 - b. General Services Administration (GSA) System for Award Management (SAM) Excluded Parties List (<http://sam.gov>).
 - c. State of California Department of Health Care Services Medi-Cal Suspended and Ineligible Provider List (County Health Care Agency Internal Database).
24. **Debarment:** Contractor certifies in writing that neither Contractor nor its employee(s) are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in a contractual transaction by any state or federal department or agency.
25. **Lobbying:** On the 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 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 contract.
26. **California Public Records Act:** Contractor and County agree and acknowledge that all information and documents related to the award and performance of this Contract are subject to disclosure pursuant to the California Public Records Act, California Government Code Section 6250 et seq.
27. **Gratuities:** The Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the County shall have the right to terminate the Contract,

either in whole or in part, and any loss or damage sustained by the County in procuring on the open market any goods or services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

28. **Data Location:** Except where Contractor obtains County's express prior written consent, the physical location of Contractor's data center where County data is stored must be within the United States. Any time County data is relocated within the United States, Contractor must securely dispose of such copies from the former data location. Should it become necessary in the course of normal operations for Contractor to copy or move County data to another storage destination on its online system and delete County data found in the original location, Contractor must preserve and maintain the content and integrity of County data.
29. **Trans-Border Data Flows:** Contractor must not transfer any County data across a country border. Furthermore, Contractor must not access County data from outside the United States.
30. **Extraction of County Data:** During the term of this Contract, County is able to extract County data from Contractor's system without cost at any time. For up to ninety (90) calendar days after termination or expiration of this Contract, cessation of business by Contractor, or any other event preventing Contractor from continuing to perform under this Contract, Contractor must provide County an extract of County data in the format specified by County.

The extraction of County data by Contractor is without cost and not subject to any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor). Contractor cannot withhold County data or refuse for any reason to promptly return to County all County data (including copies thereof) requested by County, even if County is then or is alleged to be in breach of the Contract. As part of Contractor's obligation to provide County data in this Paragraph 30, Contractor will produce this data by first using relevant export functionality provided by the application, e.g. for Contractor Elite the data would be produced as a NEMESIS Version 3 XML file(s), or by other native data export format should the application provide no export functionality. Contractor may redact or remove Contractor trade secret and confidential information, such as database schema design details, or data which is used solely in an operational or administrative fashion (e.g. data which was never entered by County end-users). For clarity, Contractor may not redact or remove data that County or County's end-users entered. Contractor will provide this exported data to County via secure electronic transfer, such as SFTP/FTPS. Contractor shall have 90 days from County's request to produce the native data export for County. Should County desire the data to come in any alternative format, or be in any way different than as described in this section, County must request those services from Contractor separately on a Time and Materials basis determined by a Scope of Work as agreed upon by both parties. Contractor will make efforts to accommodate County's request, but Contractor is under no obligation to do so.

31. **Discovery:** Contractor must promptly notify County upon receipt of any requests which in any way might reasonably require access to County data or County's use of Contractor's services. Contractor must notify County by the fastest means available and also in writing, with additional notification provided to the County's Project Manager or designee, unless prohibited by law from providing such notification. Contractor must provide such notification within forty-eight (48) hours after Contractor receives the request. Contractor must not respond to subpoenas, service

of process, Public Records Act requests, and other legal requests directed at Contractor regarding this Contract without first notifying County, unless prohibited by law from providing such notification. Contractor must provide its intended responses to County with adequate time for County to review, revise and, if necessary, seek a protective order or other appropriate remedy in a court of competent jurisdiction. If such protective order or other remedy is not obtained, Contractor must furnish only that portion of the County Data that is legally required to be furnished and must exercise commercially reasonable efforts to obtain assurance that confidentiality will be maintained for such County Data. Contractor must not respond to legal requests directed at County unless authorized in writing to do so by County.

32. **Right to Access and Use:** Contractor grants County a non-transferable and non-exclusive right to use and access the Contractor's system, including all functionalities and services provided, furnished or accessible under this Contract. County is authorized to access County data and any Contractor-provided data as specified herein and to transmit revisions, updates, deletions, enhancements, or modifications to County data. This includes the right of County to, and access to, all system maintenance and warranty updates, upgrades, new releases, patches, corrections, modifications, enhancements, fixes and support as provided herein.
33. **Subcontracting:** No performance of this Contract or any portion thereof may be subcontracted by Contractor without the express written consent of County. Any attempt by Contractor to subcontract any performance of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
34. **Software – Protection:** County agrees that all material appropriately marked or identified as proprietary, whether oral or written, and furnished hereunder are provided for County's exclusive use for the purposes of this Contract only and shall be held in confidence. All proprietary data shall remain the property of Contractor. County agrees to take all reasonable steps to ensure that such data are not disclosed to others without prior written consent of Contractor. County shall ensure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed. County agrees that it shall take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed programs and/or optional materials to satisfy its obligations under this Contract with respect to use, copying, modification and protection and security of licensed programs and optional materials. Notwithstanding the foregoing, County's confidentiality and non-disclosure requirements in this Contract are subject to and limited by the California Public Records Act, California Government Code Section 6250 et seq.
35. **Software – Maintenance:** The correction of any residual errors in any software products which may be discovered by Contractor or by County shall be considered maintenance. Such maintenance shall be performed by Contractor without additional charge for the duration of this Contract. Suspected errors discovered by County in the software products shall be handled by the following procedure:
 - a. A listing of the output and a copy of the evidential input data in machine-readable format shall be submitted to Contractor along with a completed copy of the appropriate Contractor information form and, if appropriate, a listing of the contents of the memory of the CPU at the time the error was noted.

- b. Errors in the software product as verified by Contractor shall be corrected by providing a new copy of said software product or a new copy of the affected portions in machine-readable format.

Contractor shall be available to assist County in isolating and correcting error conditions caused by County's particular hardware or operating system at rates specified in this Contract. If Contractor is called upon by the state to correct an error caused by County's negligence, modification by County, County-supplied data, or machine or operator failure or due to any other cause not inherent in the original software products, Contractor reserves the right to charge County for such service on a time and material basis at rates in accordance with the Contract.

36. **Software – Acceptance Testing:** Acceptance testing may be required as specified for all Contractor-supplied software as specified and listed in the Contract or order, including all software initially installed. Included in this clause are improved versions, including new releases, of this software, any such software which has been modified by Contractor to satisfy County requirements, and any substitute software provided by Contractor in lieu thereof, unless the Contract or order provides otherwise. The purpose of the acceptance test is to ensure that the software operates in substantial accord with Contractor's technical specifications and meets County's performance specifications.

37. **Software – Documentation:** County may utilize ImageTrend University to gain access to all materials related to the software products. ImageTrend University provides a library of resources, including educational videos, manuals, quick guides and help documents for all ImageTrend products. Online education materials are available to County under this Contract.

Contractor further agrees that County may reproduce such materials for its own use in maintaining the equipment or software provided hereunder. County agrees to include Contractor's copyright notice on any such documentation reproduced in accordance with copyright instructions to be provided by Contractor.

38. **Software – Future Releases:** If improvement, upgraded, or enhancement versions of any software product under this Contract are developed by Contractor and are made available to other licensees, they shall be made available to County at County's option, provided such versions are operable on the same computer hardware configuration. Any charge for such upgrade or enhancement shall be no greater than the difference between the price established by Contractor for other licensees and the price specified herein. Should the County not accept an improvement, upgrade, or enhancement release Contractor takes no responsibility on software functionality or support of previous release versions.

39. **Compliance with County Information Technology Policies and Procedures:**

Policies and Procedures

Contractor, its subcontractors, Contractor personnel, and all other agents and representatives of Contractor, shall at all times comply with and abide by all Information Technology (IT) policies and procedures of County that are provided or made available to Contractor that pertain to Contractor (and of which Contractor has been provided with advance notice) in connection with Contractor's performance under this Contract. Contractor shall cooperate with County in ensuring Contractor's compliance with the IT policies and procedures described in this Contract and as adopted by County from time-to-time, and any material violations or disregard of such IT policies

or procedures shall, in addition to all other available rights and remedies of County, be cause for termination of this Contract. In addition to the foregoing, Contractor shall comply with the following:

Security and Policies

All performance under this Contract shall be in accordance with County's security requirements, policies, and procedures as set forth above and as modified, supplemented, or replaced by County from time to time, in its sole discretion, by providing Contractor with a written copy of such revised requirements, policies, or procedures reasonably in advance of the date that they are to be implemented and effective (collectively, the "Security Policies"). Contractor shall at all times use industry best practices and methods, and all applicable HIPAA privacy and security regulations with regard to the prevention, detection, and elimination, by all appropriate means, of fraud, abuse, and other inappropriate or unauthorized access to County systems accessed in the performance of services in this Contract.

Information Access

Contractor personnel performing services under this Contract will execute a confidentiality and non-disclosure agreement provided by Contractor. County shall authorize, and Contractor shall issue, any necessary information-access mechanisms, including access IDs and passwords, and Contractor shall take all commercially reasonable measures that comply with HIPAA security and privacy regulations to secure such mechanisms. Contractor shall provide each Contractor personnel with only such level of access as is required for such individual to perform his or her assigned tasks and functions. All County systems, and all data and software contained therein, including County data, County hardware and County software, used or accessed by Contractor: (a) shall be used and accessed by such Contractor solely and exclusively in the performance of their assigned duties in connection with, and in furtherance of, the performance of Contractor's obligations hereunder; and (b) shall not be used or accessed except as expressly permitted hereunder, or commercially exploited in any manner whatsoever, by Contractor, at any time.

Enhanced Security Procedures

County may, in its discretion, designate certain areas, facilities, or systems as requiring a higher level of security and access control. County shall notify Contractor in writing reasonably in advance of any such designation becoming effective. Any such notice shall set forth in reasonable detail the enhanced security or access-control procedures, measures, or requirements that Contractor shall be required to implement and enforce, as well as the date on which such procedures and measures shall take effect. Contractor shall fully comply with and abide by all such enhanced security and access measures and procedures as of such date.

Breach of Security

Any breach or violation by Contractor of any of the foregoing shall be deemed a material breach of a material obligation of Contractor under this Contract and may be deemed an incurable and material breach of a material obligation of Contractor under this Contract resulting in termination.

Conduct on County Premises

Contractor shall, at all times, comply with and abide by all reasonable policies and procedures of County (or that may be established thereby, from time to time) that pertain to conduct on County's

premises, possession or distribution of contraband, or the access to, and security of, the Party's real property or facilities, to the extent that Contractor has been provided with a copy of each such policy or procedure. Contractor shall exercise due care and diligence to prevent any injury to persons or damage to property while on the other Party's premises. The operation of vehicles by either Party's personnel on the other Party's property shall conform to posted and other applicable regulations and safe-driving practices. Vehicular accidents occurring on a Party's property and involving either Party's personnel shall be reported promptly to the appropriate Party's personnel. Each Party covenants that at all times during the Term, it, and its employees, agents, and subcontractors shall comply with, and take no action that results in the other Party being in violation of, any applicable federal, state, and local laws, ordinances, regulations, and rules. Each Party's personnel shall clearly identify themselves as the appropriate Party's personnel and not as employees of the other Party. When on the other Party's premises, each Party's personnel shall wear and clearly display identification badges or tags, as approved by the other Party.

Security Audits

Each Contract year, Contractor shall utilize a third party to perform an annual HIPAA security audit for its software. Contractor will provide, to County, an independent annual SOC2 Audit for its hosting environment. County may, upon a mutually agreeable date and time at the expense of the County, perform or have performed security reviews and testing. Such reviews and testing shall ensure compliance with all pertinent County security standards as well as any HCA/Environmental Health requirements such as federal tax requirements or HIPAA.

(SIGNATURE PAGE FOLLOWS)

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Contract No. MA-042-21010508 the date set forth opposite their signatures. If the company is a corporation, Contractor shall provide two signatures as follows: 1) the first signature must be either the Chairman of the Board, President, or any Vice President; 2) the second signature must be that of the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution or by-laws demonstrating the legal authority of the signature to bind the company.

Contractor: ImageTrend, LLC.

_____	_____
Print Name	Title
_____	_____
Signature	Date
_____	_____
Print Name	Title
_____	_____
Signature	Date

County of Orange, a political subdivision of the State of California
Purchasing Agent/Designee Authorized Signature:

_____	_____
Print Name	Title
_____	_____
Signature	Date

Approved as to Form

Office of the County Counsel
County of Orange, California

_____	_____
County Counsel Deputy	Date

ATTACHMENT A

SCOPE OF WORK/SERVICE LEVEL AGREEMENT

Contractor shall continue to provide support and database hosting for the existing software modules listed in this Attachment A for the fee listed in Attachment B.

With respect to the software modules hosted by Contractor using the Software as a Service (SaaS) model, Contractor is committed to offering exceptional levels of service to its customers. The Service Level Agreement (“SLA”) in this Attachment A guarantees County’s website or application’s availability, reliability and performance. This SLA applies to any site or application hosted on Contractor’s network.

1. Software Modules

County holds perpetual software licenses for each of the following software modules that County previously purchased from Contractor.

- **Elite EMS:** An electronic health record (EHR) system for EMS providers for viewing and managing patient care reports (PCR); including 9-1-1 dispatch integrations for Metro Cities Fire Dispatch and the Orange County Fire Authority (OCFA).
- **Elite Field:** Web-based software that is utilized by Emergency Medical Services (EMS) first responders and ambulance personnel to create and post patient care reports (PCR) to document EMS patient care and transportation. Including added capabilities for documentation Critical Care Ambulance Transports.
- **Patient Registry:** Module used for data collection and reporting of specialty care (Trauma, Stroke, Cardiac) patient outcomes.
- **License Management System:** Online system that allows for the receipt and processing of applications from EMTs, paramedics, nurses, and ambulance providers. System is integrated with County approved payment processing gateway for application fee payments.
- **Hospital Hub:** Online system to allow receiving emergency departments (ED) to view and access PDF copies of PCRs posted by EMS providers.
- **Health Information Hub:** Modules for establishment of Interoperable links between Elite EMS and receiving hospitals through Health Information Exchange (HIE) networks.
- **Report Writer / Data Mart:** Modules for accessing comprehensive reports or aggregate data based on either of the modules described above. Includes manually generated charts, graphs, and maps based on the data available.

County has purchased a right to access the following software modules under the Software as a Service (SaaS) model pursuant to the terms and conditions of this Contract:

- **Continuum:** Module for reporting and targeted alerts to allow for monitoring the Orange County EMS system in real time.

2. Customer Support

Contractor is committed in providing an exceptional level of customer support. Contractor's servers are monitored 24 hours per day, 7 days per week, 365 days per year and our support staff is available via phone (888.469.7789) and email (www.imagetrend.com/support) as posted on Contractor's website. Contractor works to promptly resolve all issues reported by customers, and will acknowledge the disposition and potential resolution according to the chart below:

Severity Level	Example	Acknowledgement of Error Notice	Response Goal
High/Site Down	<ul style="list-style-type: none"> - Complete shutdown or partial shutdown of one or more Software functions - Access to one or more Software functions not available - Major subset of Software application impacted that is necessary for usage of the software 	Within one (1) hour of initial notification during business hours or via support.imagetrend.com	Six (6) hours
Medium	<ul style="list-style-type: none"> - Minor subsystem failure -Data entry or access impaired on a limited basis. 	Within four (4) hours of initial notification	24 Business hours
Low	<ul style="list-style-type: none"> - User error (i.e. training) or forgotten passwords - Issue can or must be delegated to local County contact as a first level of response for resolution 	Same day or next business day of initial notification	As appropriate depending on nature of issue and party responsible for resolution

3. Data Ownership

Intentionally Omitted.

4. Data Protection

Contractor takes data privacy and cybersecurity very seriously. Contractor utilizes compliant and industry recognized best practices to ensure data security, and does not use or make available any personally identifiable information to third parties without County consent or as required by law. Contractor's handling of information on behalf of County is subject to federal, state or local laws, rules, regulation and restrictions regarding the privacy of consumer information. Contractor must comply with all of such laws, rules, regulations and restrictions at its sole cost and expense.

5. Suspension of Service

Contractor reserves the right to suspend and limit network resources to customers failing to pay the monthly fee in advance at its own discretion. In the event of service suspension, full service delivery will be restored within 48 hours from the date and time that payment is received.

6. Availability

Contractor is fully committed to providing quality service to all customers. To support this commitment, Contractor offers the following commitments related to application server Availability:

Availability Objective: Contractor will provide 99.5% Availability (as defined below) for the ImageTrend network services within Contractor's Immediate Control. For purposes, hereof, "Availability" or "Available" means the Contractor Services are available for access and use through the Internet.

"Immediate Control" includes Contractor's network services within the Contractor data center which extends to, includes and terminates at the Internet Service Provider ("ISP") circuit termination point on the router in Contractor's data center (*i.e.*, public Internet connectivity).

Specifically excluded from the definition of "Immediate Control" are the following:

- a. Equipment, data, materials, software, hardware, services and/or facilities provided by or on behalf of County or a third-party entity (or any of their vendors or service providers) and County's or a third party entity's network services or end-user hardware.
- b. Acts or omissions of County, their employees, contractors, agents or representatives, third party vendors or service providers or anyone gaining access to the Contractor Services at the request of County.
- c. Issues arising from bugs, defects, or other problems in the software, firmware, or hardware of third parties not provided on behalf of Contractor.
- d. Delays or failures due to circumstances beyond Contractor's reasonable control that could not be avoided by its exercise of due care.
- e. Any outage, network unavailability or downtime outside the Contractor data center.

Availability Calculation: Availability is based on a monthly calculation. The calculation will be as follows: $((a - b) / a) \times 100$, where "a" is the total number of hours in a given calendar month, excluding Scheduled Maintenance (as defined below), and "b" is the total number of hours that service is not Available in a given month.

Offline Capability: The Software may have offline capability which provides redundancy when network or server back-end capability is not available. Periods of time when the Software's primary functions continue to function offline shall be excluded from the unavailability calculation "b" above.

Scheduled Maintenance: Contractor conducts scheduled maintenance, as necessary, every last Wednesday of the month. Contractor will perform scheduled maintenance within that maintenance window between the hours of 9:00 p.m. CST to 11:00 p.m. CST. Contractor may change the regularly scheduled maintenance window from time to time at Contractor's discretion upon reasonable notice to County.

Service Disruption: Upon County's written notice to Contractor, if Availability for the month is below the guaranteed level, Contractor will issue a credit to County in accordance with the schedule below:

Availability: 99.0% - 99.5% = 5% of monthly hosting fee credited
 95.0% - 98.99% = 10% of monthly hosting fee credited
 90.0% - 94.99% = 15% of monthly hosting fee credited
 89.99% or below = 2.5% for every 1% of lost Availability (in no event exceeding 50% of monthly hosting fees)

Contractor maintains precise and objective Availability metrics, which shall be determinative when calculating any County requested credit. Contractor maintained Availability metrics shall only be requested in good faith to address material County concerns. To receive a credit, County must specifically request it during the month following the month for which the credit is requested. Credits shall not be issued if a customer account is past due, suspended or pending suspension.

7. General

Contractor reserves the right to change or modify this SLA and the related services being provided to the extent it benefits County, including changes to hosting environments and infrastructure, provided that any such improvements shall adhere to the regulatory guidelines and best practices referenced herein and shall not result in an increase in charges to County or decrease in Contractor's obligations set forth in this Contract.

ATTACHMENT B**COMPENSATION AND PAYMENT TERMS****1. Compensation**

This is a fixed price Contract not to exceed the amount of \$1,519,044.49 for the Term of Contract.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full payment 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 Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work.

2. Fees and Charges: County will pay the following fees in accordance with the provisions of this Contract. Payment shall be as follows:

Description	Term in Years	Per Year	Extended
Software			
EMS, Critical Care, License Management, Patient Registry, DataMart, VI/MARS			
ImageTrend Elite EMS Annual Support	5	\$21,481.38	\$107,406.90
ImageTrend Elite Field Annual Support	5	\$12,472.27	\$62,361.35
Visual Informatics (EMS and Trauma Cubes) Annual Support	5	\$6,652.15	\$33,260.76
CAD Integration (2 Count) Annual Support \$1385.87 per license	5	\$2,771.74	\$13,858.70
MARS (Mapping) Annual Transactional Fee	5	\$2,771.73	\$13,858.65
Continuum Domain: Performance Insights	1	\$24,440.00	\$122,200.00
AIS Codes for Patient Registry	1	\$700.00	\$3,500
NEMESIS/NISE Auto Export Annual Support Fee	5	\$415.76	\$2,078.80
Critical Care Annual Support	5	\$3,463.89	\$17,319.45
Patient Registry System (Trauma, STEMI, Stroke Categories) Annual Support	5	\$19,748.58	\$98,742.91
License Management System Annual Support	5	\$12,646.02	\$63,230.10
ImageTrend HII and Integrations Annual Support	5	\$43,561.00	\$217,805.00
Additional ImageTrend HII and Integrations Annual Support	5	\$41,070.80	\$41,070.80
Pro-Rated Additional ImageTrend HII and Integrations Annual Support 7/1/24-10/31/24		\$13,690.32	\$13,690.32
Hospital Hub Annual Support	5	Included	Included
Vault™ Records with Attachments	5	\$5,000.00	\$25,000.00
Annual Support Total		\$210,885.64	\$835,383.74
Annual HOSTING Total		\$136,732.15	\$683,660.75
Support and Hosting Total		\$347,617.79	\$1,519,044.49

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this Contract. Vendor shall reference Contract number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

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

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

7. **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.
8. **Payment – Invoicing Instructions:** The Contractor will provide an invoice on the Contractor’s letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:
 - a. Contractor’s name and address
 - b. Contractor’s remittance address
 - c. Contractor’s Taxpayer ID Number
 - d. Name of County Agency/Department
 - e. Delivery/service address
 - f. Master Agreement (MA) or Purchase Order (PO) number
 - g. Agency/Department’s Account Number, if applicable
 - h. Date of invoice
 - i. Product/service description, quantity, and prices
 - j. Sales tax, if applicable
 - k. Freight/delivery charges, if applicable
 - l. Total

The responsibility for providing acceptable invoices to County for payment rests with Contractor. Incomplete or incorrect invoices are not acceptable and shall be returned to Contractor.

Invoice and support documentation are to be forwarded to:

Orange County Health Care Agency
Accounts Payable
PO Box 689
Santa Ana, CA 92702

9. **Payment (Electronic Funds Transfer)**
County offers Contractor the option of receiving payment directly to its bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT shall also receive an Electronic Remittance Advice with the payment details via e-mail. An e-mail address shall need to be provided to County via an EFT Authorization Form. Contractor may request a form from the agency/department representative listed in the Contract.

ATTACHMENT C
BUSINESS ASSOCIATE CONTRACT

A. GENERAL PROVISIONS AND RECITALS

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

2. The Parties agree that a business associate relationship under HIPAA, the HITECH Act, and the HIPAA regulations between the Contractor and County arises to the extent that Contractor performs, or delegates to subcontractors to perform, functions or activities on behalf of County pursuant to, and as set forth in, the Contract MA-042-21010508 that are described in the definition of “Business Associate” in 45 CFR § 160.103.

3. The County wishes to disclose to Contractor certain information pursuant to the terms of the Contract MA-042-21010508, some of which may constitute Protected Health Information (“PHI”), as defined below in Subparagraph B.10, to be used or disclosed in the course of providing services and activities pursuant to, and as set forth, in the Contract MA-042-21010508.

4. The Parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-042-21010508 in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they may exist now or be hereafter amended.

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

6. The Parties understand that the HIPAA Privacy and Security rules, as defined below in Subparagraphs B.9 and B.14, apply to the Contractor in the same manner as they apply to a covered entity (County). Contractor agrees therefore to be in compliance at all times with the terms of this Business Associate Contract and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended, with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-042-21010508.

B. DEFINITIONS

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

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

a. Breach excludes:

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

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

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

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

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

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

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

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

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

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

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

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

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

8. “Physical Safeguards” are physical measures, policies, and procedures to protect Contractor’s electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.

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

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

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

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

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

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

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

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

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

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

C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

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

2. Contractor agrees to use appropriate safeguards, as provided for in this Business Associate Contract and the Contract MA-042-21010508, to prevent use or disclosure of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County other than as provided for by this Business Associate Contract.

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

4. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a Use or Disclosure of PHI by Contractor in violation of the requirements of this Business Associate Contract.

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

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

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

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

9. Contractor agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, County available to County and the Secretary in a time and manner mutually [agreed upon](#)

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

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

11. Contractor agrees to provide County or an Individual, as directed by County, in a time and manner mutually agreed upon between parties, that information collected in accordance with the Contract MA-042-21010508, in order to permit County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

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

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

D. SECURITY RULE

1. Contractor shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR § 164.308, § 164.310, § 164.312, and § 164.316 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County. Contractor shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.

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

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

E. BREACH DISCOVERY AND NOTIFICATION

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

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

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

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

OCIT CEO SECURITY	HCA INFORMATION TECHNOLOGY
<p>Linda Le, CHPC, CHC, CHP County Privacy Officer 1501 E. St. Andrews Place, 2nd Fl. Santa Ana, CA 92705 Office: (714) 834-4082 E-Mail: linda.le@ceoit.ocgov.com privacyofficerinbox@ceoit.ocgov.com</p>	<p>David Castellanos IT Security Officer 200 W. Santa Ana Blvd., Ste. 1000 Santa Ana, CA 92701 Office: (714) 834-3433 E-Mail: dcastellanos@ochca.com</p>

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

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

a. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed during the Breach;

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

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

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

(3) Any steps Individuals should take to protect themselves from potential harm

resulting from the Breach;

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

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

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

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

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

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

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

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

F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

1. Contractor may use or further disclose PHI County discloses to Contractor as necessary to perform functions, activities, or services for, or on behalf of, County as specified in the Contract MA-042-21010508, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by County except for the specific Uses and Disclosures set forth below.

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

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

i. The Disclosure is required by law; or

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

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

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

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

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

G. OBLIGATIONS OF COUNTY

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

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

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

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

H. BUSINESS ASSOCIATE TERMINATION

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

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

b. Immediately terminate the Contract MA-042-21010508, if Contractor is unwilling or unable to cure the material breach or end the violation within thirty (30) days, provided termination of the Contract MA-042-21010508 is feasible.

2. Upon termination of the Contract MA-042-21010508, Contractor shall either destroy or return to County all PHI Contractor received from County or Contractor created, maintained, or received on behalf of County in conformity with the HIPAA Privacy Rule.

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

b. Contractor shall retain no copies of the PHI.

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

3. The obligations of this Business Associate Contract shall survive the termination of the Contract MA-042-21010508.

ATTACHMENT D

OCHCA SECURITY REQUIREMENTS AND GUIDELINES FOR CONTRACTORS AND APPLICATION SERVICE PROVIDERS



County of Orange Health Care Agency



**Security Requirements and Guidelines for
Application Vendors and Application Service
Providers**



04/2018



1 Overview

Security Requirements and Guidelines for Application Vendors and Application Service Providers

This document provides a high-level overview of application security related guidelines and requirements set forth by the Orange County Health Care Agency (OCHCA), and applies to both software vendors for County-implemented applications and application service providers who provide hosted services.

These requirements and guidelines are consistent with regulatory privacy and security requirements and guidelines as well as supportive of OCHCA's position and practices on risk management in terms of appropriately safeguarding OCHCA's information assets.

The sections below are comprehensive and may apply in whole or in part based on specific implementation and scope of work. The expectation is that vendors will comply with relevant sections, as necessary. This information will be reviewed, validated and documented by OCHCA Security prior to any contract being finalized.

Vendors are required to comply with all existing legal and regulatory requirements as they relate to OCHCA's systems and data. Example of regulations, rules and laws include, but are not limited to, the Health Insurance Portability and Accountability Act (HIPAA), Senate Bill 1386, Payment Card Industry (PCI) Data Security Standards, and Sarbanes-Oxley (SOX). Vendors must also commit to ensuring compliance with all future local, state and federal laws and regulations related to privacy and security as they pertain to the application or service.

2. General Security Requirements

- The application/system must meet the general security standards based upon ISO 17799 – Code of Practice for Information Security and ISO 27799 – Security Management in Health Using ISO 17799.
- The application must run on an operating system that is consistently and currently supported by the operating systems vendor. Applications under maintenance are expected to always be current in regards to the current version of the relevant operating system.
- For applications hosted by OCHCA, OCHCA will routinely apply patches to both the operating system and subsystems as updated releases are available from the operating system vendor and or any third party vendors. The vendors must keep their software current and compatible with such updated releases in order for the application to operate in this environment.

- Vendors must provide timely updates to address any applicable security vulnerabilities found in the application.
- OCHCA utilizes a variety of proactive, generally available, monitoring tools to assess and manage the health and performance of the application server, network connectivity, power etc. The application must function appropriately while the monitoring tools are actively running.
- All application services must run as a true service and not require a user to be logged into the application for these services to continue to be active. OCHCA will provide an account with the appropriate security level to logon as a service, and an account with the appropriate administrative rights to administer the application. The account password must periodically expire, as per OCHCA policies and procedures.
- In order for the application to run on OCHCA server and network resources, the application must not require the end users to have administrative rights on the server or subsystems.

3. Encryption

- Application/system must use encryption to protect sensitive data at rest wherever technically possible (e.g. SQL TDE Encryption).
- All data transmissions must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. Encryption can be end to end at the network level. This requirement pertains to any regulated data in motion such as website access and file transfers.
- All electronic files, where applicable, that contain OCHCA data must be encrypted when stored on any removable media or portable device (USB drives, CD/DVD, mobile phones, backup tapes). The encryption must be a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher.
- All encryption methods used for data storage and transmission must be disclosed by the vendors.

4. Network Application Documentation

- Vendors must provide documentation related to the configuration of the application including methods of secure implementation and port requirements.

5. Access Management

- Application/system must control access to and within the system at multiple levels (e.g. per user, per user role, per area, per section of the chart) through a consistent mechanism of identification and authentication of all users in accordance with the 'Role Based Access Control' (RBAC) standard.

- Application/system must support measures to define, attach, modify and remove access rights for all classes of users.
- Application/system must support measures to enable and restrict access to the whole and/or sections of the technology solution in accordance with prevailing consent and access rules.
- Application must have the ability to create unique user accounts.
- Application must support session timeouts or automatic logoff after 20 minutes of inactivity.
- The application must provide functionality to automatically disable or lock accounts after 60 days of inactivity.

6. Password Management

- Application must support password management measures including but not limited to password expiration, account lockout and complex passwords.
- Passwords expiration must be set to 90 days and the system must prevent the use of the previous 4 passwords.
- Accounts must be locked after five unsuccessful login attempts.
- The password must be at least 8 characters in length and a combination of letters, numbers, and special characters with at least 3 of the four following categories.
 - ◆ Uppercase letters (A through Z)
 - ◆ Lowercase letters (a through z)
 - ◆ Numeric digits (0 through 9)
 - ◆ Special Characters (! @ # \$ % ^ & etc.)

7. Audit Capabilities

Auditing and logging capabilities will permit HCA to identify, and possibly reverse, unauthorized or unintended changes to application.

- Application must support the identification of the nature of each access and/or modification through the use of logging.
- Application must employ audit capabilities to sufficiently track details that can establish accountability for each step or task taken in a clinical or operational process.
- All audit logs must be protected from human alteration.
- Access to logs must be limited to authorized users.
- The application must employ basic query tools and reports to easily search logs.
- OCHCA record retention policies must be followed. [Currently OCHCA requires that this period be at least six years from the time the record was initiated.](#)

- Logging and auditing functionality must include the following:
 - ◆ Record of who did what to which material object, when and on which system.
 - ◆ Successful/unsuccessful log-in and log-out of users.
 - ◆ Add, modify and delete actions on material data/files/objects.
 - ◆ Read/view actions on data classified as restricted/confidential.
 - ◆ Changes to user accounts or privileges (creation, modification, deletion).
 - ◆ Switching to another users access or privileges after logging in (if applicable).

8. Protection from Malicious Code

- For cloud hosted solutions, vendors must utilize antivirus/antispymware software on servers and monitor to prevent malicious code which may lead to a compromise of OCHCA's data.
- For local hosted solutions, vendors must ensure that the application appropriately supports the use of antivirus/antispymware software.

9. Remote Support Functionality

- Provider must conform to OCHCA Vendor Remote Access Policy.

10. HCA Data Usage

- During the course of any implementation and subsequent support and life cycle management, any OCHCA data that the vendors have access to in any manner shall be considered confidential unless otherwise designated in writing.
- Vendors must not use or disclose OCHCA's data other than as permitted or as required by contract or law.
- The vendors must agree to use appropriate safeguards to prevent the unauthorized use or disclosure of OCHCA's data during any time that the data is stored or transported in any manner by vendors.
- After the end of any appropriate use of OCHCA's data within the vendors' possession, such data must be returned to OCHCA or securely destroyed unless otherwise permitted by contract or law.

11. Cloud Solutions

Application Service Providers hosting OCHCA data must meet the following additional requirements and are required to comply with and provide deliverables noted below:

- **SSAE 18.** SSAE 18 SOC 2 Type 2 or SOC 3 compliance certificate
- **Network Intrusion Detection and Prevention.** All systems that are accessible via the internet must

actively use a network based intrusion detection and prevention solution.

- **Workstation/Laptop Encryption.** All workstations, laptops and mobile devices that process and/or store OCHCA data must be encrypted using full disk encryption that uses a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher.
- **Jurisdiction and Location of OCHCA Data.** To protect against seizure and improper use by non-United States (US) persons and government entities, all data / information stored and processed for OCHCA must reside in a facility under the legal jurisdiction of the US.
- **Patch Management.** All workstations, laptops, and other systems that access, process and/or store OCHCA data must have appropriate security patches installed. Application Service Providers must utilize a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a minimum, all applicable patches must be installed within 30 days of vendor release.
- **Application Access.** All systems accessible via the internet must employ security controls to prevent access to the application via an asset not approved or owned by the county.
- **Risk Assessment.** Application Service Providers hosting data for HIPAA covered services must conduct an accurate and thorough Risk Assessment as required by HIPAA Security Rule, Security Management (§ 164.308(a)(1)). Further, they must follow the risk assessment methodology, based on the latest version of NIST SP 800-30 (http://csrc.nist.gov/publications/nistpubs/800-30-rev1/sp800_30_r1.pdf). Upon request, the Risk Assessment findings and remediation strategy must be shared with OCHCA.
- **NIST.** To ensure compliance with HIPAA, Application Service Providers shall implement appropriate security safeguards by following National Institute of Standards and Technology (NIST) guidelines.

12. Policies

Vendors must have formal, published IT security policies that address how they manage and maintain the internal security posture of their own or sub-contracted infrastructure. The vendor shall also clearly demonstrate that additional security features are in place to protect systems and data in the unique environment of the service provider model: namely, security issues associated with storing County-owned data on a remote server that is not under direct County control and the necessity of transferring this data over an untrusted network.

Vendors must provide, to the extent permissible, all relevant security policies and procedures to the County for review and validation. All documentation must be provided in electronic format for the County's review.

These policies must include, but not be limited to, the following:

County of Orange, Health Care Agency
Software Maint. & Data Hosting Services

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- **IT Staff Usage Agreement.** All vendor employees performing services for the County must sign and agree to an IT usage agreement within their own organization as part of an overall security training and awareness program. At a minimum, vendor employees must sign a statement of understanding within their own organization regarding Internet dangers, IT security, and IT ethics and best practices,
- **IT Security Policies and Procedures.**
- **IT Operations Security Policy.** Written standards for operational security for any facilities where the County data, staff or systems shall exist. These documents must include, but not be limited to, physical security, network security, logical security, systems/platform security, wireless access, remote access, and data protections.
- **Data Management Security Policy.** Policy for the safeguarding and management of all data provided by the County or accessed by vendor as part of implementation and ongoing maintenance. This policy must, at a minimum, include check-in, check-out, copy control, audit logs and separation of duties.
- **Security Incident Notification and Management Process.** A detailed document that outlines the contact names and order and escalation of events that will occur in the case of a security breach concerning the County staff, data, or systems. This document must be updated immediately upon any change. The vendor shall be held liable to the time-tables and protections outlined in the document.

In addition to developing, maintaining, and enforcing the above named policies, the vendor must:

- P. Bear the cost of compliance for any required changes to security infrastructure, policies and procedures to comply with existing regulations, unless such change is unique to the County.
- Q. Comply with reasonable requests by the County for audits of security measures, including those related to identification and password administration.
- R. Comply with reasonable requests by the County for onsite physical inspections of the location from which the vendor provides services.
- S. Provide the County with any annual audit summaries and certifications, including but not limited to HIPAA, ISO or SOX audits, as applicable.
- T. Designate a single point of contact to facilitate all IT security activities related to services provided to the County, with the allowance of appropriate backups. Such contact(s) must be available on a 7/24/365 basis.

13. **Business Continuity / Disaster Recovery Plans**

Application Service Providers must have a viable risk management strategy that is formally documented in a Business Continuity Plan (BCP) and/or a Disaster Recovery Plan (DRP). This BCP/DRP plan(s) must identify recovery strategies within the application service areas, outline specific recovery methods and goals, and provide the mutually agreed upon recovery time and point objectives.

14. **Backup and Restore**

The vendor must provide their routine Backup and Restore policy and procedure which includes their backup data security strategy. These procedures shall allow for protection of encryption keys (if applicable) as well as a document media destruction strategy including media management tasks (i.e., offsite vaulting and librarian duties).

15. **Staff Verification**

For any employee a vendor contemplates using to provide services for the County, the vendor shall use its standard employment criteria as used for similar services provided to their customers in evaluating the suitability of that employee for such roles.

At a minimum, subject to the requirements of applicable law, such criteria must include the information as outlined below for each employee:

- A. **Relevant Skills, Licenses, Certifications, Registrations.** Each service employee must possess the educational background, work experience, skills, applicable professional licenses, and related professional certifications commensurate with their position. The County may, at any time and at its sole discretion, request that the vendor demonstrate compliance with this requirement as applicable to the nature of the services to be offered by the vendor's employee. The County may, at its sole discretion, also request the vendor's certification that the vendor employee has undergone a chemical/drug screening, with negative results, prior to granting access to the County facilities.
- B. **Background Checks.** In accordance with applicable law, the vendor must, at the County's request, obtain as a condition of employment, a background investigation on any vendor employee selected to work for the County. The security and background investigation shall include criminal record checks, including records of any conviction in the U.S. or other relevant jurisdiction where the employee resides. Costs for background investigations must be borne by the vendor.

At a minimum, subject to the requirements of applicable law, the vendor must:

- A. Ensure that all vendor service employees performing applicable services or supporting the vendor's duties and obligations under a County agreement: (i) have not been convicted of any crime involving violence, fraud, theft, dishonesty or breach of trust under any laws; and (ii) have not been on any list published and maintained by the Government of the United States of America of persons or entities with whom any United States person or entity is prohibited from conducting business.
- B. Follow such verification procedures as may be reasonably specified by the County from time to time. If either the vendor or the County becomes aware that any vendor employee has been convicted of a crime involving violence, fraud, theft, dishonesty or breach of trust, or has been included on any such list of persons or entities convicted of such crimes, then the vendor shall promptly remove the employee from providing services to the County and prohibit that employee from entering any facilities at which services are provided.
- C. Annually certify to the County that, to the best of its knowledge, none of the service employees have been convicted of any felony involving fraud, theft, dishonesty or a breach of trust under any laws.

16. **IT Physical Security and Access Control**

The vendor must establish processes and procedures for physical access to and control of their own facilities that are, at a minimum, consistent with relevant industry-specific best practices.

Vendor employees are expected to:

- A. Comply with facility access procedures, using procedures such as sign-in/sign-out requirements and use of assigned ID badges.
 - B. Scan ID badges, where applicable, at any secure door and/or entrance and exit gates, including any door or gate that may already be open.
 - C. Refrain from using recordable media in conjunction with County-owned equipment.
 - D. Comply with check-in/check-out requirements for materials and/or equipment.
- E. Adhere to the facility's established emergency, safety and evacuation procedures.
 - F. Report any unsafe conditions to the facility's safety representative.
 - G. Report any access violations or security threats to the facility's local security administrator.

17. **IT Security Compliance and Training**

The vendor must ensure that all vendor employees comply with security policies and procedures and take all reasonable measures to reduce the opportunity for unauthorized access, transmission, modification or misuse of the County's data by vendor employees.

The vendor must ensure that all vendor employees are trained on security measures and practices. The vendor will be responsible for any costs related to such training.

At a minimum, the vendor is expected to:

- A. Ensure that a formal disciplinary process is defined and followed for vendor employees who violate established security policies and procedures.
- B. Proactively manage and administer access rights to any equipment, software and systems used to provide services to the County.
- C. Define, maintain and monitor access controls, ranging from physical access to logical security access, including a monthly review of vendor employees' access to systems used to provide services to the County.

The vendor shall monitor facilities, systems and equipment to protect against unauthorized access. At a minimum, the

vendor is expected to:

- D. Monitor access to systems; investigate apparent security violations; and notify the County of suspected violations, including routine reporting on hacking attempts, penetrations and responses.
- E. Maintain data access control and auditing software and provide adequate logging, monitoring, and investigation of unusual or suspicious activity.
- F. Initiate immediate corrective actions to minimize and prevent the reoccurrence of attempted or actual security violations.
- G. Document details related to attempted or actual security violations and provide documentation to the County.
 - H. Provide necessary documentation and evidence to the County in connection with any legal action or investigation.

18. **Security Testing Recommendations**

The vendor should perform a series of steps to verify the security of applications, some of which are noted below. This section will not be validated by the County, but reflects best practices that the vendor should consider and follow.

- A. Look for vulnerabilities at various layers of the target environment. In the lowest layer, the vendor's testing team should look for flaws in the target network environment, including any routers and firewalls designed to control access to the web server and related target components. The team should attempt to determine whether such filters provide adequate protection at the network layer of the target hosts that the team can reach across the Internet.
- B. Look for flaws in the Internet-accessible hosts associated with the target infrastructure, including the web server. This host-based component of the test will analyze which network-accessible services are available on the target hosts across the Internet, including the web server process. The testing team should look for incorrect configuration, unpatched or enabled services, and other related problems on the target hosts.

This review performed by the vendor should include but not be limited to:

- A. The web application (i.e., the software that interacts with users at their web browsers; typically custom-crafted code created by the web development team)
- B. The web server application (the underlying software that sends and receives information via HTTP and HTTPS, typically off-the-shelf software such as Microsoft's IIS or the open-source Apache software)
- C. Any separate backend application servers that process information from the web application
- D. The backend database systems that house information associated with the web application.
 - E. Infrastructure diagrams.
 - F. Configuration host review of settings and patch versions, etc.
 - G. Full code review.
 - H. Identification and remediation of well-known web server, code engine, and database vulnerabilities.
 - I. Identification and remediation of any server and application administration flaws and an exploitation attempt of same.
 - J. Analysis of user interface, normal application behavior, and overall application architecture for potential security vulnerabilities.

- K. Analysis of data communications between the application and databases or other backend systems.
- L. Manual analyses of all input facilities for unexpected behavior such as SQL injection, arbitrary command execution, and unauthorized data access.
- M. Analyses of user and group account authentication and authorization controls to determine if they can be bypassed.
- N. Identification of information leakage across application boundaries, including the capability to enumerate other users' data and "show code" weaknesses that reveal internal application logic.
- O. Identification of areas where error handling is insufficient or reveals too much sensitive information.
- P. Identification of opportunities to write to the host file system or execute uploaded files.
- Q. Identification of product sample files, application debugging information, developer accounts or other legacy functionality that allows inappropriate access.
- R. Determination as to whether or not fraudulent transactions or access can be performed.
- S. Attempts to view unauthorized data, especially data that should be confidential.
- T. Examination of client-side cached files, temporary files, and other information that can yield sensitive information or be altered and re-submitted.
- U. Analysis of encoded and encrypted tokens, such as cookies, for weakness or the ability to be reverse engineered.

19 Vendor Deliverables

The following items are to be provided by the vendor:

- A. OCHCA Security Requirements and Guidelines for Application Vendors and Application Service Providers - Questionnaire
- B. Business Continuity Plan Summary (as related to service provided)
- C. SSAE 18 SOC 2 Type 2 or SOC 3 compliance certificate for its hosting environment.
 - Network Diagram that demonstrates vendor network and application segmentation including the security controls in place to protect HCA data
 - IT Security Staff Usage Policy

- Data Management Security Policy
- Security Incident Notification and Management Process
- Security Contact Identification (24x7x365)

D. Staff Related Items

- Pre-Employment Screening Policy/Procedure
- Background Checking Procedure
- Ongoing Employment Status Validation Process
- Staff Roster and Duties (limited to employees performing under this contract)