

AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

between

COUNTY OF SANTA BARBARA

and

IRON MOUNTAIN INFORMATION MANAGEMENT, LLC

THIS AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and Iron Mountain Information Management, LLC with an address at 12958 Midway Place, Cerritos CA 90703 (hereafter CONTRACTOR) wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein.

WHEREAS, County executed effective 1/1/2014 Purchase Agreement CN16243 with Contractor in the amount of \$100,000 for the period of January 1, 2014 through December 31, 2015. During the term of that Purchase Agreement, County anticipates that Contractor will provide, at the request of County, a greater number of services than originally contemplated by the Purchase Agreement, and will incur total expenses beyond the value of the Purchase Agreement and in excess of \$100,000. This Agreement, which is made to cancel, nullify, and supersede Purchase Agreement CN16243, increases the original Agreement term by one year and provides a total of \$210,000 for January 1, 2014 through December 31, 2016.

WHEREAS, CONTRACTOR represents that it is specially trained, skilled, experienced, and competent to perform the special services required by COUNTY and COUNTY desires to retain the services of CONTRACTOR pursuant to the terms, covenants, and conditions herein set forth;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. DESIGNATED REPRESENTATIVE

Dan Reid, Assistant Deputy Director at phone number 805-681-5173 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Dawn Adams at phone number (805) 416-5092 is the authorized representative for CONTRACTOR. Changes in designated representatives shall be made only after advance written notice to the other party.

2. NOTICES

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To COUNTY: Dan Reid, Assistant Deputy Director
 300 N. San Antonio Road, Bldg. 1
 Santa Barbara, CA 93110

To CONTRACTOR: Dawn Adams
 Iron Mountain Information Management, LLC
 12958 Midway Place

Cerritos, CA 90703

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

3. SCOPE OF SERVICES

CONTRACTOR will perform the services described in this Agreement and the service pricing schedules in EXHIBIT A ("Schedules"), and COUNTY will pay CONTRACTOR for such services according to the rates and provisions in EXHIBIT A. All services will be provided subject to this Agreement, which consists of these Terms and Conditions, Exhibit A Schedules, and the Glossary of terms that can be found at <http://cic.ironmountain.com/records/glossary>.

4. VALUE OF DEPOSITS

COUNTY declares, for the purposes of this Agreement, that (a) with respect to hard-copy (paper) records, microfilm and microfiche stored pursuant to this Agreement ("Deposits" or "Items"), the value of such stored Items is \$1.00 per carton, linear foot of open-shelf files, container or other storage unit, and (b) with respect to round reel tape, audio tape, video tape, film, data tape, cartridges or cassettes or other non-paper media stored pursuant to this Agreement, the value of such stored items is equal to the cost of replacing the physical media. COUNTY acknowledges that it has declined to declare an excess valuation, for which an excess valuation fee would have been charged.

5. TERM

Under this Agreement, which is made to cancel, nullify and supersede Purchase Agreement CN 16243, CONTRACTOR shall commence performance by January 1, 2014 and complete performance by December 31, 2016 (the "Initial Term"). Upon expiration of the Initial Term, the term will continue with automatic renewals for additional one (1) year terms, unless written notice of non-renewal is delivered by either party to the other not less than thirty (30) days prior to the expiration date. In the event that CONTRACTOR continues to hold Deposits after the expiration or termination of this Agreement, the terms of this Agreement shall continue to apply until all Deposits have been removed from CONTRACTOR's facility, except that CONTRACTOR may adjust rates upon thirty (30) days' written notice following expiration of the Initial Term.

6. COMPENSATION OF CONTRACTOR

For CONTRACTOR services to be rendered under this Agreement, CONTRACTOR shall be paid a total Agreement amount, including cost reimbursements, not to exceed \$210,000, inclusive of the approximate \$100,000 already paid by County to CONTRACTOR under CN 16243, for the period January 1, 2014 through December 31, 2016. CONTRACTOR shall not be obligated to perform services in excess of said amounts unless the parties execute an Amendment to this Agreement.

Rates and charges shall be as specified in the Pricing Schedule (EXHIBIT A), attached hereto, and/or other Schedules. Rates and charges for storage and services shall remain fixed for the first year of this Agreement, and may thereafter be changed at any time upon ninety (90) days' written notice, in an amount not to exceed the below percentages, rounded up to the nearest whole cent:

Year 2: 3 %

Year 3: 3 %

Transportation surcharges apply and change monthly without notice in accordance with CONTRACTOR's fuel surcharge policy, which may be found at <http://cic.ironmountain.com/fuelsurcharge/usfuel.asp>.

7. STORAGE VOLUME

COUNTY acknowledges that the rates and charges on the Schedules in Exhibit A have been offered by CONTRACTOR on the basis of COUNTY's agreement to maintain its storage levels with CONTRACTOR at no less than eighty percent (80%) of the storage levels maintained by COUNTY during the immediately preceding three (3) month period, excluding any Deposits destroyed by CONTRACTOR at COUNTY's request.

8. COUNTY INSTRUCTIONS

COUNTY warrants that it is the owner or legal custodian of the Deposits and has full authority to store the Deposits and direct their disposition in accordance with this Agreement. CONTRACTOR will perform services pursuant to the direction of COUNTY's agent(s) identified pursuant to CONTRACTOR's standard authorization forms. Authority granted to any persons on standard authorization forms shall constitute COUNTY's representation that the identified persons have full authority to order any service, including disposal or removal of Deposits. Such orders may be given in person, by telephone or in writing (fax, email or hard-copy). COUNTY releases CONTRACTOR from all liability by reason of the destruction of materials pursuant to COUNTY's authorization.

9. OPERATIONAL PROCEDURES

COUNTY shall comply with CONTRACTOR's reasonable operational requirements, as modified from time to time, regarding cartons, carton integrity, delivery/pickup/account closing volumes, and preparation for pickup, security, secure shredding protocols, access and similar matters. Extraordinary volume requests (defined as 125% of the average volume over the immediately preceding three month period) may involve additional costs, such as overtime, which COUNTY will pay at CONTRACTOR's overtime rates, provided COUNTY consents to such costs in advance.

10. FORCE MAJEURE

Neither party shall be liable for delay or inability to perform caused by acts of God, governmental actions, labor unrest, acts of terrorism, riots, unusual traffic delays or other causes beyond its reasonable control.

11. GOVERNMENTAL ORDERS

CONTRACTOR is authorized to comply with any subpoena or similar order related to the Deposits, at COUNTY's expense, provided that CONTRACTOR notifies COUNTY promptly upon receipt thereof, unless such notice is prohibited by law. CONTRACTOR will cooperate with COUNTY's efforts to quash or limit any subpoena, at COUNTY's expense.

12. CONFIDENTIALITY

"Confidential Information" means any information (i) contained in the Deposits, (ii) concerning or relating to the property, business and affairs of the party disclosing such information that is furnished to the receiving party, and (iii) regarding CONTRACTOR's processes and procedures; except for information that was previously known to the receiving party free of any obligation to keep it confidential, is subsequently made public by the disclosing party or is disclosed by a third party having a legal right to make such disclosure. Confidential Information shall be used only in the manner contemplated by this Agreement and shall not be intentionally disclosed to third parties without the disclosing party first obtaining written consent. CONTRACTOR shall not obtain any rights of any sort in or to the Confidential Information of COUNTY contained in Deposits. CONTRACTOR shall implement and maintain reasonable safeguards designed to protect COUNTY's Confidential Information.

13. LIMITATIONS OF LIABILITY

- a. **Liability for Loss or Damage to Deposits.** CONTRACTOR's liability, if any, for loss or destruction of, or damage to, materials stored with CONTRACTOR ("Deposits" or "Items") is limited to the value of each Deposit as described in Section 4 VALUE OF DEPOSITS, or as otherwise set forth herein. CONTRACTOR's maximum liability with respect to services not related to storage is the amount paid by COUNTY for a discrete project or, if the loss is related to service of an ongoing and continuing nature, six months of fees paid by COUNTY for such service. Other limitations on CONTRACTOR's and/or COUNTY'S liability are set forth in this Agreement. Except as otherwise set forth in the HIPAA Business Associate Agreement (BAA) in EXHIBIT B, CONTRACTOR shall not be liable for any loss or destruction of, or damage to, Deposits, including costs resulting from a loss of a Deposit constituting a breach of data security or confidentiality, unless such loss or damage resulted from CONTRACTOR's negligence. If liable, the amount of CONTRACTOR's liability is limited as described in Section 4 VALUE OF DEPOSITS. Deposits are not insured by CONTRACTOR against loss or damage, however caused. COUNTY may insure Deposits through third-party insurers for any amount. COUNTY shall cause its insurers of Deposits to waive any right of subrogation against CONTRACTOR. If Deposits are placed in the custody of a third-party carrier for transportation, the carrier shall be solely responsible for any loss or destruction of, or damage to, such Deposits while in the custody of the carrier.
- b. **No Consequential Damages.** In no event shall either party be liable for any consequential, incidental, special or punitive damages, or for loss of profits or loss of data, regardless of whether an action is brought in tort, contract or under any other theory.

14. BODILY INJURY/PROPERTY DAMAGE INDEMNIFICATION

CONTRACTOR agrees to indemnify COUNTY with respect to any claim or demand for bodily injury (including death) or loss of or damage to tangible property (excluding Deposits), to the extent based upon the negligent acts or omissions of CONTRACTOR its agents, employees and independent contractors responsible to them, provided that COUNTY provides the Indemnifying Party prompt written notice of any such claim or demand. The Indemnified Party shall grant the Indemnifying Party the option to control the defense and/or settlement of the claim or demand and, in the event the Indemnifying Party exercises such option to control the defense/settlement, then (i) the Indemnifying Party shall not settle any claim requiring any admission of fault on the part of the Indemnified Party without its prior written consent, (ii) the Indemnified Party shall have the right to participate, at its own expense, in the claim or suit and (iii) the Indemnified Party shall cooperate with the Indemnifying Party as may be reasonably requested. The Indemnifying Party's sole obligation hereunder shall be to pay any judgment rendered, pay any attorney fees and costs, or settlement made, as a result of any such claim or demand.

15. ITAR/EAR COMPLIANCE

COUNTY represents that none of the Deposits stored by CONTRACTOR pursuant to this Agreement require protection from access by foreign persons because they contain technical information regarding defense articles or defense services within the meaning of the International Traffic in Arms Regulations (22 CFR 120) or technical data within the meaning of the Export Administration Regulations (15 CFR 730-774). If any of COUNTY's Deposits do contain any such information, COUNTY shall notify CONTRACTOR of the specific Deposits that contain such information and acknowledges that special storage and service rates shall apply thereto.

16. NON-CUSTODIAL STATUS

Unless CONTRACTOR shall have explicitly agreed in writing, CONTRACTOR's performance of services shall not cause CONTRACTOR to be deemed a "custodian" of the records or "designee" of COUNTY under state or federal law with respect to such records.

17. NOTICE OF CLAIMS

Claims by COUNTY must be presented in writing within a reasonable time, in no event longer than ninety (90) days after delivery or return of the Deposits to COUNTY, or ninety (90) days after COUNTY is notified of loss, damage or destruction to part or all of the Deposits.

18. NOTICE OF LOSS

When Deposits have been lost, damaged or destroyed, CONTRACTOR shall, upon confirmation of the event, report the matter in writing to COUNTY.

19. PAYMENT TERMS

- a. Payment for services and /or reimbursement of costs shall be made upon CONTRACTOR's satisfactory performance, based upon the scope and methodology contained in **EXHIBIT A** as determined by COUNTY.
- b. Upon completion of the work detailed in **EXHIBIT A** and/or delivery to COUNTY of item(s) specified therein, CONTRACTOR shall submit to the COUNTY DESIGNATED REPRESENTATIVE an invoice or certified claim on the County Treasury for the service performed. This invoice or claim must cite the assigned Board Contract Number. COUNTY DESIGNATED REPRESENTATIVE shall evaluate the quality of the service performed and/or the item(s) delivered and if found to be satisfactory shall initiate payment processing. COUNTY shall pay invoices or claims for satisfactory work within 30 days of date of correct and complete invoices or claims from CONTRACTOR. Prior to delivery of Deposits upon expiration, termination, or substantial withdrawal, CONTRACTOR may require payment by certified check.

20. COUNTY DEFAULT

If COUNTY fails to pay CONTRACTOR's charges (other than disputed charges) within sixty (60) days after the date of an invoice, CONTRACTOR may suspend service. If COUNTY fails to pay CONTRACTOR's charges (other than disputed charges) for six (6) months or longer, CONTRACTOR may securely destroy Deposits, provided CONTRACTOR shall have provided ninety (90) days' written notice to COUNTY; COUNTY shall pay CONTRACTOR's standard price for such secure destruction. A final notice will be sent to COUNTY ten (10) days prior to secure destruction of the Deposits. CONTRACTOR shall have other rights and remedies as may be provided by law. In the event CONTRACTOR takes any actions pursuant to this Section, it shall have no liability to COUNTY or anyone claiming by or through COUNTY.

21. TERMINATION

- A. Either party may terminate this Agreement upon written notice to the other party in the event that the other party shall have breached any of its material obligations hereunder and shall not have cured such default within forty-five (45) days after written notice of such default, subject to the fees set forth in the applicable Schedule(s). Notwithstanding the foregoing, either party may, for any reason, at any point after the Initial Term, terminate the Agreement upon not less than ninety (90) days' notice in writing to the other.
- B. **For Non-appropriation of Funds.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or COUNTY governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then COUNTY will notify CONTRACTOR of such occurrence and COUNTY may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, COUNTY shall have no obligation to make payments with regard to the remainder of the term.

22. SAFE MATERIALS AND PREMISES

COUNTY shall not store with CONTRACTOR or place in shredding bins any material that is highly flammable, may attract vermin or insects, or is otherwise dangerous or unsafe to store or handle, or any material that is regulated by federal or state law or regulation relating to the environment or hazardous materials. COUNTY shall not store negotiable instruments, jewelry, check stock or other items that have intrinsic value. COUNTY warrants that it shall only place paper-based materials in the shredding bins. COUNTY shall reimburse CONTRACTOR for damage to equipment or injury to personnel resulting from COUNTY's breach of this warranty.

23. PURCHASE ORDERS

In the event that COUNTY issues a purchase order to CONTRACTOR covering the services provided under this Agreement, any terms and conditions set forth in the purchase order which are in addition to or establish conflicting terms and conditions to those set forth in this Agreement are expressly rejected by CONTRACTOR.

24. RECORDS, AUDIT, AND REVIEW

CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of the records management profession, and CONTRACTOR shall maintain those records for at least four (4) years following termination of this Agreement. All account records shall be kept in accordance with generally accepted accounting practices. COUNTY shall have the right to inspect CONTRACTOR's books and records which provide substantiation of the performance of services by Contractor to COUNTY relating to the charges which are set forth in invoices issued by CONTRACTOR to COUNTY. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY or as part of any audit of the COUNTY, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). CONTRACTOR shall participate in any audits and reviews, whether by COUNTY or the State, at no charge to COUNTY. The audit rights contained in this Section 24 are subject to the following restrictions: COUNTY must provide at least ten (10) business days' advance notice; COUNTY may not view materials or information pertaining to other customers of CONTRACTOR; CONTRACTOR will not disclose information related to its proprietary security systems; all third-parties must sign CONTRACTOR's standard confidentiality agreement; CONTRACTOR reserves the right to refuse access to any person who is or who represents a competitor of CONTRACTOR; COUNTY agrees to comply with CONTRACTOR's safety and security policies at all times while on CONTRACTOR's premises.

25. CONTRACTOR SERVICES

CONTRACTOR warrants that (i) the Services will be performed in accordance with professional industry standards and substantially in conformance with this Agreement, and (ii) the persons it assigns to perform the Services shall have the appropriate skill, training and background to perform such Services in a competent manner. This warranty is limited and shall not apply to any Services where the failure of the Services to satisfy this warranty is determined to result from improper use by COUNTY of the Services or from COUNTY's decision not to implement any reasonable practices to which the Services apply that may be recommended by CONTRACTOR. In the event of CONTRACTOR's breach of the foregoing warranty, COUNTY's exclusive remedy and CONTRACTOR's sole liability shall be the re-performance of the applicable Service, at no charge to COUNTY.

26. STATUS AS INDEPENDENT CONTRACTOR

CONTRACTOR shall perform all services under this Agreement as an independent contractor and not as COUNTY's employee. CONTRACTOR understands and acknowledges that CONTRACTOR will not be entitled to any of the benefits of a COUNTY employee, including but not limited to vacation, sick leave, administrative leave, health

insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. CONTRACTOR warrants that it is authorized by law to perform all work contemplated in this Agreement, and CONTRACTOR agrees to submit, upon request, verification of licensure or registration, or other applicable evidence of official sanction.

27. TAXES

COUNTY shall not be responsible for paying any taxes on CONTRACTOR's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse COUNTY for the full value of such taxes paid plus interest and penalty assessed, if any. These taxes include, but are not limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

28. CONFLICT OF INTEREST

CONTRACTOR covenants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, CONTRACTOR will employ no person having any such interest.

29. OWNERSHIP OF DOCUMENTS

COUNTY shall be the owner of the following items incidental to this Agreement, upon production and whether or not completed: all data collected, all documents of any type whatsoever (paper or electronic), and any material necessary for the practical use of the data and/or documents from the time of collection and/or production, whether or not performance under this Agreement is completed or terminated prior to completion. CONTRACTOR shall not release any materials under this paragraph except after COUNTY's prior written approval.

30. COPYRIGHT

No materials produced in whole or in part under this Agreement will be subject to copyright in the United States or in any other country except as determined at COUNTY's sole discretion. COUNTY shall have the authority to publish, disclose, distribute, and otherwise use in whole or in part, any reports, data, documents or other materials prepared under this Agreement. Notwithstanding the foregoing, COUNTY shall not acquire any ownership interest in any techniques, methods, or software, which CONTRACTOR employs in performing the services under this Agreement.

31. NONDISCRIMINATION

The County's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated into the Agreement by this reference with the same force and effect as if the ordinance were specifically set out herein, and CONTRACTOR agrees to comply with that ordinance.

32. NONEXCLUSIVE AGREEMENT

CONTRACTOR understands that this is not an exclusive Agreement and that COUNTY has the right to negotiate with and enter into contracts with others providing the same or similar services as those that CONTRACTOR provides. CONTRACTOR agrees to promptly disclose to COUNTY any other contracts under which CONTRACTOR is providing services to the CONTRACTOR.

33. INSURANCE

Without limiting CONTRACTOR's indemnification obligations above, CONTRACTOR agrees to procure the following insurance coverage, at its sole cost and expense. All insurance coverages are to be placed with insurers

which (1) have a Best's rating of no less than B+: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the County Risk Manager. This insurance coverage must be maintained throughout the term of this Contract. Failure to comply with the insurance requirements may be deemed a breach of this Agreement.

- a. **Workers' Compensation Insurance.** Statutory Workers' Compensation and Employers Liability Insurance shall cover all CONTRACTOR staff while performing any work related to the performance of this Agreement. The policy must provide that no cancellation, major change in coverage, or expiration will be effective or occur until at least thirty (30) days after we receive notice of that event. If CONTRACTOR is legally self-insured, CONTRACTOR shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if a) CONTRACTOR has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement, and b) CONTRACTOR has submitted to Purchasing a document stating that fact.
- b. **General and Automobile Liability Insurance.** General liability insurance must include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations by CONTRACTOR. The automobile liability insurance must cover all owned, non-owned and hired motor vehicles that are operated by CONTRACTOR. The County of Santa Barbara, its officers, employees, and agents shall be Additional Insured status on any policy. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the County has been added as an additional insured on the policy, must be attached to the certificate of insurance. The limit of liability of said policy or policies for general and automobile liability insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The policy or policies must contain a provision of the following form: "The insurance afforded by this policy shall be primary and if the County has other valid and collectible insurance, that other insurance shall be excess and non-contributory."
- c. **Professional Liability Insurance.** For those agreements where required, professional liability insurance shall include coverage for the activities of CONTRACTOR employees with a combined single limit of not less than \$1,000,000 per occurrence or claim and \$2,000,000 in the aggregate. CONTRACTOR must notify COUNTY for any required insurance policy cancellation.

33. AMENDMENT

This Agreement may be altered, amended or modified only by an instrument in writing (executed by COUNTY), and agreed to by COUNTY and CONTRACTOR.

34. PARKING

This Agreement does not entitle CONTRACTOR to park in any County lot at the Santa Barbara downtown complex. Failure to comply may result in CONTRACTOR's vehicle being ticketed or towed without notice. Exceptions for extraordinary circumstances may only be made upon prior written approval of the Parking Coordinator (568-2650). For on-street parking for construction or delivery operations, CONTRACTOR may instead wish to seek a "Parking Restriction Waiver Permit" from the City of Santa Barbara (564-5385). Public parking lots are available across from the County's downtown complex along Anacapa Street.

35. MISCELLANEOUS

CONTRACTOR may subcontract its obligations under this Agreement, in whole or in part, to an affiliate. Neither party may assign this Agreement in whole or in part, except to an Affiliate, without the prior written consent of the other party. An affiliate means any entity controlling, controlled by, under common control with, or having a common parent with CONTRACTOR or COUNTY. CONTRACTOR may exercise all rights granted to warehousemen by the Uniform Commercial Code as adopted in the state where the Deposits are stored. This Agreement shall be

governed by the laws of California: except for conflicts of laws principles. Any litigation regarding this Contract or its contents must be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

36. DEBARMENT AND SUSPENSION

CONTRACTOR certifies to COUNTY that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. CONTRACTOR certifies that it shall not contract with a subcontractor that is so debarred or suspended.

37. NO PUBLICITY OR ENDORSEMENT

CONTRACTOR shall not use COUNTY's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. CONTRACTOR shall not use COUNTY's name or logo in any manner that would give the appearance that the COUNTY is endorsing CONTRACTOR. CONTRACTOR shall not in any way contract on behalf of or in the name of COUNTY. CONTRACTOR shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the COUNTY or its projects, without obtaining the prior written approval of COUNTY.

38. SECTION HEADINGS

The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

39. SEVERABILITY

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

40. TIME IS OF THE ESSENCE

Time is of the essence in this Agreement and each covenant and term is a condition herein.

41. NO WAIVER OF DEFAULT

No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

42. SUCCESSORS AND ASSIGNS

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

43. COMPLIANCE WITH LAW

CONTRACTOR shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court

of competent jurisdiction, or the admission of CONTRACTOR in any action or proceeding against CONTRACTOR, whether COUNTY is a party thereto or not, that CONTRACTOR has violated any such ordinance or statute, shall be conclusive of that fact as between CONTRACTOR and COUNTY.

44. AUTHORITY

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

45. SURVIVAL

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

46. PRECEDENCE

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

47. BUSINESS ASSOCIATE

The parties agree to the terms and conditions set forth in EXHIBIT B - HIPAA Business Associate Agreement attached hereto and incorporated herein by reference.

Agreement for Services of Independent Contractor between the County of Santa Barbara and Iron Mountain Information Management, LLC.

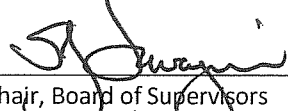
IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on January 1, 2014 .

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

By: 
Deputy Clerk

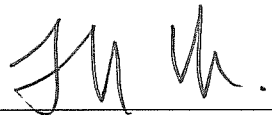
COUNTY OF SANTA BARBARA:

By: 
Chair, Board of Supervisors

Date: 12/2/14

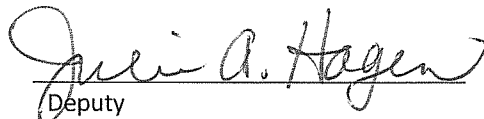
RECOMMENDED FOR APPROVAL:

Takashi Wada, MD, MPH
Director / Deputy Health Officer

By: 
Director

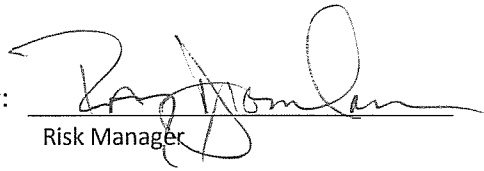
APPROVED AS TO ACCOUNTING FORM:

Robert W. Geis, CPA
Auditor-Controller

By: 
Deputy

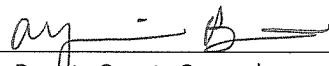
APPROVED AS TO FORM:

Ray Aromatorio, ARM, AIC
Risk Management

By: 
Risk Manager

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

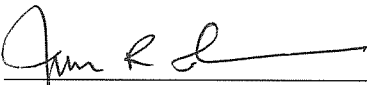
By: 
Deputy County Counsel

Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **Iron Mountain Information Management, LLC**.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on January 1, 2014.

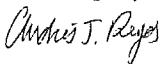
CONTRACTOR:

Iron Mountain Information Management, LLC

By: 
Authorized Representative

Name: JAMES R INCAVO

Title: VICE PRESIDENT

Approved as to Form and Legal Content:
Iron Mountain Legal Department

Andrés J. Reyes, Corporate Counsel
Customer Name: County of Santa Barbara
Date: 11.12.2014

**Exhibit A
Pricing Schedule**

List Prices (as of January 1, 2014)

STANDARD STORAGE AND SERVICES (see http://cic.ironmountain.com/records/glossary for service definitions)					
DESCRIPTION	CURRENT LIST PRICE	DISCOUNT %	EFFECTIVE PRICE	PER	
☐ Carton Storage	\$0.508	63%	\$0.188	Cubic Foot	
☐ Receiving and Entering - Carton	\$3.21	63%	\$1.188	Cubic Foot	
☐ Regular Retrieval - Carton	\$4.15	63%	\$1.536	Cubic Foot	
☐ Regular Retrieval - File from Carton	\$5.57	63%	\$2.061	File	
☐ Regular Refile - Carton	\$4.15	63%	\$1.536	Cubic Foot	
☐ Regular Refile - File to Carton	\$5.57	63%	\$2.061	File	
☐ Archival Destruction - Carton	\$5.02	63%	\$1.857	CF plus Regular Retrieval Charge	
☐ Permanent Withdrawal - Carton	\$6.27	63%	\$2.32	CF plus Regular Retrieval Charge	
☐ Permanent Withdrawal - File from Carton	\$9.02	63%	\$1.117	File plus Regular Retrieval Charge	
☐ Next Day Delivery	\$39.47	63%	\$14.604	Visit plus Handling Charge	
☐ Regular Pickup	\$39.47	63%	\$14.604	Visit plus Handling Charge	
☐ Handling Charge	\$3.64	63%	\$1.347	Cubic Foot	

PREMIUM STORAGE AND SERVICES (see http://cic.ironmountain.com/records/glossary for service definitions)			
DESCRIPTION		EFFECTIVE PRICE	PER
☐ Rush Retrieval - Carton		\$6.21	Cubic Foot
☐ Rush Retrieval - File from Carton		\$8.28	File
☐ Regular Interfile - Carton		\$7.56	Each
☐ Half Day Delivery		\$54.52	Visit plus Handling Charge
☐ Rush Delivery - Business Day		\$109.02	Visit plus Handling Charge
☐ Rush Delivery - Weekends/Holidays/After Hours		\$218.05	Visit plus Handling Charge
☐ Rush Pickup - Business Day		\$109.02	Visit plus Handling Charge
☐ Archival Destruction - File from Carton		\$4.73	File plus Regular Retrieval Charge
☐ Miscellaneous Services - Labor		\$56.21	Hour
☐ Re-Boxing Charge		\$5.68	Labor plus New Carton Cost

OTHER PROGRAM FEES (see http://cic.ironmountain.com/records/glossary for service definitions)			
DESCRIPTION		EFFECTIVE PRICE	PER
☐ Administrative Fee (Summary Billing)		\$25.12	Account ID per Month
☐ Administrative Fee (Detailed Billing)		\$62.80	Account ID per Month
☐ Fuel Surcharge		*	Transportation Visit

*A Fuel Surcharge is applied monthly based upon changes in the price of diesel fuel as published by the US Department of Energy. This charge is calculated monthly and included as a percentage of transportation related service charges. The current monthly Fuel Surcharge information can be found at <http://cic.ironmountain.com/FuelSurcharge>.

Exhibit B
HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA)
Revised December 16, 2013

This Business Associate Agreement (“BAA”) supplements and is made a part of the Records Management Agreement, with an effective date of January 1, 2014 between COUNTY (referred to herein as “Covered Entity”) and Iron Mountain (referred to herein as “Business Associate”).

RECITALS

Covered Entity wishes to disclose certain information to Business Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”) (defined below).

Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Agreement in compliance with 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 (“HITECH Act”), and 45 CFR Parts 160 and 164, Subpart C (the “Security Rule”), Subpart D (the “Data Breach Notification Rule”) and Subpart E (the “Privacy Rule”) (collectively, the “HIPAA Regulations”).

As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Covered Entity to enter into a contract containing specific requirements with Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (C.F.R.) and contained in this BAA.

In consideration of the mutual promises below and the exchange of information pursuant to this BAA, the parties agree as follows:

1. Definitions

- a. **Breach** shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921].
- b. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103, to the extent it receives, maintains, destroys, or stores PHI in providing services to Covered Entity.
- c. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- d. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- e. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- f. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media, and shall be limited to the PHI created by Business Associate on behalf of Covered Entity as received from or on behalf of Covered Entity pursuant to the Agreement.

- g. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.
- h. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- i. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- j. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
- k. **Protected Information** shall mean PHI provided by Covered Entity to Business Associate or created or received by Business Associate on Covered Entity's behalf.
- l. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- m. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).

2. Obligations of Business Associate

- a. **Permitted Uses.** Business Associate shall not use Protected Information except for the purpose of performing Business Associate's obligations under the Agreement and as permitted under the Agreement and this BAA. Further, Business Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by Covered Entity. However, Business Associate may use Protected Information (i) for the proper management and administration of Business Associate, or (ii) to carry out the legal responsibilities of Business Associate.
- b. **Permitted Disclosures.** Business Associate shall not disclose Protected Information except for the purpose of performing Business Associate's obligations under the Agreement and as permitted under the Agreement and this BAA. Business Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by Covered Entity. However, Business Associate may disclose Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; or (iii) as required by law. If Business Associate discloses Protected Information to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant a written agreement requiring such third party to provide privacy and security protections to such PHI at least as stringent as those required of Business Associate through the BAA, , and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to promptly notify Business Associate of any breaches of confidentiality of the Protected Information, to the extent the third party has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].

- c. **Prohibited Uses and Disclosures.** Business Associate shall not use or disclose Protected Information for fundraising or marketing purposes. Business Associate shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a)]. Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. section 17935(d)(2); however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Agreement. Business Associate shall take reasonable steps to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement, the BAA, or the HIPAA Regulations.
- d. **Appropriate Safeguards.** Business Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Agreement or this BAA, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312 as they apply to and required of a business associate. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316 [42 U.S.C. Section 17931], as those policies and procedures are consistent with and as required of a business associate by HIPAA Rules.
- e. **Reporting of Improper Access, Use or Disclosure.** Business Associate shall report to Covered Entity in writing of any access, use or disclosure of Protected Information not permitted by the Agreement and this BAA, and any Breach of Unsecured PHI, as required by the Data Breach Notification Rule, of which it becomes aware without unreasonable delay and in no case later than 60 calendar days after discovery [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].
- f. **Business Associate's Subcontractors and Agents.** Business Associate shall ensure that any agents and subcontractors to whom it provides Protected Information, agree in writing requiring such agent or subcontractor to provide privacy and security protections to such PHI at least as stringent as those required of Business Associate, through this BAA.
- g. **Access to Protected Information.** To the extent that the Covered Entity keeps a designated record set then Business Associate shall make Protected Information maintained by Business Associate or its agents or subcontractors in Designated Record Sets available to Covered Entity for inspection and copying within five (5) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under state law [Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)].
- h. **Amendment of PHI for Business Associate who is Required to Maintain a Record Set.** If Business Associate is required to maintain a designated record set on behalf of the Covered Entity the Business Associate shall within ten (10) days of receipt of a request from Covered Entity for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Business Associate or its agents or subcontractors shall make such Protected Information available to Covered Entity for amendment in accordance with the terms and conditions of the Agreement. If any individual requests an amendment of Protected Information directly from Business Associate or its agents or subcontractors, Business Associate must notify Covered Entity in writing within five (5) days of the request. Any approval or denial of

amendment of Protected Information maintained by Business Associate or its agents or subcontractors shall be the responsibility of Covered Entity [45 C.F.R. Section 164.504(e)(2)(ii)(F)].

- i. **Accounting Rights.** Within ten (10) days of notice by Covered Entity of a request for an accounting of disclosures of Protected Information, Business Associate and its agents or subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by Covered Entity. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to the request. In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall within five (5) days of a request forward it to Covered Entity in writing. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any Protected Information except as set forth in Sections 2.b. of this BAA [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528]. The provisions of this subparagraph shall survive the termination of this Agreement.
- j. **Governmental Access to Records.** Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to Covered Entity and to the Secretary of the U.S. Department of Health and Human Services (Secretary) for purposes of determining Business Associate's compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(H)]. Business Associate shall provide to Covered Entity a copy of any Protected Information that Business Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- k. **Minimum Necessary.** Business Associate (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)(3)]. Business Associate understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- l. **Data Ownership.** Business Associate acknowledges that Business Associate has no ownership rights with respect to the Protected Information.
- m. **Business Associate's Insurance.** Business Associate represents and warrants that it purchases commercial insurance to cover its exposure for any claims, damages or losses arising as a result of a breach of the terms of this BAA.
- n. **Notification of Possible Breach.** During the term of the Agreement, Business Associate shall notify Covered Entity within seventy-two (72) hours of any suspected or actual breach of security, or any access, use or disclosure of Protected Information not permitted by the Agreement or this BAA or unauthorized use or disclosure of PHI of which Business Associate becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by federal and state laws and regulations applicable to business associates. [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]
- o. **Breach Pattern or Practice by Covered Entity.** Pursuant to 42 U.S.C. Section 17934(b), if the Business Associate knows of a pattern of activity or practice of the Covered Entity that constitutes a material breach or violation of the Covered Entity's obligations under the Agreement or this BAA or other arrangement, the

Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the Business Associate must terminate the Agreement or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary. Business Associate shall provide written notice to Covered Entity of any pattern of activity or practice of the Covered Entity that Business Associate believes constitutes a material breach or violation of the Covered Entity's obligations under the Agreement or this BAA or other arrangement within five (5) days of discovery and shall meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

- p. **Audits, Inspection and Enforcement.** Within ten (10) days of a written request by Covered Entity, Business Associate and its agents or subcontractors shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this BAA for the purpose of determining whether Business Associate has complied with this BAA; provided, however, that (i) Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with this BAA, nor does Covered Entity's (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity's enforcement rights under the Agreement or this BAA, Business Associate shall notify Covered Entity within ten (10) days of learning that Business Associate has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

3. Obligations of Covered Entity.

- a. Covered Entity shall not request Business Associate to Use or Disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity or Business Associate. Covered Entity shall not direct Business Associate to act in a manner that would not be compliant with the HIPAA Rules.
- b. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI.
- c. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to Use or Disclose PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.
- d. Covered Entity shall notify Business Associate in writing of any restriction to the Use or Disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.
- e. Covered Entity agrees that it will respond to a Covered Entity request for an accounting of disclosures of electronic health records under 45 CFR §164.528 in accordance with Section 13405(c)(3)(A) of the HITECH Act.

4. Term Termination

- a. The Term of this BAA shall commence as of the effective date of the Agreement above and shall terminate upon the later to occur of (i) the expiration of the Agreement, or (ii) when all PHI provided by Covered Entity

to Business Associate is destroyed or returned to Covered Entity, or (iii) if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions of Section 4(b)

- b. **Material Breach.** A material breach by Business Associate of any provision of this BAA, as determined by Covered Entity, shall constitute a material breach of the Agreement and shall provide grounds for termination of the Agreement, in accordance with the terms of the Agreement [45 C.F.R. Section 164.504(e)(2)(iii)].
- c. **Judicial or Administrative Proceedings.** Covered Entity may terminate the Agreement, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- d. **Effect of Termination.** Upon termination of the Agreement for any reason, Business Associate shall, at the option of Covered Entity, return or destroy all Protected Information that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by Covered Entity, Business Associate shall continue to extend the protections of Section 2 of this BAA to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 C.F.R. Section 164.504(e)(ii)(2)(I)]. If Covered Entity elects destruction of the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.

5. Indemnification

If Business Associate fails to adhere to any of the privacy, confidentiality, and/or data security provisions set forth in this BAA or if there is a Breach of PHI in Business Associate's possession and, as a result, PHI or any other confidential information is unlawfully accessed, used or disclosed, Business Associate agrees to reimburse Covered Entity for any and all costs, direct or indirect, incurred by Covered Entity associated with any Breach notification obligations as required by law. Business Associate also agrees to pay for any and all fines and/or administrative penalties imposed for such unauthorized access, use or disclosure of confidential information or for delayed reporting if it fails to notify the Covered Entity of the Breach as required by this BAA

6. Disclaimer

Covered Entity makes no warranty or representation that compliance by Business Associate with this BAA, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

7. Certification

To the extent that Covered Entity determines that such examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA relating to certification of its security practices, Covered Entity or its authorized agents or contractors, may, at Covered Entity's expense, examine Business Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to Covered Entity the extent to which Business Associate's security safeguards comply with HIPAA, the HITECH Act, the HIPAA Regulations or this

BAA. The certification rights contained in this Section 7 are subject to the following restrictions: Covered Entity must provide at least ten (10) business days' advance notice; Covered Entity may not view materials or information pertaining to other customers of Business Associate; Business Associate will not disclose information related to its proprietary security systems; all third-parties must sign Business Associate's standard confidentiality agreement; Business Associate reserves the right to refuse access to any person who is or who represents a competitor of Business Associate; Covered Entity agrees to comply with Business Associate's safety and security policies at all times while on Business Associate's premises.

8. Amendment to Comply with Law

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Agreement or this BAA may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this BAA embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. Covered Entity may terminate the Agreement upon sixty (60) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend the Agreement or this BAA when requested by Covered Entity pursuant to this Section or (ii) Business Associate does not enter into an amendment to the Agreement or this BAA providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

9. Assistance in Litigation of Administrative Proceedings

Business Associate shall use reasonable efforts to make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the Agreement or this BAA, available to Covered Entity, at Covered Entity's cost and as it relates to provision of services by Business Associate, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is named adverse party.

10. No Third-Party Beneficiaries

Nothing express or implied in the Agreement or this BAA is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

11. Effect on Agreement

Except as specifically required to implement the purposes of this BAA, or to the extent inconsistent with this BAA, all other terms of the Agreement shall remain in force and effect.

12. Entire Agreement of the Parties

This BAA supersedes any and all prior and contemporaneous business associate agreements between the parties and constitutes the final and entire agreement between the parties hereto with respect to the subject matter hereof. Covered Entity and Business Associate acknowledge that no representations, inducements, promises, or agreements, oral or otherwise, with respect to the subject matter hereof, have been made by either party, or by anyone acting on behalf of either party, which are not embodied herein. No other agreement, statement or promise, with respect to the subject matter hereof, not contained in this BAA shall be valid or binding.

13. Interpretation

The provisions of this BAA shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this BAA. This BAA and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.