

#### RALPH M. TERRAZAS

February 1, 2017

BOARD OF FIRE COMMISSIONERS FILE NO. 17-021

TO:

**Board of Fire Commissioners** 

FROM:

Ralph M. Terrazas, Fire Chief

SUBJECT:

FIRST AMENDED AND RESTATED AGREEMENT WITH STORETRIEVE, LLC (C-127646) FOR DOCUMENT DESTRUCTION SERVICES

FINAL ACTION: Approved Denied	Approved w/Corrections Received & Filed	Withdrawn Other
-------------------------------	--	--------------------

#### SUMMARY

On June 15, 2016 the Los Angeles Fire Department (LAFD) entered into Agreement C-127646 and Business Associate Agreement (BAA), with Storetrieve, LLC for document destruction services of Patient Care Records (PCRs) and other documents containing patient Protected Health Information (PHI). This Agreement provided a six month term with maximum compensation of \$12,000.

The LAFD now desires this First Amended and Restated Agreement to extend the term of the Agreement through June 14, 2019, increase the maximum compensation amount from \$12,000 to \$25,000, and update the BAA covering compliance with privacy and security rules required under the Health Insurance Portability and Accountability Act of 1996.

#### **RECOMMENDATIONS**

That the Board:

Approve, and transmit to the Mayor in accordance with Executive Directive 3, the First Amended and Restated Agreement with Storetrieve, LLC for document destruction services.

#### FISCAL IMPACT STATEMENT

The Los Angeles Fire Department has identified funds in FY 2016-17 Contractual Services account to cover expenses related to this Agreement.

Board report prepared by Stewart Young, Management Analyst II, Administrative Services Bureau.

Attachment

# FIRST AMENDED AND RESTATED AGREEMENT FOR C-127646 BETWEEN THE CITY OF LOS ANGELES AND STORETRIEVE, LLC

**This First Amended and Restated Agreement** is made and entered into by and between the City of Los Angeles, a municipal corporation (hereinafter referred to as the "CITY"), by and through the Los Angeles Fire Department (hereinafter referred to as the "LAFD"), and Storetrieve, LLC (hereinafter referred to as the "CONTRACTOR") with reference to the following:

WHEREAS, the CITY is required by Federal law, in accordance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), to destroy paper Patient Care Records ("PCRs") and other documents containing Protected Health Information ("PHI") in a manner that renders the final product as unreadable and unrecoverable; and

**WHEREAS**, the LAFD, in conjunction with the Office of the City Clerk, are responsible for the retention and eventual destruction of records, some of which include PHI; and

**WHEREAS**, the LAFD held an informal comprehensive process by contacting three (3) local firms to obtain the best responsible price to complete the destruction of no less than 1200 boxes of obsolete records; and

**WHEREAS,** the LAFD identified Storetrieve, LLC, as a qualified contractor, who possesses the technical expertise with both document destruction services and HIPAA compliance; and

WHEREAS, the services to be provided are of a technical, temporary and occasional nature for which competitive bidding under Charter section 371(e)(2) would neither be advantageous nor in the CITY's best interests: and

WHEREAS, the LAFD engaged CONTRACTOR to render document destruction services as set forth in this Agreement for compliance with HIPAA regulations; and

**WHEREAS**, on June 15, 2016, the LAFD entered into Agreement C-127646 with CONTRACTOR for a six (6) month term and a maximum compensation amount of \$12,000; and

**WHEREAS**, the LAFD desires in this First Amended and Restated Agreement to extend the term of the Agreement thirty (30) months to June 14, 2019, increase the maximum compensation from \$12,000 to \$25,000 and reflect updates to the Business Associate Agreement ("BAA"); and

NOW THEREFORE, the parties hereby covenant and agree as follows:

#### 1. TERM

The term of this Agreement shall be from June 15, 2016 to June 14, 2019, unless earlier terminated as provided herein. CONTRACTOR shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the services covered herein.

#### 2. SCOPE OF SERVICES

The CONTRACTOR will periodically, at the direction of the LAFD: pick-up, transport, and destroy records retention boxes of obsolete PCRs and Billing/Accounting Records containing PHI as outlined in the quote, dated October 17, 2016, provided by CONTRACTOR and attached hereto as Exhibit A.

#### 3. RESPONSIBILITIES OF CONTRACTOR

- A. CONTRACTOR will pick-up, provide secure transport, destroy, and dispose of materials identified by LAFD, in accordance with HIPAA regulations, 45 CFR 164.308(b), 164.314(a), 164.502(e), and 164.504(e).
- B. CONTRACTOR shall notify LAFD of any materials lost or not destroyed in accordance with the BAA incorporated herein as Exhibit C.
- C. CONTRACTOR shall inform LAFD of its policies regarding the condition the materials must be in, in order for CONTRACTOR to receive the materials from LAFD.
- D. CONTRACTOR must adhere to the National Association of Information Destruction ("NAID") standards in the destruction of all documents and shall provide a certification of document destruction to the LAFD. The certification of document destruction report must include, but is not limited to, the following:
  - (1) count of materials received from LAFD
  - (2) count of materials received at CONTRACTOR'S facility
  - (3) count of materials destroyed
  - (4) date of destruction
  - (5) method of destruction
  - (6) certificate of destruction

#### 4. RECORDS

CONTRACTOR shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable.

CONTRACTOR shall allow a representative of LAFD during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. CONTRACTOR shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

#### 5. COMPENSATION AND PAYMENTS

#### A. Compensation

The total compensation of this Agreement shall not exceed Twenty-Five Thousand Dollars (\$25,000) without authorized written approval of the Fire Chief. CONTRACTOR shall submit to LAFD an itemized statement(s) which detail the work completed by CONTRACTOR consistent with Exhibit A.

#### B. Invoices

The City will make payment to the Contractor for the services performed after the receipt and approval of the invoices by the City's Representative. The City will not unreasonably withhold approval of invoices. In the event any invoice is not approved, the City's Representative will immediately send a notice to the Contractor setting forth therein the reason(s) said invoice was not approved. Upon receipt of such notice, the Contractor may re-invoice the City for the accepted portion of the invoice or cure the defects identified in the City Representative's notice. The City will pay the revised invoice as soon as practicable after its submission. If the City's Representative contests all or a portion of an invoice, the City's Representative and the Contractor will use their best efforts to resolve the disputed portion or portions of the invoice.

Invoices must include the following information:

- (1) name and address of company or firm
- (2) name and address of the LAFD
- (3) date of the invoice and period covered
- (4) reference to contract number

- (5) description of completed task and amount due for the task
- (6) payment terms, total due, and due date
- (7) certification by a duly authorized officer
- (8) discounts and terms
- (9) remittance address (if different from company address)
- C. Reimbursement for Expenses.

CONTRACTOR shall not be reimbursed for any additional expenses, unless authorized in writing by the Fire Chief.

#### 6. TERMINATION OF AGREEMENT

#### A. Grounds for Termination

LAFD may, by written notice to CONTRACTOR, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to CONTRACTOR of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination, Upon termination, CONTRACTOR shall be compensated only for those services which have been adequately rendered to LAFD, and CONTRACTOR shall be entitled to no further compensation. CONTRACTOR may not terminate this Agreement except for cause.

#### B. Effect of Termination

If this Agreement is terminated as provided herein, LAFD may require CONTRACTOR to provide all finished or unfinished Documents and Data and other information of any kind prepared by CONTRACTOR in connection with the performance of Services under this Agreement. CONTRACTOR shall be required to provide such document and other information within fifteen (15) days of the request.

#### C. Survival.

In the event this Agreement is terminated in whole or in part as provided herein, LAFD may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

#### 7. OWNERSHIP OF MATERIALS AND CONFIDENTIALITY

#### A. Documents

All documents transferred to the CONTRACTOR are the sole property of the LAFD, up to the point at which the documents are destroyed and useless.

#### B. Subcontractors

CONTRACTOR shall not utilize any Subcontractors in the performance of this Agreement without the written permission of the Fire Chief.

#### C. Confidentiality

All documents provided to CONTRACTOR in connection with the performance of this Agreement, shall be held confidential by CONTRACTOR. All documents shall not be copied, saved, used, transmitted, shared, delivered to another party, or in any manner be reproduced or retained by CONTRACTOR for any purposes other than the performance of the Services. CONTRACTOR, in accordance with HIPAA, shall not disclose, cause, or facilitate the disclosure of the documents to any person or entity not connected with the performance of this Agreement.

#### 8. PARTIES' REPRESENTATIVES

#### A. CONTRACTOR's Representative

Patrick J. McKillop, Executive Vice President Storetrieve, LLC 1150 South Taylor Avenue Montebello, California 90640 (800) 541-2480 (323) 726-9971 Fax

#### B. LAFD's Representative

Alexis Cameron, EMS Contracts and Billing Manager 200 North Main Street, Room 1660 Los Angeles, California, 90012 (213) 978-3834

#### 9. NOTICES

All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

#### A. CONTRACTOR:

Storetrieve LLC Patrick J. McKillop, Executive Vice President 1150 South Taylor Avenue Montebello, California 90640

#### B. LAFD:

Los Angeles Fire Department Attn: Alexis Cameron, EMS Contracts & Billing Manager 200 North Main Street, Room 1660 Los Angeles, California 90012

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

#### 10. CITY'S STANDARD PROVISIONS FOR CONTRACTS

With the exception of PCSs 27, 28 and 29, CONTRACTOR, by entering into this agreement with the LAFD agrees to abide by the City Standard Provisions (Rev. 03/09), attached hereto and incorporated herein as Exhibit B.

#### 11. BUSINESS ASSOCIATE AGREEMENT

CONTRACTOR, with respect to documents containing PHI, by entering into this agreement with the LAFD agrees to abide by the BAA attached hereto as EXHIBIT C. The BAA shall survive the expiration and termination of this Agreement.

#### 12. NON-DISCRIMINATION

Notwithstanding any other provision of any ordinance of the CITY to the contrary, every Agreement which is let, awarded or entered into with or on behalf of the CITY, shall contain by insertion therein a provision obligating the CONTRACTOR in the performance of such Agreement not to discriminate in his or her Employment Practices against any employee or applicant for employment because of the applicant's race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition. All CONTRACTORs who enter into such Agreements with the CITY shall include a like provision in all subcontracts awarded for work to be performed under the Agreement with the CITY. Failure of the CONTRACTOR to comply with this requirement or to obtain the compliance of its Subcontractors with such obligations shall subject the

CONTRACTOR to the imposition of any and all sanctions allowed by law, including, but not limited to, termination of the CONTRACTOR's Agreement with the CITY. Nothing contained in this AGREEMENT shall be construed in any manner so as to require or permit any act which is prohibited by law.

#### 13. EQUAL EMPLOYMENT PRACTICES

Every non-construction and construction Agreement with, or on behalf of, the CITY for which the consideration is \$1,000 or more shall contain the following provisions, which shall be designated as the EQUAL EMPLOYMENT PRACTICES provision of such Agreement:

- A. During the performance of this AGREEMENT, the CONTRACTOR agrees and represents that it will provide Equal Employment Practices and the CONTRACTOR and each Subcontractor hereunder will ensure that in his or her Employment Practices persons are employed and employees are treated equally and without regard to, or because of, race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
  - (1) This provision applies to work or service performed or materials manufactured or assembled in the United States.
  - (2) Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
  - (3) The CONTRACTOR agrees to post a copy of Paragraph A, hereof, in conspicuous places at its place of business available to employees and applicants for employment.
- B. The CONTRACTOR will, in all solicitations or advertisements for employees placed by, or on behalf of, the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
- C. At the request of the Awarding Authority or the Designated Administrative Agency ("DAA"), the CONTRACTOR shall certify in the specified format that he or she has not discriminated in the performance of CITY Agreements against any employee or applicant for employment on the basis or because of race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
- D. The CONTRACTOR shall permit access to, and may be required to provide certified copies of, all of his or her records pertaining to employment and to employment practices by the Awarding Authority or the DAA for the purpose of

- investigation to ascertain compliance with the Equal Employment Practices provisions of CITY Agreements. Upon request, the CONTRACTOR shall provide evidence that he or she has or will comply therewith.
- E. The failure of any CONTRACTOR to comply with the Equal Employment Practices provisions of this AGREEMENT may be deemed to be a material breach of CITY Agreements. The failure shall only be established upon a finding to that effect by the Awarding Authority, on the basis of its own investigation or that of the DAA. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice, and an opportunity to be heard, has been given to the CONTRACTOR.
- F. Upon a finding duly made that the CONTRACTOR has failed to comply with the Equal Employment Practices provisions of a CITY Agreement, the Agreement may be forthwith cancelled, terminated or suspended, in whole or in part, by the Awarding Authority, and all monies due or to become due hereunder may be forwarded to, and retained by, the CITY. In addition thereto, the failure to comply may be the basis for a determination by the Awarding Authority or the DAA that the said CONTRACTOR is a non-responsible bidder or proposer pursuant to the provisions of Section 10.40 of this Code. In the event of such a determination, the CONTRACTOR shall be disqualified from being awarded an Agreement with the CITY for a period of two (2) years, or until the CONTRACTOR shall establish and carry out a program in conformance with the provisions hereof.
- G. Notwithstanding any other provision of this AGREEMENT, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- H. The Board of Public Works shall promulgate rules and regulations through the DAA, and provide necessary forms and required language to the Awarding Authorities to be included in CITY Request for Bids or Request for Proposal packages or in supplier registration requirements for the implementation of the Equal Employment Practices provisions of this AGREEMENT, and such rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive orders. No other rules, regulations or forms may be used by an Awarding Authority of the CITY to accomplish the Agreement compliance program.
- I. Nothing contained in this AGREEMENT shall be construed in any manner so as to require or permit any act which is prohibited by law.
- J. By affixing its signature on an Agreement that is subject to this article, the CONTRACTOR shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of CITY Agreements.

- K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with employment practices, including, but not limited to:
  - (1) hiring practices;
  - (2) apprenticeships where approved programs are functioning and other on-thejob training for non-apprenticeable occupations;
  - (3) training and promotional opportunities; and
  - (4) reasonable accommodations for persons with disabilities.
- L. All CONTRACTORs subject to the provisions of this section shall include a similar provision in all subcontracts awarded for work to be performed under the Agreement with the CITY, and shall impose the same obligations including, but not limited to, filing and reporting obligations, on the Subcontractors as are applicable to the CONTRACTOR. Subcontracts shall follow the same thresholds specified in Section 10.8.1.1 of CITY Ordinance No.184292. Failure of the CONTRACTOR to comply with this requirement or to obtain the compliance of its Subcontractors with all such obligations shall subject the CONTRACTOR to the imposition of any and all sanctions allowed by law, including, but not limited to, termination of the CONTRACTOR's Agreement with the CITY.

#### 14. AFFIRMATIVE ACTION PROGRAM

Every non-construction and construction Contract with, or on behalf of, the CITY for which the consideration is \$25,000 or more shall contain the following provisions which shall be designated as the AFFIRMATIVE ACTION PROGRAM provisions of such Agreement:

- A. During the performance of a CITY Agreement, the CONTRACTOR certifies and represents that the CONTRACTOR and each Subcontractor hereunder will adhere to an Affirmative Action Program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.
  - (1) This section applies to work or services performed or materials manufactured or assembled in the United States.
  - (2) Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

- (3) The CONTRACTOR shall post a copy of Paragraph A, hereof, in conspicuous places at its place of business available to employees and applicants for employment.
- B. The CONTRACTOR shall, in all solicitations or advertisements for employees placed, by or on behalf of, the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.
- C. At the request of the Awarding Authority or the DAA, the CONTRACTOR shall certify on an electronic or hard copy form to be supplied, that the CONTRACTOR has not discriminated in the performance of CITY Agreements against any employee or applicant for employment on the basis or because of race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.
- D. The CONTRACTOR shall permit access to, and may be required to provide certified copies of, all of its records pertaining to employment and to its employment practices by the Awarding Authority or the DAA for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY Agreements and, upon request, to provide evidence that it has or will comply therewith.
- E. The failure of any CONTRACTOR to comply with the Affirmative Action Program provisions of CITY Contracts may be deemed to be a material breach of a CITY Agreement. The failure shall only be established upon a finding to that effect by the Awarding Authority, on the basis of its own investigation or that of the DAA. No finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the CONTRACTOR.
- F. Upon a finding duly made that the CONTRACTOR has breached the Affirmative Action Program provisions of a CITY Agreement, the Agreement may be forthwith cancelled, terminated or suspended, in whole or in part, by the Awarding Authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, the breach may be the basis for a determination by the Awarding Authority or the Board of Public Works that the CONTRACTOR is a non-responsible bidder or proposer pursuant to the provisions of Section 10.40 of this Code. In the event of such determination, the CONTRACTOR shall be disqualified from being awarded an Agreement with the CITY for a period of two (2) years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the CITY, or any court of competent jurisdiction, that the CONTRACTOR has been guilty of a willful

violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a CITY Agreement, there may be deducted from the amount payable to the CONTRACTOR by the CITY under the Agreement, a penalty of ten dollars (\$10.00) for each person for each calendar day on which the person was discriminated against in violation of the provisions of a CITY Agreement.

- H. Notwithstanding any other provisions of a CITY Agreement, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- I. The Public Works Board of Commissioners shall promulgate rules and regulations through the DAA and provide to the Awarding Authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of CITY Agreements, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an Awarding Authority of the CITY to accomplish this AGREEMENT compliance program.
- J. Nothing contained in CITY Agreements shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. By affixing its signature to an Agreement that is subject to this article, the CONTRACTOR shall agree to adhere to the provisions in this article for the duration of the Agreement. The Awarding Authority may also require CONTRACTORs and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Program.
  - (1) The CONTRACTOR certifies and agrees to immediately implement good faith effort measures to recruit and employ minority, women and other potential employees in a non-discriminatory manner including, but not limited to, the following actions as appropriate and available to the CONTRACTOR's field of work. The CONTRACTOR shall:
    - (a) Recruit and make efforts to obtain employees through:
      - Advertising employment opportunities in minority and other community news media or other publications;
      - (ii) Notifying minority, women and other community organizations of employment opportunities;
      - (iii) Maintaining contact with schools with diverse populations of students to notify them of employment opportunities;

- (iv) Encouraging existing employees, including minorities and women, to refer their friends and relatives;
- (v) Promoting after school and vacation employment opportunities for minority, women and other youth;
- (vi) Validating all job specifications, selection requirements, tests, etc.;
- (vii) Maintaining a file of the names and addresses of each worker referred to the CONTRACTOR and what action was taken concerning the worker; and
- (viii) Notifying the appropriate Awarding Authority and the DAA in writing when a union, with whom the CONTRACTOR has a collective bargaining agreement, has failed to refer a minority, woman or other worker.
- (b) Continually evaluate personnel practices to assure that hiring, upgrading, promotions, transfers, demotions and layoffs are made in a non-discriminatory manner so as to achieve and maintain a diverse work force.
- (c) Utilize training programs and assist minority, women and other employees in locating, qualifying for and engaging in the training programs to enhance their skills and advancement.
- (d) Secure cooperation or compliance from the labor referral agency to the CONTRACTOR's contractual Affirmative Action Program obligations.
- (e) Establish a person at the management level of the CONTRACTOR to be the Equal Employment Practices officer. Such individual shall have the authority to disseminate and enforce the CONTRACTOR's Equal Employment and Affirmative Action Program policies.
- (f) Maintain records as are necessary to determine compliance with Equal Employment Practices and Affirmative Action Program obligations and make the records available to CITY, State and Federal authorities upon request.
- (g) Establish written company policies, rules and procedures which shall be encompassed in a company-wide Affirmative Action Program for all its operations and Agreements. The policies shall be provided to all employees, Subcontractors, vendors, unions and all others with whom the CONTRACTOR may become involved in fulfilling any of its Agreements.

- (h) Document its good faith efforts to correct any deficiencies when problems are experienced by the CONTRACTOR in complying with its obligations pursuant to this article. The CONTRACTOR shall state:
  - (i) What steps were taken, how and on what date;
  - (ii) To whom those efforts were directed:
  - (iii) The responses received, from whom and when;
  - (iv) What other steps were taken or will be taken to comply and when; and
  - (v) Why the CONTRACTOR has been or will be unable to comply.
- (2) Every Agreement of \$25,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall also comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
- L. The Affirmative Action Program required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Awarding Authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
  - Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
  - (2) Classroom preparation for the job when not apprenticeable;
  - (3) Pre-apprenticeship education and preparation;
  - (4) Upgrading training and opportunities;
  - (5) Encouraging the use of CONTRACTORs, Subcontractors and suppliers of all racial and ethnic groups; provided, however, that any Agreement subject to this ordinance shall require the CONTRACTOR, Subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the CONTRACTOR's, Subcontractor's or supplier's geographical area for such work;
  - (6) The entry of qualified women, minority and all other journeymen into the industry; and
  - (7) The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.

- M. Any adjustments which may be made in the CONTRACTOR's work force to achieve the requirements of the CITY's Affirmative Action Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- N. This ordinance shall not confer upon the CITY or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by CONTRACTORs engaged in the performance of CITY Agreements.
- O. All CONTRACTORs subject to the provisions of this article shall include a similar provision in all subcontracts awarded for work to be performed under the Agreement with the CITY and shall impose the same obligations including, but not limited to, filing and reporting obligations, on the Subcontractors as are applicable to the CONTRACTOR. Failure of the CONTRACTOR to comply with this requirement or to obtain the compliance of its Subcontractors with all such obligations shall subject the CONTRACTOR to the imposition of any and all sanctions allowed by law, including, but not limited to, termination of the CONTRACTOR's Agreement with the CITY.

#### 15. FIRST SOURCE HIRING

Unless otherwise exempt in accordance with the provisions of this Ordinance, this contract is subject to the applicable provisions of the First Source Hiring Ordinance ("FSHO"), Section 10.44 et seq. of the Los Angeles Administrative Code, as amended from time to time.

CONTRACTOR shall, prior to the execution of the Agreement, provide a list of anticipated employment opportunities that CONTRACTOR estimate they will need to fill in order to perform the services under the Agreement.

CONTRACTOR further pledges that it will, during the term of the Agreement, a) At least seven (7) business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Community Development Department ("CDD"), which will refer individuals for interview; b) Interview qualified individuals referred by CDD; and c) Prior to filling any employment opportunity, the CONTRACTOR shall inform the LAFD of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who the CONTRACTOR interviewed and the reasons why referred individuals were not hired.

Any Subcontract entered into by the CONTRACTOR relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.

CONTRACTOR shall comply with all rules, regulations and policies promulgated by the DAA, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the Los Angeles Administrative Code the DAA has determined that the CONTRACTOR intentionally violated or used hiring practices for the purpose of avoiding the article, the determination must be documented in the Awarding Authority's Contractor Evaluation, required under Los Angeles Administrative Code Section 10.39 et seq., and must be documented in each of the Contractor's subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Code Section 10.40 et seq. This measure does not limit the City's authority to act under this article.

Under the provisions of Section 10.44.8 of the Los Angeles Administrative Code, the Awarding Authority shall, under appropriate circumstances, terminate this Agreement and otherwise pursue legal remedies that may be available if the DAA determines that the subject CONTRACTOR has violated provisions of the FSHO.

#### 16. MUNICIPAL LOBBYING ORDINANCE AND CHARTER SECTION 470

#### A. CEC FORM 50

Certain contractors agree to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance if those contractors qualify as a lobbying entity under Los Angeles Municipal Code §48.02. CEC Form 50 is attached hereto as Exhibit D. Agreements submitted without a completed CEC Form 50, by proposers that qualify as a lobbying entity under Los Angeles Municipal Code §48.02 shall be deemed nonresponsive.

#### B. CEC FORM 55

Campaign Contributions - Per City Charter Sections 470(c) (12) the CONTRACTOR is subject to Charter section 470(c) (12) and related ordinances. As a result, the CONTRACTOR may not make campaign contributions to and/or engage in fundraising for certain elected City officials or candidates during the proposal process or for twelve (12) months after the contract is signed. The CONTRACTOR'S principals and subcontractors performing \$100,000.00 or more in work on the contract, as well as the principals of those subcontractors, are also subject to the same limitations on campaign contributions and fundraising.

CEC Form 55 requires the CONTRACTOR to identify with their principals, their subcontractors performing \$100,000 or more in work on the Agreement, and the principals of those subcontractors. The CONTRACTOR must also notify their

principals and subcontractors in writing of the restrictions and include the notice in Agreements with subcontractors. CEC Form 55 is attached hereto as Exhibit E. Agreements submitted without a completed CEC Form 55 shall be considered nonresponsive. Bidders who fail to comply with City law may be subject to penalties, termination of contract, and debarment. Additional information regarding these restrictions and requirements may be obtained from the City Ethics Commission at (213) 978-1960 or ethics.lacity.org

#### 17. CALIFORNIA IRAN CONTRACTING ACT OF 2010

The California Legislature adopted the Iran Contracting Act of 2010 to respond to policies of Iran in a uniform fashion (PCC §2201(q)). The Iran Contracting Act prohibits contractors engaged in investment activities in Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million dollars (\$1,000,000) or more (PCC § 2203(a)). A contractor who "engages in investment activities in Iran" is defined as either:

- A. A contractor providing goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including provision of oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
- B. A contractor that is a financial institution (as that term is defined in 50 U.S.C. § 1701) that extends twenty million dollars (\$20,000,000) or more in credit to another person, for forty-five (45) days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services ("DGS") pursuant to PCC § 2203(b) as a person engaging in the investment activities in Iran.

The contractor shall certify that at the time of submitting a bid for new contract or renewal of an existing contract, the contractor is not identified on the DGS list of ineligible businesses or persons and that the bidder is not engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three (3) year ineligibility to bid on contracts (PCC § 2205).

To comply with the Iran Contracting Act of 2010, CONTRACTOR shall complete and return the Iran Contracting Act of 2010 Compliance Affidavit attached herein as Exhibit F.

#### 18. ENTIRE AGREEMENT

This Agreement contains eighteen (18) pages, including the signature page, and with six (6) additional exhibits, together which constitutes the entire Agreement between the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by written amendment signed by both parties.

#### List of Exhibits:

EXHIBIT A – Storetrieve Pricing Schedule

EXHIBIT B – Standard Provisions for City Contracts (3/09)

EXHIBIT C - Business Associate Agreement

EXHIBIT D - CEC Form 50 EXHIBIT E - CEC Form 55

EXHIBIT F - Iran Contracting Act of 2010 Affidavit

(Signature Page to Follow)

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives.

DATE:	For: THE CITY OF LOS ANGELES
	By:
DATE:	For: STORETRIEVE, LLC.
	By:PATRICK J. McKILLOP Executive Vice President, Sales
Approved as to Form: MICHAEL N. FEUER, City Attorney	ATTEST: HOLLY L. WOLCOTT City Clark
By: Marcia Gonzales-Kimbrough Deputy City Attorney	By: Deputy City Clerk
DATE:	DATE:



#### **PRICING**

#### Destruction/HIPAA-compliant For LAFD

Storetrieve, LLC appreciates the opportunity to present you with our proposal to securely dispose of your 1200 records retention boxes located at the CRC at Piper Tech.

Storetrieve has been servicing our customers' information management needs in Southern California for over 25 years, and is a Certified Local Business with City of Los Angeles being headquartered out of 1150 South Taylor Avenue, Montebello, CA 90640.

The cost of goods requested quote:

Line Items	Unit	Cost
2. Cost of Goods (per unit & total cost)	See below	See below
3. Services – secure destruction/shredding	BX	\$1.50
4. Labor	Hr.	\$0.00
5. Freight	Trip	\$0.00
6. Shipping	Trip	\$0.00
7. Handling Charges	BX	\$1.50
8. Tax	N/A	
9. Any other applies charges	None	
10. Total Cost of items 2 thru 9	ВХ	\$3.00
11. Expiration	TBD	

Again, thank you for the opportunity to be of service to you and LAFD.

Transce a. Malla

Sincerely,

Francesca

## BUSINESS ASSOCIATE AGREEMENT BETWEEN THE LOS ANGELES FIRE DEPARTMENT AND

STORETRIEVE, LLC.

TO COMPLY WITH THE PRIVACY AND SECURITY RULES REQUIRED UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) OF 1996

This Business Associate Agreement (the "Agreement"), is made as of the \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_, 2017, (the "Effective Date"), by and between the Los Angeles Fire Department and the Clerk's Office, Records Management Division for the City of Los Angeles (jointly "Covered Entity"), on behalf of itself and its subsidiaries and affiliates, and Storetreieve, LLC. (the "Business Associate") (collectively the "Parties") to comply with the privacy and security standards required under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), adopted by the U.S. Department of Health and Human Services and as amended January 25, 2013, [45 C.F.R. Parts 160, 162 and 164; Volume 78 Fed. Reg. No. 17, Pages 5566 through 5702, January 23, 2013] and, in order to satisfy the electronic storage requirements of the Health Information Technology for Economic and Clinical Health Act as incorporated in the American Recovery and Reinvestment Act of 2009 (hereinafter referred to as "HITECH"), and any applicable state confidentiality laws.

#### **RECITALS**

WHEREAS, Business Associate ("BA") will provide as-needed document removal and shredding services as stipulated in Contract No. C-127646, the ("Contract");

WHEREAS the Covered Entity ("CE") and BA have entered into the Contract under which the CE will need to disclose to BA certain "Protected Health Information" ("PHI") that is subject to protection under HIPAA and HITECH;

WHEREAS, HIPAA requires that CE receive adequate assurances that BA will comply with certain obligations with respect to the PHI received in the course of providing services to or on behalf of CE;

NOW THEREFORE, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### A. <u>DEFINITIONS</u>

Terms used in this Agreement, but not otherwise defined, shall have the meaning ascribed by the HIPAA Final Regulations and the HITECH Act, as amended as of January 23, 2013.

1. Breach means the acquisition, access, use, or disclosure of protected health

information in a manner not permitted under subpart E of 45 C.F.R. Part 164.

- 2. **Business Associate** ("BA") shall have the meaning ascribed in 45 C.F.R. § 160.103 and refers to Storetrieve, LLC for purposes of this Agreement.
- 3. <u>Contract</u> means Los Angeles City Contract Number C-127646 and all amendments by and between the City of Los Angeles ("City") and Storetrieve, LLC which includes performing the activities related to the secure removal and shredding of medical and other confidential records for the Covered Entity.
- 4. <u>Covered Entity</u> ("CE") means the Los Angeles Fire Department ("LAFD"), a Health Care Component of the City of Los Angeles, a Hybrid Entity.
- Designated Record Set means a group of records maintained by or for a Covered Entity that are: (i) medical records about individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record system maintained by or for a health plan; and/or (iii) used, in whole or in part, by or for the Covered Entity to make decisions about individuals. For purposes of this definition, the term "record" means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a Covered Entity.
- 6. Health Care Component ("HCC") means those portions of the Hybrid Entity that perform HIPAA-related activities. The LAFD became a HCC by the Los Angeles City Council action which adopted the recommendation of the Personnel Committee meeting on July 30, 2010 [Council File No. 10-1181] or as modified [Council File No. R3-0240; August 16, 2013].
- 7. **HITECH Act** ("HITECH") means the Health Information Technology for Economic and Clinical Health Act, which is Title XIII of the American Recovery and Reinvestment Act, and any amendments, regulations, rules and guidance issued thereto and the relevant dates for compliance.
- 8. **HIPAA Final Regulations** means 45 C.F.R. Parts 160, 162 and 164 as amended on January 23, 2013 and effective on March 23, 2013 but only to the extent it allies to a Covered Entity, Hybrid Entity and/or Business Associate.
- 9. Hybrid Entity ("HE") means, for purposes of this Agreement, the City of Los Angeles, a single legal municipal entity that is (i) a Covered Entity; (ii) whose business activities include both covered and non-covered HIPAA functions; and
  - (iii) that has designated its LAFD, along with other portions of the City of Los Angeles, as a HHC pursuant to 45 C.F.R. § 160.103.

- 10. <u>Individual</u> means the person who is the subject of the Protected Health Information as defined in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 502(g).
- 11. **Protected Health Information** ("PHI") means the Individually Identifiable Health Information ("IIHI") described in 45 C.F.R. § 160.103 that is transmitted electronically, maintained electronically, or transmitted or maintained in any other form or medium.
- 12. **Required by Law** means mandate contained in law that compels a use or disclosure of PHI under 45 C.F.R. § 164.512(a)(1) and (2).
- 13. <u>Secretary</u> means the Secretary of the Department of Health and Human Services or their designee under 45 C.F.R. § 160.103.
- 14. <u>Security Incident</u> any use or disclosure of information not provided for by this "Agreement" of which the BA becomes aware, including breaches of unsecured protected health information as defined by 45 C.F.R. § 164.402.
- 15. <u>Subcontractor</u> means a person or entity that, creates, receives, maintains or transmits protected health information on behalf of the business associate. (45 C.F.R. 160.103(3)(iii))

#### B. <u>DISCLOSURE OF PHI TO BUSINESS ASSOCIATE</u>

In connection with the services provided by BA to or on behalf of CE, described in this Agreement, CE may disclose PHI to BA for the purpose of enabling the BA to securely remove and shred medical and other confidential records eligible for destruction. These activities include maintaining document confidentiality and security throughout the document destruction process and ensuring chain-of-custody tracking of documents from the point of origin to the physical point of shredding. At no time shall BA use or disclose PHI or other related documents to any 3<sup>rd</sup> party.

BA shall comply with its obligations under this Agreement and with all obligations of a BA under HIPAA, HITECH, and other related laws and any implementing regulations, as they exist at the time this Agreement is executed and as they are amended, for so long as this Agreement is in place. Specifically, the BA will comply with all the obligations and assume the liability for failure to do so as provided for in the Final Rules reflected in the Federal Register, Vol. 78, No. 17, commencing at Page 5677, dated, January 25, 2013 which implements among other things Section 13401 of HITECH.

#### C. OBLIGATIONS OF COVERED ENTITY

1. CE shall notify BA of any limitation(s) in its Notice of Privacy Practices of Covered Entity in accordance with 45 CRF §164.520, to the extent that such

limitation may affect BA's use or disclosure of PHI.

- 2. CE shall notify BA of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI.
- 3. CE shall notify BA of any restriction to the use or disclosure of PHI that CE has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction my affect BA's use or disclosure of PHI.
- 4. CE shall not request BA to use or disclose PHI in any manner that would not be permissible under HIPAA if done by CE. [45 C.F.R. § 164.504(e)(2)(i)]
- 5. CE will make a determination as to whether a use or disclosure of PHI by BA is a Breach within the meaning of 45 C.F.R. 164.402 necessitating notification under 45 C.F.R. 164.404, 164.406 and 164.408.

#### D. <u>OBLIGATIONS OF BUSINESS ASSOCIATE</u>

BA agrees to comply with applicable federal and state privacy and security laws, specifically the provisions of the HIPAA Administrative Simplification to the extent applicable to business associates.

- 1. <u>Use and Disclosure of PHI</u>. Except as otherwise permitted by this Agreement or applicable law, BA shall not use or disclose PHI other than as permitted or required by the Agreement or as Required By Law, except as necessary to safely and securely remove and shred medical and other confidential records as described in this Agreement and the Contract to or on behalf of the CE. These activities include a review of selected records and may include the transmitting or receiving of PHI, as may be required from time to time, to other business associates or covered entities on behalf of CE. BA shall not use or disclose PHI that would violate the HIPAA Rules if used or disclosed by CE. Provided, however, BA may use and disclose PHI as necessary for the proper management and administration of BA, or to carry out its legal responsibilities. BA shall in such cases:
  - (a) Provide information to members of its workforce suing or disclosing PHI regarding the confidentiality requirements of the HIPAA Final Rules and this Agreement;
  - (b) Obtain reasonable assurances from the person or entity to whom the PHI is disclosed that: (i) the PHI will be held confidential and further used and disclosed only as Required by Law or for the purpose for which it was disclosed to the person or entity; and (ii) the person or entity will notify BA of any instances of which it is aware in which confidentiality of the PHI has been breached;

- (c) Notification to Covered Entity. Agree to notify the designated Privacy Officer of CE of any instances of which it is aware in which the PHI is used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the HIPAA Rules within 72 hours of discovery of the improper use or disclosure. The determination as to whether a use or disclosure for a purpose not provided for by this Agreement is a Breach within the meaning of 45 C.F.R. 164.402 shall be determined by the CE using the criteria determined in 45 C.F.R. 164.402 (2)(i)-(iv) after BA notifies CE of the use or disclosure of the PHI;
- (d) <u>Breach Notification.</u> BA agrees to follow 45 C.F.R.164.410 after first notifying CE of the use or disclosure not provided by this Agreement and CE makes a determination that a breach has occurred pursuant to paragraph C(5) of this Agreement; and
- (e) For purposes of the Breach Notification provision in 45 C.F.R. 164.410, BA in this Agreement is not the agent of CE.
- 2. <u>Data Aggregation</u>. In the event that BA works for more than one covered entity, BA is not permitted to use and disclose PHI for data aggregation purposes, however, only in order to analyze data for permitted health care operations, and only to the extent that such use is permitted under the HIPAA Administrative Simplification.
- 3. <u>De-identified Information</u>. BA may use and disclose de-identified health information if (i) the use is disclosed to CE in writing and permitted in writing by CE in its sole discretion and (ii) the de-identification is in compliance with 45 CFR §164.502(d), and the de-identified health information meets the standard and implementation specifications for de-identification under 45 CRF §164.514(a) and (b).
- 4. <u>Safeguards</u>. BA shall maintain appropriate safeguards to ensure that PHI is not used or disclosed other than as provided by this Agreement or as required by law. BA shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI it creates, receives, maintains, or transmits on behalf of CE.
- Minimum Necessary. BA shall attempt to ensure that all uses and disclosures of PHI which pertain to the billing or operations of the CE are subject to the principle of "minimum necessary use and disclosure," i.e., that only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure, or request is used or disclosed.

- Disclosure to Agents and Subcontractors. If BA discloses PHI received from CE, to agents, including a subcontractor, BA shall require the agent or subcontractor to agree to the same restrictions and conditions as apply to BA under this Agreement. BA shall ensure that any agent, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the PHI that it creates, receives, maintains, or transmits on behalf of the CE. BA shall be liable to CE for any acts, failures or omissions of the agent or subcontractor in providing the services as if they were BA's own acts, failures or omissions, to the extent permitted by law. BA further expressly warrants that its agents or subcontractors will be specifically advised of, and will comply in all respects with, the terms of this Agreement.
- 7. <u>Individual Rights Regarding Designated Record Sets.</u> If BA maintains a Designated Record Set on behalf of CE, BA agrees as follows:
  - (a) <u>Individual Right to Copy or Inspection</u>. BA agrees that if it maintains a Designated Record Set for CE that is not maintained by CE, it will, in the event any Individual delivers directly to BA a request for access to PHI, in order for CE to respond to such Individual, forward such request to CE in order to meet the requirements of 45 CFR §164.524(a)(1). Under the HIPAA Final Rules, CE is required to take action on such requests as soon as possible, but not later than 30 days following receipt of the request. [45 C.F.R. § 164.524(b)(2).] BA agrees to make reasonable efforts to assist CE in meeting this deadline. The information shall be provided in the form or format requested if it is readily producible in such form or format; or in summary, if the Individual has agreed in advance to accept the information in summary form. A reasonable, cost-based fee for copying health information may be charged. If CE maintains the requested records, CE, rather than BA shall permit access according to its policies and procedures implementing the HIPAA Administrative Simplification.
  - (b) <u>Individual Right to Amendment</u>. BA agrees, if it maintains PHI in a Designated Record Set, to make the Designated Record Set available to CE for amendments to PHI pursuant to 45 CRF §164.526.
  - (c) Accounting of Disclosures. BA agrees to maintain documentation of the information required to provide an accounting of disclosures of PHI in accordance with 45 CFR §164.528, and to make this information available to CE upon CE's request, in order to allow CE to respond to an Individual's request for accounting of disclosures. Under the HIPAA Final Rules, CE is required to take action on such requests as soon as possible but not later than 60 days following receipt of the request. BA agrees to use its best efforts to assist CE in meeting this deadline. Such accounting must be provided without cost to the individual or CE if it is the first accounting requested by an individual within any 12 month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if BA informs the CE in advance of the fee and is

afforded an opportunity to withdraw or modify the request. Such accounting is limited to disclosures that were made in the six (6) years prior to the request (not including disclosures prior to the compliance date of the HIPAA Administrative Simplification and shall be provided for as long as BA maintains the PHI.

- 8. <u>Internal Practices, Policies and Procedures</u>. Except as otherwise specified herein, BA shall make available its internal practices, policies and procedures relating to the use and disclosure of PHI, received from or on behalf of CE to the Secretary or his or her agents for the purpose of determining CE's compliance with the HIPAA Rules, or any other health oversight agency, or to CE. Records requested that are not protected by an applicable legal privilege will be made available in the time and manner specified by CE or the Secretary.
- 9. <u>Notice of Privacy Practices</u>. BA shall abide by the limitations of CE's Notice of which it has knowledge. Any use or disclosure permitted by this Agreement may be amended by changes to CE's Notice; provided, however, that the amended Notice shall not affect permitted uses and disclosures on which BA relied prior to receiving notice of such amended Notice.
- 10. Withdrawal of Authorization. If the use or disclosure of PHI in this Agreement is based upon an Individual's specific authorization for the use or disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, BA shall, if it has notice of such revocation, expiration, or invalidity, cease the use and disclosure of the Individual's PHI except to the extent it has relied on such use or disclosure, of if an exception under the HIPAA Administrative Simplification expressly applies.
- 11. <u>Knowledge of HIPAA Rules</u>. BA agrees to review and understand the HIPAA Rules as it applies to BA, and to comply with the applicable requirements of the HIPAA Rule, as well as any applicable amendments.
- 12. <u>Security Incident</u>. BA agrees to immediately report to the CE any security incident of which BA becomes aware within 72 hours of discovery of the security incident.

#### E. TERM AND TERMINATION

1. <u>Term.</u> The Term of this Agreement shall be effective as of the Effective Date of the Contract, and shall terminate when all of the PHI provided by CE to BA, or created or received by BA on behalf of CE, is destroyed or returned to CE, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

- 2. <u>Termination for Cause</u>. Upon CE's knowledge of a material breach by BA, CE shall either:
  - (a) Provide an opportunity for BA to cure the breach or end the violation and terminate this Agreement and the Contract if BA does not cure the breach or end the violation within the time specified by CE;
  - (b) Immediately terminate this Agreement and the Contract if BA has breached a material term of this Agreement and cure is not possible; or
  - (c) If neither termination nor cure is feasible, CE shall report the violation to the Secretary.

#### 3. Effect of Termination.

- (a) Except as provided in paragraph (b) of this section, upon termination of this Agreement, for any reason, BA shall return or destroy all PHI received from CE, or created or received by BA on behalf of CE. This provision shall apply to PHI that is in the possession of subcontractors or agents of BA. BA shall retain no copies of the PHI and shall confirm, in writing, to the CE that all PHI has been returned to the CE or destroyed and, state the method of destruction.
- (b) In the event that BA determines that returning or destroying the PHI is infeasible, BA shall provide to CE written notification of the conditions that make return or destruction infeasible. Upon discovering that return or destruction of PHI is infeasible, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as BA maintains such PHI.

#### F. <u>MISCELLANEOUS</u>

#### 1. Indemnification.

- (a) To the extent permitted by law, BA agrees to indemnify and hold harmless CE from and against all claims, demands, liabilities, judgments or causes of action of any nature for any relief, elements of recovery or damages recognized by law (including, without limitation, attorney's fees, defense costs, and equitable relief), for any damage or loss incurred by CE arising out of, resulting from, or attributable to any acts or omissions or other conduct of BA or its agents in connection with the performance of BA's or its agents' and/or subcontractor's duties under this Agreement. This indemnity shall not be construed to limit CE's rights, if any, to common law indemnity.
- (b) CE shall have the option, at its sole discretion, to employ attorneys

selected by it to defend any such action described in F(1)(a) above, the costs and expenses of which shall be the responsibility of BA. CE shall provide BA with timely notice of the existence of such proceedings and such information, documents and other cooperation as reasonably necessary to assist BA in establishing a defense to such action.

- (c) These indemnities shall survive termination of this Agreement, and CE reserves the right, at its option and expense, to participate in the defense of any suit or proceeding through counsel of its own choosing.
- 2. <u>Mitigation</u>. If BA violates this Agreement or the HIPAA Rules, BA agrees to mitigate any damage caused by such breach, and bear any such related costs.
- 3. <u>Rights of Proprietary Information</u>. CE retains any and all rights to the proprietary information, confidential information, and PHI it releases to BA.
- 4. <u>Survival</u>. The respective rights and obligations of BA under Section (Effect of Termination) of this Agreement shall survive the termination of this Agreement.
- 5. <u>Notices</u>. Any notices pertaining to this Agreement shall be given in writing and shall be deemed duly given when personally delivered to a Party or a Party's authorized representatives as listed below or sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid. A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt. All notices shall be addressed to the appropriate Party as follows:

If to Covered Entity:

Ralph Terrazas, Fire Chief Los Angeles Fire Department 200 N. Main St., Room 1800 Los Angeles, California 90012 (213) 978-3838 (213) 978-3814 Fax

And:

June Gibson, Fire Administrator Los Angeles Fire Department 200 N. Main St., Room 1630 Los Angeles, California 90012 (213) 978-3731 (213) 978-3414 Fax

And:

Holly L. Wolcott, City Clerk Office of the City Clerk 200 N. Spring Street, Room 360 Los Angeles, California 90012 (213) 978-1020 (213) 978-1027 Fax

#### And:

Todd Gaydowski, Records Management Officer Office of the City Clerk, Records Management Division 555 Ramirez St., Space 320 Los Angeles, California 90012 (213) 473-8449 (213) 473-8450 Fax

If to Business Associate:

Storetrieve, LLC. Attention: Patrick J. McKillop Executive Vice President 1150 South Taylor Avenue Montebello, California 90640 (800) 541-2480 (323) 726-9971 Fax

- 6. <u>Amendments</u>. This Agreement may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the Parties hereto. The Parties, however, agree to amend this Agreement from time to time as necessary, in order to allow CE to comply with the requirements of the HIPAA Rules.
- 7. <u>Choice of Law</u>. This Agreement and the rights and the obligations of the Parties hereunder shall be governed by and construed under the laws of the State of California, without regard to applicable conflict of laws principles.
- 8. Assignment of Rights and Delegation of Duties. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. However, neither party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding any provisions to the contrary; however, CE retains the right to assign or delegate any of its rights or obligations hereunder to any City department or office in a manner consistent with the HIPAA Rules. Assignments made in violation of this provision are null and

void.

- 9. <u>Nature of Agreement</u>. Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates, (ii) any fiduciary duty owed by one Party to another party or any of its affiliates, or (iii) a relationship of employer and employee between the Parties.
- 10. <u>No Waiver</u>. Failure or delay on the part of either Party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. No provision of this Agreement may be waived by either Party except by a writing signed by an authorized representative of the Party making the waiver.
- 11. Equitable Relief. Any disclosure of misappropriation of PHI by BA in violation of this Agreement will cause CE irreparable harm, the amount of which may be difficult to ascertain. BA therefore agrees that CE shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining BA from any such further disclosure or breach, and for such other relief as CE shall deem appropriate. Such rights are in addition to any other remedies available to CE at law or in equity. BA expressly waives the defense that a remedy in damages will be adequate, and further waives any requirement in an action for specific performance or injunction for the posting of a bond by CE.
- 12. <u>Severability</u>. The provisions of this Agreement shall be severable, and if any provision of this Agreement shall be held or declared to be illegal, invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.
- 13. <u>No Third Party Beneficiaries</u>. Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not party to this Agreement nor imposing any obligations on either Party hereto to persons not a party to this Agreement.
- 14. <u>Headings</u>. The descriptive headings of the articles, sections, subsections of this Agreement are inserted for convenience only, do not constitute a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.
- 15. <u>Interpretation</u>. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits CE to comply with the HIPAA rules and any applicable state confidentiality laws. The provisions of this Agreement shall prevail over the provisions of any other agreement that exists between the Parties that may conflict with, or appear inconsistent with, any provision of this Agreement or the HIPAA Rules.

### BUSINESS ASSOCIATE AGREEMENT Page 12 of 13

16. <u>Regulatory References</u>. A citation in this Agreement to the Code of Federal Regulations shall mean the cited section as that section may be amended from time to time.

## BUSINESS ASSOCIATE AGREEMENT Page 13 of 13

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives.

Dated:	For: THE CITY OF LOS ANGELES
Dated:	By:  Ralph M. Terrazas  Fire Chief  Los Angeles Fire Department  For: THE CITY OF LOS ANGELES
	By:HOLLY L. WOLCOTT City Clerk City Clerk's Offie
Dated:	For: STORETRIEVE, LLC
	By: Patrick J. McKillop, Executive Vice President, Sales
Approved as to Form: MICHAEL N. FEUER, City Attorney	ATTEST: HOLLY L. WOLCOTT, City Clerk
By: Judith Thompson Deputy City Attorney	By: Deputy City Clerk
Dated:	Dated:
Agreement Number:	