

**AMENDMENT TO THE AGREEMENT
BETWEEN THE COUNTY OF SAN MATEO
AND MEDQUIST TRANSCRIPTIONS, LTD.**

THIS AGREEMENT, entered into this _____ day of _____, 2003, by and between the COUNTY OF SAN MATEO (hereinafter called "County") and MedQuist Transcriptions, Ltd. (hereinafter called "Contractor"),

W I T N E S S E T H:

WHEREAS, on June 19, 2001, the parties hereto entered into an agreement (hereinafter referred to as the "Original Agreement") for the furnishing of certain services by Contractor to County as set forth in that Original Agreement; and

WHEREAS, it is now the mutual desire and intent of the parties hereto to amend and clarify that Original Agreement;

NOW, THEREFORE, IT IS HEREBY AGREED between the parties that the Original Agreement is amended as follows:

1. All references to Health Services Agency, Hospital and Clinics will be amended to read "San Mateo Medical Center; and all references to Director of Health Services shall be amended to read "Chief Executive Officer".
2. Section 2, Payments, Paragraph A, Maximum Amount, of the Original Agreement is hereby amended to read as follows:

"2. Payments

- A. Maximum Amount. In full consideration of Contractor's performance of the services described in Schedule A, the amount that County shall be obligated to pay for services rendered under this Agreement shall not exceed TWO MILLION SIX HUNDRED FIFTY-FOUR THOUSAND SIX HUNDRED TWENTY-TWO (\$2,654,622) for the contract term."

3. Section 4, Hold Harmless, of the Original Agreement is hereby amended to read as follows:

4. Hold Harmless

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, or (C) any failure to withhold and/or pay to the government income and/or employment taxes from earnings under this Agreement, or (D) any sanctions, penalties or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (E) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from the performance of any work required

of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.”

The duty of Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

4. Section 6, Non-Discrimination, of the Original Agreement is hereby amended to read as follows:

“6. Non-Discrimination

Contractor shall comply with the non-discrimination requirements described in Schedule C, which is attached hereto, and incorporated herein.

Contractor shall comply with County admission and treatment policies which shall provide that patients are accepted for care without discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, age, handicap, or political affiliation.

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject Contractor to penalties, to be determined by the County Manager, including, but not limited to:

- i. termination of this Agreement;
- ii. disqualification of Contractor from bidding on or being awarded a County contract for a period of up to three (3) years;
- iii. liquidated damages of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) per violation;
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this paragraph, the County Manager shall have the authority to:

- i. examine Contractor’s employment records with respect to compliance with this paragraph;
- ii. set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within thirty (30) days of such filing, provided that within such thirty (30) days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of its response to the complaint when filed.

With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse”.

5. Section 10, Compliance with Applicable Laws, of the Original Agreement is hereby amended to read as follows:

“10. Compliance with Applicable Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable federal, state, county, and municipal laws, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Federal Regulations promulgated thereunder, as amended, and will comply with the Business Associate requirements set forth in Schedule D, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment I, which prohibits discrimination on the basis of handicap in programs and activities receiving any federal or county financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations.”

6. Section 12, Term of the Agreement, of the Original Agreement is hereby amended to read as follows:

“12. Term of the Agreement

Subject to the compliance with the terms and conditions of this Agreement, the term of this Agreement shall be from May 1, 2001 through April 30, 2005. This Agreement may be terminated by Contractor, Chief Executive Officer or her designee at any time upon thirty (30) days’ written notice to the other party.”

7. Schedule A is hereby amendment as follows:

“SCHEDULE A

I. SERVICES TO BE PROVIDED BY CONTRACTOR

- A. In consideration of the payments described in paragraph II, Contractor shall provide medical transcription services as follows:

- 24-hour access to a digital dictation system.
- Audio access to pre-transcribed dictations.
- On-line transcription information system access.
- Archive all dictated reports (in electronic form).
- Report types will be batched as indicated on Document Type Table, section B, below.
- Providers (dictators) will be sorted within the batch.
- 24-hour support line.
- 99% accuracy rate on all transcribed reports.
- Training and support to the dictating staff.
- Training and support to the Medical records Department staff.

- Provide prompts for facility.
- Provide confirmation number to dictator.
- Provide Listen Line Capability.
- In the event of system failure, Contractor shall provide a back-up dictation system within 10 minutes with full duplicate database.
- Provide line access (800 number access) via facility's phone system.
- Assume phone charges.
- Provide software/hardware upgrades at no charge.
- Provide technical support (help desk support for locating/printing reports and troubleshooting problems via 800 access) 24 hours/day, 7 days/week.
- Provide access to reports for updating.
- Provide access to reprinting reports.
- Provide access to checking the status of reports dictation, transcription, proofing, queuing and transmission.
- Provide access to autofax reports on demand with no charge
- Provide access to batch print copies by physicians alphabetically by physicians last name.
- Provide access to mark carbon copies.

B. Document Type Table

SAN MATEO MEDICAL CENTER
DICTATION WORK TYPE LIST

01	SMCGH Clinic Notes	32	SMCAP Clinic Notes
02	History & Physical	40	Fair Oaks Clinic Notes
03	Discharge Summaries	41	Belle Haven Clinic Notes
04	Consultations	43	Fair Oaks Clinic Notes
05	Operative Notes	45	Fair Oaks Letters
05	Procedures Notes	46	Belle Haven Letters
06	Pre-Admits H & P	47	Willow Clinic Letters
07	Letters	49	Forensic Mental Health
09	Emergency Room Notes	50	Transesophageal Echo
10	Holter Monitor	51	Echos
11	Stress/Stress Echo	52	Stress Echocardiography
12	EEG	53	Coastside Health Clinic Note
13	EMG	54	SSFHC Notes
16	Psychology Testing	55	SSFHC Letters
17	Psychiatric Dis Sum	60	Patient Problem List
20	Crystal Springs H & P	61	Hospital Mental Health Notes
21	Crystal Springs Dis Sum	62	Psychiatric H & P
30	North County Clinic Notes	88	STATS
31	SMCAP Intake H & P		

C. Turnaround Times for Dictated Reports:

1. STAT within 3 hours of dictation (dictator must use appropriate STAT code). STAT reports included Conservatorship letters and transfer summaries.
2. History and Physicals, pre-op history and physicals, inpatient consultations and ED reports within 12 hours of dictation.
3. Operative Reports within 24 hours of dictation

4. All other work types, Clinic Notes within 48 hours of dictation

Contractor shall work with County to assure that the dictation system provides the appropriate report format. Contractor is responsible only for issues that apply to the use of Contractor's system.

D. Frequency of batch transmissions to be determined by each site.

Contractor shall send batches based on a specific time(s) of day or by frequency (e.g. every three hours).

E. Vendor shall provide on-site equipment

F. Equipment – Contractor shall provide the following:

1. Contractor shall provide 24-hour access to the digital dictation system with sufficient ports to handle all of County's requirements.
2. Two Compaq DL320 servers.
3. Two workstations for access to Remote Document viewer.
4. One printer (connected to one of the workstations), which is a HP laserjet 5 Plus, with a speed of 12 pages per minute.
5. One HP Laserjet printer.
6. Maintenance for above equipment.

G. Contractor shall respond to call for equipment related problems within one hour; Currently implemented (via phone). If the problem is identified before 2 p.m. (PST), Contractor shall provide on-side services the same day. If the problem is identified after 2:00 p.m. (PST), contractor shall provide on-side services the next morning.

H. Failure to respond within contracted times will result in penalties as follows:

Monthly penalty for not meeting the specified transcription turnaround times:

<u>Turnaround Time</u>	<u>Penalty</u>
All work returned 24 hours after the contracted time	Reduced 2.5 percent
All work returned 48 hours after the contracted time	Reduced 5 percent
All work returned 72 hours after the contracted time	Reduced 7.5 percent

All penalty deductions must be identified within five (5) days from receipt of invoice and can only be taken if the invoice is paid within thirty (30) days. In no event shall turnaround time be less than (5) times the duration of the dictation. Stat Report turnaround time shall be measured from the time Contractor is notified by County of Stat Report Status until report is transcribed. Contractor shall not be penalized for failure to meet turnaround time if such failure results directly or indirectly from acts outside of the reasonable control of Contractor (e.g., equipment failure; phone line failure; force majeure). Physicians shall be responsible for dictating in an understandable manner and in appropriate time frame in accordance with applicable rules and regulations of County.

Under no circumstances would the total amount of penalty for non-compliance related issues exceed 3% of total amount of invoice and shall be subject to all terms and conditions of the above paragraph.

II. SAN MATEO COUNTY REQUIREMENTS

County shall provide the following:

1. Telephone Outlets - To support the dictation system (and access thereto by Contractor's transcription staff), and County must provide loop start telephone extensions terminating at the location chosen for the DVI dictation unit. Exact number of telephone extension to be determined at pre-cutover meeting. At the location of the transcription management workstation, County must provide a minimum of four dedicated phone lines with outside line access to support the sending and receiving of completed transcription, the FAX manager and a remote diagnostic modem.
2. Speed Dial System - County shall implement a speed dial system to enable abbreviated dial for direct access to the dictation system.
3. Power - Contractor requires two dedicated standard wall outlets at the location of the Distribution server and the Gateway server.
4. Printer Maintenance - Contractor is responsible for all service maintenance of the computer and printer equipment. However, County personnel shall be required to provide toner and paper.
5. Physician Information - County agrees to provide via fax or mail information on each new doctor to be added to the staff, including full name, physician I.D. number and specialty.
6. Patient Demographics - If County desires Contractor to incorporate County generated demographic information into the transcribed reports, the County must provide contractor with electronic access to ADT transactions in a near real time (a minimum of once per hour).

8. Schedule B is hereby amended as follows:

"SCHEDULE B
PAYMENTS

In consideration of the services described in paragraph I, above, Contractor shall be reimbursed as follows:

- A. \$0.115 per 65 character line for services provided through county's direct dial extensions through the county's switchboard.
- B. In the event Contractor is required to install Contractor's own outside telephone lines into San Mateo County General Hospital (SMCGH), Contractor shall be reimbursed a \$0.005 surcharge in addition to the line rate described in subparagraph A, above.
- C. Contractor agrees to provide billing breakdown by document type. Invoices will be submitted weekly and paid within thirty (30) days of submission.

The term of the agreement is May 1, 2001 through April 30, 2005. In no event shall total payment for services under this Agreement exceed TWO MILLION SIX HUNDRED FIFTY-FOUR THOUSAND SIX HUNDRED TWENTY-TWO DOLLARS (\$2,654,622).

8. Schedule D is hereby added to this agreement:

"Schedule D
Health Insurance Act (HIPAA)
Business Associate Requirements

Definitions

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms are defined in 45 Code of Federal Regulations section 160.103 and 164.501. (All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.)

- (a) Designated Record Set. "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.
- (b) Individual. "Individual" shall have the same meaning as the term "individual" in Section 164.501 and shall include a person who qualifies as a person representative in accordance with Section 164.502(g).
- (c) Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Part 160 and Part 164, Subparts A and E.
- (d) Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" in Section 164.501 and is limited to the information created or received by Contractor from or on behalf of County.
- (e) Required By Law. "Required by law" shall have the same meaning as the term "required by law" in Section 164.501.
- (f) Secretary. "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.

Obligations and Activities of Contractor

- (a) Contractor agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.

- (b) Contractor agrees to use appropriate safeguards to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (c) Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement.
- (d) Contractor agrees to report to County any use or disclosure of the Protected Health Information not provided for by this Agreement.
- (e) Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Contractor on behalf of County, agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information.
- (f) If Contractor has protected health information in a designated record set, Contractor agrees to provide access, at the request of County, and in the time and manner designated by County, to Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.
- (g) If Contractor has protected health information in a designated record set, Contractor agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.
- (h) Contractor agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor on behalf of, County available to the County, or at the request of the County to the Secretary, in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.
- (i) Contractor agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- (j) Contractor agrees to provide to County or an Individual in the time and manner designed by County, information collected in accordance with Section (i) of this Schedule, to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

Permitted Uses and Disclosures by Contractor

Except as otherwise limited in this Schedule, Contractor may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by County.

Obligations of County

- (a) County shall provide Contractor with the notice of privacy practices that County produces in accordance with Section 164.520, as well as any changes to such notice.
- (b) County shall provide Contractor with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Contractor's permitted or required uses and disclosures.
- (c) County shall notify Contractor of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.

Permissible Requests by County

County shall not request Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by County, unless the Contractor will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Contractor.

Duties Upon Termination of Agreement

- (a) Upon termination of the Agreement, for any reason, Contractor shall return or destroy all Protected Health Information received from County, or created or received by Contractor on behalf of County. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information.
- (b) In the event that Contractor determines that returning or destroying Protected Health Information is infeasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Contractor shall extend the protections of the Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such Protected Health Information.

Miscellaneous

- (A) *Regulatory References.* A reference in this Schedule to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- (B) *Amendment.* The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- (C) *Survival.* The respective rights and obligations of Contractor under this Schedule shall survive the termination of the Agreement.
- (D) *Interpretation.* Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule."

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES that:

1. These amendments are hereby incorporated and made a part of the Original Agreement and subject to all provisions therein.
2. All provisions of the Original Agreement, including all references to audit and fiscal management requirements unless otherwise amended hereinabove, shall be binding on all the parties hereto.
3. All provisions of the Original Agreement, including all monitoring and evaluation requirements, shall be applicable to all amendments herein.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES that the Agreement of June 19, 2001, be amended accordingly.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hand on the day and year first above written.

COUNTY OF SAN MATEO

MEDQUIST TRANSCRIPTIONS, LTD.

By: _____
Rose Jacobs Gibson
President, Board of Supervisors
San Mateo County



Date: _____

Date: 7-16-03

ATTEST:

**BRIAN J. KEARNS
EXECUTIVE VICE PRESIDENT
CHIEF FINANCIAL OFFICER
MEDQUIST INC.**

By: _____
Clerk of Said Board

Date: _____

COUNTY OF SAN MATEO

Equal Benefits Compliance Declaration Form

I Vendor Identification

Name of Contractor: Medquist Transcriptions, Ltd
Contact Person: _____
Address: Five Greentree Centre, Suite 311
Marlton, NJ 08053
Phone Number: (856) 810-8000
Fax Number: 856 810-8040

II Employees

Does the Contractor have any employees? Yes No

Does the Contractor provide benefits to spouses of employees? Yes No

If the answer to one or both of the above is no, please skip to Section IV.

III Equal Benefits Compliance (Check one)

- Yes, the Contractor complies by offering equal benefits, as defined by Chapter 2.93, to its employees with spouses and its employees with domestic partners.
- Yes, the Contractor complies by offering a cash equivalent payment to eligible employees in lieu of equal benefits.
- No, the Contractor does not comply.
- The Contractor is under a collective bargaining agreement which began on _____ (date) and expires on _____ (date).

IV Declaration

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Signature

Brian J. Kearns
Name (Please Print)

Title

7-16-03
Date

BRIAN J. KEARNS
EXECUTIVE VICE PRESIDENT
CHIEF FINANCIAL OFFICER
MEDQUIST INC.

Waiver Request Memo

Date: 7/17/03
To: John Maltbie, County Manager
From: Nancy J. Stelger, Chief Executive Officer, San Mateo Medical Center
Subject: Waiver Request

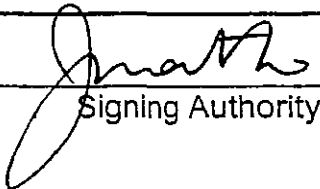
We are requesting a waiver of the Equal Benefits Ordinance to enter into or amend a contract with MediQuist Transcriptions, Ltd. in the amount of \$2,654,622.

This waiver is necessary and in the best interest of the County for the following reason(s):

- Necessary in order to respond to an emergency
- Sole Source
- No compliant contractors are capable of providing the goods/service
- Inconsistent with a grant, subvention or agreement with a public agency
- Is part of a Cooperative or Joint Purchasing Agreement
- Other

MedQuist has been a valued partner since 1997, providing high quality, reliable dictation/transcription services at, by far, an industry leading low rate. In addition, the SMMC negotiated a 10% decrease in charges with this agreement. MedQuist's benefits do not extend to domestic partners but they do not have any offices in Northern California.

- Approved
- Not Approved



Signing Authority

7-25-03

Date