



# Master Software and Services Agreement

**CONTRACT NUMBER: 00000222.0**

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*BETWEEN*

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City of Fort Lauderdale  
100 N. Andrews Avenue  
Fort Lauderdale, Florida 33311

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*AND*

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**IMAGETREND®**

ImageTrend, Inc.  
20855 Kensington Blvd.  
Lakeville, Minnesota 55044

**THIS AGREEMENT** is made and entered into on the date last written below, by and between the ImageTrend, Inc., a Minnesota corporation (hereinafter "ImageTrend"), and City of Fort Lauderdale (hereinafter "Client"), together "the Parties."

## RECITALS

**WHEREAS**, Client desires to have services performed by ImageTrend, or

**WHEREAS**, Client desires to purchase Commercial-Off-The-Shelf Software from ImageTrend, or

**WHEREAS**, Client desires to purchase Custom Software Development from ImageTrend, and

**WHEREAS**, ImageTrend possesses technical skill, knowledge, and capability in consulting and designing custom and off-the-shelf software solutions and performing technical software services and Client desires such services,

**NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:**

## SECTION 1. DEFINITIONS

**"Agreement"** and **"This Agreement"** means this Master Software and Services Agreement, the Work Orders issued hereunder, all Attachments and Exhibits attached hereto, or any Amendments made in mutually executed hereto.

**"Business Day"** means a single 8 hour period occurring on a Monday, Tuesday, Wednesday, Thursday or Friday, 9:00am CST to 5:00pm CST, excluding holidays per §14(b) below. Unless specified in a Service Order, ImageTrend personnel will only perform services during Business Days.

**"Business Week"** means a 5 day period, beginning Monday at 9:00am CST and ending Friday at 5:00pm CST, excluding holidays per below.

**"Confidential information"** means the proprietary products 'to the extent permitted by Florida law and/or 'subject to Chapter 119 Florida Statutes' or Except as otherwise provided by Florida Law and trade secrets to the extent it is a trade secret pursuant to Sections 815.045 and 812.01(1)(c), Florida Statutes (2015), as may be amended or revised, or is otherwise exempt or confidential pursuant to Florida law, including, but not limited to, computer software, code, technical parameters, price lists, methods of pricing, customer lists, designs, software documentations, manuals, models and account tables, and any and all information maintained or developed. Information shall be considered Confidential Information if it is identified in writing as confidential or proprietary, or if disclosed verbally or visually in discussion, upon written notice specifying and describing the nature of the orally disclosed Confidential Information at that time, or within fifteen (15) days of such disclosure.

**"Commercial Off The Shelf" or "COTS"** means pre-designed software products which are made available for sale by ImageTrend to many customers. COTS is mutually exclusive to Custom Software or Custom IP. MOTS means Modified Off The Shelf, and is a derivative work of ImageTrend COTS Software.



**“Custom IP” or “Custom Software”** means software products, or other Intellectual Property, which is designed for a specific purpose, for a specific customer or CLIENT.

**“Deliverable”** means an intangible or tangible product, material, or service produced as a result of a Work Order, and each Deliverable is specified in the corresponding Work Order from which it is produced.

**“Disclosing Party”** means the party disclosing Confidential Information to the other party, see also Receiving Party.

**“Effective Date”** means the date upon which the last party has signed and executed this Agreement.

**“Fixed Fee”** means a fixed amount of compensation due in return for a fixed Deliverable.

**“Go Live”** means the software system has reached a level of readiness and ready for usage by the end-users in its intended use cases. This will be complete when the Client’s Software system processes, receives, transmits, generates, or otherwise interacts with the first non-test data record, excluding non-test data which is migrated on a one-time basis from another system. Go Live utilizing non-test data is accomplished when City begins collecting ePCRs in the field.

**“Governmental Entity”** shall have the same meaning as “State and local government entities” as defined in the General Services Administration Acquisition Manual (GSAM) at 538.7001, as updated

**“Intellectual Property”** means any intellectual property or proprietary rights in any jurisdiction, whether owned or held for use under license, whether registered or unregistered, including such rights in and to: (i) trademarks, trade dress, service marks, certification marks, logos, trade names, brand names, corporate names, assumed names and business names (“Trademarks”, which term shall include the items described in clause (viii) below); (ii) patents and any and all divisions, continuations, continuations-in-part, reissues, continuing patent applications, reexaminations or extensions thereof, any counterparts claiming priority therefrom, utility models, patents of importation/confirmation, certificates of invention, certificates of registration and like statutory rights; inventions, invention disclosures, discoveries and improvements, whether patentable or not; (iii) copyrights and works of authorship; (iv) trade secrets (including those trade secrets defined in the Uniform Trade Secrets Act and under corresponding federal, Florida or foreign statutory or common law), business, technical and know-how information, non-public information, and confidential information as defined and/or limited under Florida law and rights to limit the use or disclosure thereof by any Person; (vii) claims, causes of action and defenses relating to the enforcement of any of the foregoing; (viii) any applications for registration of any of the foregoing, and all renewals or extensions of any of the foregoing, whether now existing or hereafter arising; and (ix) the goodwill associated with each of the foregoing. For the avoidance of doubt, “Intellectual Property Rights” includes any and all of the foregoing related to computer software, data files, Source Code, Object Code, APIs, manuals, documentation, specifications, databases or other materials or information.

**“Licensed Information”** means any information pertaining to the Software which is owned by IMAGETREND and is licensed to CLIENT. Licensed Information includes such information as input form, user manuals and user documentation, interface format and input/output format, and any other materials pertaining to the Software.

**“Local Travel”** means travel to a destination in the Twin Cities Metro area, within 30 miles of Lakeville, MN.

**"Materials" and "Expenses"** means but is not limited to third party software licenses, physical hardware, test devices, or other items, reasonable travel expenses (including but not limited to food, lodging, and transportation), printing, or delivery of materials.

**"Master Services Agreement"** means this document excluding Work Orders issued from this document.

**"Pre-Existing Materials"** means code, documentation, frameworks, development accelerators, tool sets or any other materials owned by ImageTrend and not developed as part of the services performed for Client. It may include, without limitation, Security Framework, Dashboard, ImageTrend Frameworks, Report Writer and any other tools or Intellectual Property made or used by ImageTrend unrelated to this Agreement.

**"On-Site Hour"** means time an hour worked by ImageTrend personnel on Client premises, or other premises of Client's choosing that are not ImageTrend's corporate offices.

**"Statement of Work"** means the technical document which outlines a mutually agreed upon specification for particular Custom Development projects and associated costs, payment terms and acceptance procedures. This document requires client acceptance and signature prior to beginning work.

**"Support"** means technical support for the configuration and functioning of the products, including taking and monitoring defect reports, as defined further below in the Service Level Agreement between ImageTrend and Client

**"Software"** means ImageTrend software provided to Client by ImageTrend, specifically software developed and/or written by ImageTrend. Software developed by a third-party which is purchased on behalf of Client is considered Third Party Material.

**"Receiving Party"** means the party receiving Confidential Information from the Disclosing Party

**"The Agreement"** means collectively this Master Services Agreement, its Exhibits, all Work Orders issued from this Master Services Agreement, and all Exhibits to Work Orders.

**"Third Party Material(s)"** means software or other materials owned by a party other than Client or ImageTrend

**"Time and Materials Basis"** means charges billable to the Client based upon each hour worked, multiplied by the hourly rate for the work, plus the cost of any Materials necessary (including but not limited to, the cost of third party software licenses, travel and accommodation expenses, or otherwise), or Materials beneficial (conditioned upon mutual assent of the parties), billed on a monthly basis in arrears.

**"Travel"** refers solely to travel contracted through this Agreement as outlined in the Price Sheet and Work Order Attachment. It does not refer to future travel.

**"Work Order"** means the document which outlines a mutually agreed upon set of services, products, or Deliverables and associated costs, payment terms, and acceptance procedures

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## **SECTION 2. TERM OF AGREEMENT**

The Term of this Agreement shall be 36 months from March 5, 2019 ("Initial Term"). Upon expiration of a Term, Client shall have the option to renew under the same terms and conditions for two additional 24



month terms ("Renewal Term"). Thereafter, this contract may be renewed automatically annually upon mutual written consent of the parties.

The Client's payment and performance obligations under this Agreement for each and every fiscal period beyond the fiscal period when the agreement is executed shall be subject to discretionary annual appropriation by the Client Commission of funds. When funds are not appropriated or otherwise made available to support the continuation of payment and performance in a subsequent fiscal period, the Agreement shall be deemed terminated on the last day of the fiscal period for which appropriations were made, without further cost, penalty or obligation to the Client

### SECTION 3. WORK ORDERS

**CREATION OF WORK ORDERS.** The Parties may, from time to time, work together to detail the specific engagement scope, pricing, acceptance criteria, and terms of services to be performed and Deliverables to be delivered by ImageTrend. ImageTrend will set forth these details as a Work Order. If the Work Order is for the purchase of COTS Software, the Work Order shall also outline the quantity and SKU of each product or service as applicable. Should a Work Order contain no term regarding a topic, the terms of this Master Software and Services Agreement shall hold instead.

**LIMITATIONS OF WORK ORDERS.** Work Orders may include requirements on the Client. Such requirements, when executed as part of a mutual agreed writing, form a material part of this Agreement and of the Work Order where the requirement is presented. Additionally, either party may set forth factual assumptions ("Assumption") in each Work Order. Notwithstanding anything in this Agreement or the Work Order, a Work Order will be rendered void to the extent that ImageTrend or Client is obligated to perform services which are impossible or impracticable. Further, a Work Order will be rendered voidable to the extent that ImageTrend is obligated to perform services materially different than originally set out in that Work Order due to an inaccurate Assumption. The parties will make commercially reasonable efforts to negotiate an alternative or modified Work Order in light of the inaccurate Assumption.

**MODIFICATION OF WORK ORDERS.** Any modification to the scope or tasks identified within the Work Order that change the work budget by an estimated 10 hours of work or more shall require a new modified written Work Order or written Change Order. ImageTrend shall not work on the new tasks in the modified Work Order until the Client has provided signed written acceptance of the new Work Order. The parties may waive this requirement on a case-by-case basis in writing. Modifications requiring less than an estimated 10 hours of work may be proposed and accepted verbally, with such modifications requiring less than 10 hours of work billed on a Time and Materials basis.

**FEE MODEL.** The following fee models are contemplated:

Model Name	Definition
Fixed Fee	ImageTrend shall perform the work outlined in the Work Order for a fixed flat fee. The Fixed Fee is exclusive of Expenses unless the Work Order outlines the Expenses. The Fixed Fee model may include milestone payments, with such milestone payments outlined in the Work Order.

<b>Time and Materials</b>	ImageTrend shall perform the work outlined in the Work Order on a Time and Materials basis, at the rate of \$145 per hour.
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**LEGAL EFFECT.** Work Orders issued under this Master Services Agreement are incorporated by reference into this Master Services Agreement which collectively is called “the Agreement.” Work Orders do not override the terms of this Master Services Agreement unless specifically stated that they do so. The payment terms in the Price Sheet below control.

**CUSTOMIZED SOFTWARE DEVELOPMENT.** The parties may mutually agree to a Work Order also known as a Statement of Work for the development of new or custom software, also known as “Modified Off The Shelf” or MOTS. All normal requirements of the Work Order shall apply, but additionally the parties must work together to mutually define a Statement of Work which outlines the tasks, and their timelines, to be undertaken as part of the project. Any Customized Software or MOTS Software developed under this Agreement will be Intellectual Property owned by ImageTrend. Should Client desire ownership of any Intellectual Property developed by ImageTrend, this must be embodied by a separate, mutually executed contract. For clarity, Client shall not and will not own any ImageTrend Intellectual Property under any circumstance under this Agreement. Client may only receive a license thereto as outlined in each Work Order.

#### **SECTION 4. PERFORMANCE OF SERVICES**

**COMMENCEMENT.** ImageTrend shall begin services described in the Work Order subsequent mutual signed execution the Work Order. No services shall begin before mutual signed and written final acceptance of each Work Order.

**USE OF KNOW HOW.** ImageTrend shall use its know-how, Intellectual Property, talent, skills, and employees to perform the services. Client shall conditionally receive a license to any and all pre-existing ImageTrend Intellectual Property and Know-How used in the creation of Deliverables and delivery of services as outlined below in §6 “Licensing and Intellectual Property” and Software Licensing Terms Attachment.

**MATERIALS.** Materials (including, but not limited to, third party software licenses, physical hardware, test devices) that will be used in the development of the Software will be identified by ImageTrend to Client. ImageTrend shall acquire such Materials as the parties mutually agree should be acquired.

**ACCEPTANCE OF SERVICES AND DELIVERABLES.** ImageTrend shall deliver completed Deliverables and services to Client for acceptance. Each Work Order must detail the acceptance criteria for each Deliverable or service contained within that Work Order. If a Deliverable or services acceptance criteria is measurable objectively, it shall be complete upon satisfaction of that objective measurement without regard to either party’s satisfaction with the Deliverable. If 1) a Deliverable’s acceptance criteria is based on Client’s satisfaction with the Deliverable, or 2) no acceptance criteria is detailed, then the following default clause shall apply:

*After delivery of the Deliverable or performance of the service, ImageTrend and Client shall schedule verification testing of the Licensed Program(s) on a module-by-module basis. Testing shall be performed by the Client during implementation of each Licensed Program. Should City*



*require assistance it will be provided as part of the training visits. Any given module shall be deemed as formally verified when used in a live, non-paralleled operation for forty-five (45) consecutive days not to exceed 270 days following delivery of first Licensed Program. Should the test fail, Client shall give ImageTrend notice of failed verification describing in reasonable detailed the material failure. ImageTrend shall be granted 30 days to cure such failed condition(s) and another Verification Test shall then be scheduled. This procedure may be repeated should Client decide to do so. Note that all modifications, interfaces, report writer files, etc., programmed by ImageTrend is subject to individual verification testing as documented in the implementation plan. Should a given module fail two tests, Client reserves the right to schedule additional tests. Acceptance or failure of the Verification Test will be determined jointly by Client and ImageTrend.*

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**SECTION 5. FEES, INVOICING, AND PAYMENT TERMS**

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**PROMPT PAYMENT ACT.** Client shall upon presentation of a proper invoice', 'in accordance with Florida's Prompt Payment Act' pay all invoices.

**FEES.** Client shall owe to ImageTrend such fees as set forth in each mutually executed Work Order with payment terms as follows:

- "One Time Fees" are due once and do not occur on an annual basis. 50% of the total One Time Fees are due upon contract signature and the remaining 50% are due upon "Go Live".
- "Recurring Fees" are annual fees which recur each year. The Recurring Fees for Year 1 shall commence upon "Go Live" and shall recur thereafter annually.
- The Recurring Fees and Hourly Rates contained herein will escalate in price annually by 2% beginning with Year 2, which is one year after "Go Live" and the yearly anniversary thereafter.
- ImageTrend may temporarily suspend performance (e.g. cease to provide access, hosting, support) due to Client's breach of the Agreement provided Client shall have 30 days to cure such breach before ImageTrend may suspend performance.
- All Annual SaaS Fees are based upon anticipated transaction volumes (as provided by Client) and are subject to an annual usage audit. ImageTrend reserves the right to increase fees in accordance with increased transaction volume per the Unit Price listed in the tables above.

**SCHEDULING NON-LOCAL TRAVEL.** For air travel Client may, and is strongly advised to, schedule travel no less than 3 weeks in advance of the first on-site date by written request; ImageTrend reserves the right to approve or deny travel requests on a per-request basis. Client may also request travel by writing with 3 weeks or less advance notice; ImageTrend reserves the right to approve or deny such travel requests, and to invoice costs to Client due to scheduling changes ImageTrend must make to accommodate such a request if approved. All travel shall comply with the Travel Policy Attachment attached hereto and incorporated herein by reference.

**CANCELLATION, RESCHEDULE, OR DELAY.** Client will provide to ImageTrend (10) ten business days prior written notice of Client's intent to delay, reschedule, or cancel ("Staffing Change") any service in a Work

Order which requires an ImageTrend employee to perform work at a specific location or at a specific time (e.g. face-to-face meetings, on-site visits, after hours on-call status). If Client fails to provide such notice, Client shall reimburse ImageTrend for loss caused by the Staffing Change. ImageTrend shall use commercially reasonable efforts to mitigate any losses that would be incurred by a Staffing Change and due to ImageTrend by Client. This provision does not apply in the case of weather caused delays such as a hurricane.

**INVOICING.** Invoices must be paid upon presentation of a proper invoice', 'in accordance with Florida's Prompt Payment Act' on Net 45 terms. Any objection to an invoice must be made in writing. Client has thirty (30) days after receipt of an invoice to provide written notice of a dispute of that invoice to the IMAGETREND at the address listed on the cover of the Agreement. IMAGETREND will provide a written response to Client that either provides a justification of the invoice or an explanation of an adjustment to the invoice and an action plan that will outline the reasonable steps needed to be taken by IMAGETREND and Client to resolve any remaining issues in Client's dispute. Client may withhold payment of the amount in actual dispute until IMAGETREND provides the required written response and has completed all material steps in the action plan to be taken by IMAGETREND. Invoices disputed as provided herein will not be assessed interest or late fees. If IMAGETREND is unable to complete all material steps in the action plan because Client has not completed its part of the action plan, Client will remit the full payment of the invoice within fifteen (15) days of action plan received.

**Send Invoices To:**

R1 RCM, Inc.  
ATTN: Accounts Payable  
401 N. Michigan Ave.  
Suite 2700  
Chicago, IL 60611

Client has the right to switch billing companies during the term of this contract and replace where invoices are sent. Should Client choose not to engage a billing company, Client shall be responsible for payment of all invoices issued pursuant to this contract.

**TRAVEL COSTS.** Should Client desire ImageTrend to send personnel to a location of Client's choosing in the continental United States, Client may pay \$1,750 per ImageTrend trainer per trip and a further \$1,400 per trainer per day spent at Client's chosen location. Travel may only be scheduled for a maximum of one business week of Monday through Friday per trip; however Client may book consecutive trips. Non-local travel scheduling which runs from one business week into a subsequent business week(s) (e.g. start date on Friday at 8:00am, end date Wednesday at 5:00pm, "Overlapped Weekend") will result in ImageTrend invoicing Client an additional trip for each Overlapped Weekend. ImageTrend staff will work 8 hours each day, except on the first and last day of each trip ImageTrend may reserve up to 2 hours of the Business Day for travel time.

**TIME AND MATERIALS RATE.** Unless otherwise specified in a Work Order, ImageTrend's Time and Materials rate is \$145.00 per hour.



**PRICE ESCALATION.** ImageTrend reserves the right to escalate the prices contained herein, and any recurring fee, by no more than 2% of the then current price commencing one year from the “Go Live” date and continuing annually thereafter. ImageTrend further reserves the right to escalate travel prices once per year upon written notice to Client. Such travel price increases will only affect future travel prices and will not change the price or amount due to ImageTrend for previously rendered travel.

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**SECTION 6. DATA AND INTELLECTUAL PROPERTY**

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**CLIENT DATA.** All Client data provided to ImageTrend remains at all times the property of the Client unless otherwise specified by a Work Order. ImageTrend will not to use or make available any personally identifiable information or patient health information other than for performing the services outlined in a Work Order, and for use in an aggregated manner to monitor, operate, train artificial intelligence, and conduct statistical analyses relevant to the application’s proper functioning, maintenance, optimization, or improvement. ImageTrend will not in any way transfer to any third party any Confidential Information of Client.

**GRANT OF LICENSE TO IMAGETREND’S PRE-EXISTING IP AND OWNERSHIP OF NEW IP.** All Intellectual Property Rights connected to the ImageTrend pre-existing materials such as architectural structure, modules, processes, and Know-How that may be used in Deliverables (“Pre-existing IP”), shall remain owned by ImageTrend. ImageTrend agrees to grant to Client a royalty-free, worldwide, transferable, non-exclusive, use license for these architectural structures, modules, and processes that may be used solely in conjunction with the Deliverables and services performed under Work Orders and in accordance with the license selected below in the Software Licensing Terms Attachment, conditioned upon full payment of the Work Order from which the Deliverable containing Pre-Existing IP originates. This license may not be transferred, and Client may not sublicense, use, reproduce, distribute or prepare derivative works of ImageTrend’s Pre-Existing IP except to the extent strictly necessary to fulfill the purpose of a Work Order. New Deliverables utilizing the same Pre-Existing IP may require another license for that new Deliverable, in ImageTrend’s discretion. New Custom Intellectual Property authored by the parties in the course of performing a Work Order shall be owned by the party that authored the Intellectual Property and in the case of derivative works, it shall be owned by the party who owns the work from which the derivative is made, or as otherwise set forth in the Work Order. In the case of ImageTrend Software products licensed per the Software Licensing Terms Attachment below, or “Modified Off The Shelf Software” as defined above, ImageTrend shall own all Intellectual Property related to or arising out of any Work Order. A Work Order may specify who owns the intellectual property embodied in a Deliverable; however, absent such terms in the Work Order, the terms of this Agreement shall control. Any right not hereby granted is reserved.

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**SECTION 7. CONFIDENTIALITY**

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**CONFIDENTIALITY ACKNOWLEDGEMENT.** Each party hereby acknowledges and agrees that the other Party’s Data, potential clients or customers, client or customer lists, business plans, pricing structures, software and database designs, and any other information a Party has marked as Confidential, constitute Confidential Information to the extent permitted by Florida law’ and/or ‘subject to Chapter 119 Florida Statutes’ or Except as otherwise provided by Florida Law. Each party agrees to treat (and take precautions to ensure that its authorized personnel treat) Confidential Information as confidential in accordance with the confidentiality requirements and conditions set forth below, subject to Florida law. Orally transmitted information shall not be Confidential Information unless specified as such in a

writing transmitted from the Disclosing party to the Receiving party within 15 days of the oral transmission, with such writing providing a reasonable description and scope of the Confidential Information transmitted.

**CONFIDENTIALITY OBLIGATIONS.** Each party agrees to keep confidential all confidential information disclosed to it by the other party in accordance to the extent permitted by Florida law' and/or 'subject to Chapter 119 Florida Statutes' or Except as otherwise provided by Florida Law herewith, and to protect the confidentiality thereof in the same manner it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of confidential information); provided, however, that the provisions of this §7 shall not apply to information which: (i) is in the public domain; (ii) has been acquired by a Party by means other than the disclosure of the information by the Disclosing Party; (iii) is duly obtained by a Party directly or indirectly from a third party who has independently developed the information and is entitled to disclose the information to the Party, and such disclosure does not directly or indirectly violate the confidentiality obligation of such third party; or (iv) becomes known publicly, without fault on the part of a Party, subsequent to the receipt of the information by Party; . Oor (v) is subject to disclosure pursuant to Florida law.

**SURVIVAL.** This §7 shall survive the termination of this Agreement or of any license granted under this Agreement.

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## **SECTION 8. WARRANTIES**

**NO CONFLICTS OF INTEREST.** ImageTrend does not have any express or implied obligation to a third party which in any way conflicts with any of ImageTrend's obligations under this Agreement.

**SERVICES.** All services and will be provided in a professional and workmanlike manner in accordance with applicable industry standards and will comply with all applicable laws. All Deliverables will substantially conform to the agreed-upon specifications set forth in the applicable Work Order or as otherwise set forth in this Agreement.

**ImageTrend warrants that the Software will conform to the specifications as set forth in the Licensed Information.**

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT ABOVE, THE SERVICES IMAGETREND PROVIDES TO CLIENT ARE PROVIDED WITHOUT ADDITIONAL WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS, OR STATEMENTS MADE PRIOR TO THIS AGREEMENT. IMAGETREND HEREBY EXPRESSLY DISCLAIM, AND CLIENT HEREBY WAIVES, ANY REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO THE SERVICES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES PROVIDED IN THIS AGREEMENT ARE CLIENT'S SOLE AND EXCLUSIVE REMEDIES.

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## **SECTION 9. LIMITATION OF LIABILITY**

EACH PARTY SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OR LOSSES



ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF THAT PARTY IS ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. EACH PARTY'S CUMULATIVE LIABILITY ARISING OUT OF OR IN ANY MANNER RELATED TO THIS SHALL BE LIMITED TO THE AMOUNT OF THE FEES DUE UNDER THIS AGREEMENT.

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## **SECTION 10. DISPUTE RESOLUTION**

**DUTY TO NEGOTIATE IN GOOD FAITH PRIOR TO FORMAL DISPUTES.** The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within 15 days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include with reasonable particularity (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within 30 days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place, or by teleconference.

All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential unless prohibited by law, privileged and inadmissible for any purpose, including impeachment, or other legal proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

1. The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within 15 days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include with reasonable particularity (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within 30 days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place, or by teleconference.
2. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

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## **SECTION 11. NON-EXCLUSIVITY**

This Agreement does not establish any exclusivity of service, contract, customer relationship, or otherwise between the Parties.

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**SECTION 12. AMENDMENTS**

This Agreement may only be modified by a mutually executed writing including but not limited to Work Orders, signed by a person having authority to sign.

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**SECTION 13. TERMINATION**

The aggrieved party may terminate this Agreement for cause if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. The parties agree that if the City erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

Should ImageTrend be found to have breached this Agreement, ImageTrend shall prorate any fees paid by Client for that year to the date the breach was found against ImageTrend.

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**SECTION 14. INDEMNIFICATION**

**IMAGETREND INDEMNITY.** Image Trend shall protect and defend at Image Trend's expense, counsel being subject to the Client's approval, and indemnify and hold harmless the Client and the Client's officers, employees, volunteers, and agents from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any act or omission by the Image Trend or by any officer, employee, agent, invitee, subImage Trend, or sublicensee of the Image Trend. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the City Manager, any sums due Image Trend under this Agreement may be retained by Client until all of Client's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by Client. Because ImageTrend must provide its own insurers with notice of a claim within 60 days of actual knowledge of a Claim, Client's Risk Manager accordingly must provide ImageTrend written notice no more than 60 days after Client's Risk Manager has actual knowledge of a Claim. Should Client's Risk Manager fail to provide timely notice and a claim is denied based upon late notice and recourse has been attempted but unsuccessful, ImageTrend shall have no obligation to indemnify Client.

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**SECTION 15. GENERAL TERMS**

- a. **INSURANCE REQUIREMENTS.** ImageTrend will provide to Client a Certificate of Insurance upon request.
- b. **BUSINESS DAYS AND HOLIDAYS.** The parties agree a business day is 8 hours long, and excludes Saturdays, Sundays, and days reasonably considered a holiday by either party per each party's written policies. Unless otherwise specified in a Work Order, ImageTrend shall perform services only during business days, from 9:00am CST to 5:00pm CST.
- c. **FORCE MAJEURE.** Neither party will be liable for delays nor for non-performance due to an unforeseeable event, external to this Agreement and the parties, where the occurrence of the



event beyond the non-performing or delayed party's reasonable control ("Force Majeure Events.") This clause shall not apply to costs due to ImageTrend to reimburse cancellation, reschedule, or modification of travel arrangements per §5 above. Force Majeure Events may include, but are not limited to: war, terrorism or threats of terrorism, civil disorder, labor strikes, fire, disease, medical epidemics or outbreaks, events which curtail necessary transportation facilities (e.g. airports), or other unforeseeable events where the occurrence of the event is beyond the non-performing or delayed party's control.

- d. **REASONABLE COOPERATION.** Client will reasonably cooperate with ImageTrend to the extent reasonably necessary to enable ImageTrend to perform the Services contemplated in each Work Order. Accordingly, Client will provide access, information or other materials in a fashion timely to the schedule of each Work Order. ImageTrend shall have no liability to Client for delays arising out the actions or non-actions of Client.
- e. **NON ASSIGNABILITY.** A party shall not assign this Agreement or its rights hereunder without the prior written consent of the other party.
- f. **JURISDICTION AND VENUE.**—Venue shall lie in the 17th Judicial Circuit, Broward County, Florida, in the appropriate court or before the appropriate administrative body, or in the event of federal jurisdiction, in the Southern District of Florida. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder, shall be in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in Broward County state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency, or other jurisdictional device.
- g. **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the parties, with respect to this subject matter, including, but not limited to the services, goods, products, and Software provided by ImageTrend for Client and the compensation provided by Client for said provision of such services therefore, and supersedes all previous proposals, both oral and written, negotiations, representations, writings and all other communications between the parties. This Agreement may not be released to the extent permitted by Florida law' and/or 'subject to Chapter 119 Florida Statutes' or Except as otherwise provided by Florida Law, discharged, or modified except by an instrument in writing signed by the parties.
- h. **SEVERABILITY.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.
- i. **WAIVER.** No waiver by either party of any of any provision hereof shall constitute a waiver of any other term of this Agreement nor shall it preclude either party from enforcing its rights.

- j. **NONAPPROPRIATION.** The continuation of this Agreement is contingent upon the appropriation of funds by the City Commission to fulfill the requirements of the Agreement. If insufficient monies are appropriated to provide for the continuation of the Agreement, or if such appropriation is reduced by the City Commission and the effect of such reduction is to provide insufficient monies for the continuation of this Agreement or any Work Order hereto, the Agreement or applicable Work Order(s) shall terminate on the date of the beginning of the first fiscal year for which funds have not been appropriated. ImageTrend shall be entitled to payment for deliverables in progress, to the extent work has been performed pursuant to this Agreement or any Work Order hereto.
- k. **ATTORNEYS' FEES.** In any action between the parties to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover reasonable expenses, including reasonable attorneys' fees.
- l. **INDEPENDENT CONTRACTORS.** It is the express intention of Client and ImageTrend that ImageTrend and its employees and agents will perform the services hereunder as independent contractors to Client. Nothing in this Agreement shall in any way be construed to constitute ImageTrend or its employees or agents as an agent, employee or representative of Client. Without limiting the generality of the foregoing, ImageTrend is not authorized to bind Client to any liability or obligation or to represent ImageTrend has any such authority. Client and ImageTrend agree that neither ImageTrend employees nor its agents will receive Client - sponsored benefits from Client.
- m. **NOTICES.** Any notice required to be given by either party to the other shall be deemed given if in writing on the date actually delivered (including electronic methods such as e-mail), or if deposited in the United States mail in registered or certified form with return receipt requested, postage prepaid, on the receipt date and addressed to the notified party at the address set forth below, or to such other address as a party may designate from time to time by means of notice given hereunder to the other party.
- n. Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), affirmed, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the "Cuba Amendment," the Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2018), that it is not engaged in a boycott of Israel, and that it does not have business operations in Cuba or Syria, as provided in section 287.135, Florida Statutes (2018), as may be amended or revised. The City may terminate this Agreement at the City's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2018), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida



Statutes (2018), as may be amended or revised, or is engaged in a boycott of Israel or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2018), as may be amended or revised.

- o. Image Trend shall (a) Keep and maintain public records that ordinarily and necessarily would be required by the Client in order to perform the service;(b) Provide the public with access to public records on the same terms and conditions that the Client would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2015), as may be amended or revised, or as otherwise provided by law;(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law;(d) Meet all requirements for retaining public records and transfer, at no cost, to the Client, all public records in possession of the Image Trend upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Client in a nationally standardized format (currently NEMSIS) format that is compatible with the information technology systems of the Client.

**If to Client:**

City of Fort Lauderdale  
Attn: Chief of EMS  
100 N. Andrews Avenue  
Fort Lauderdale, Florida 33311

**If to ImageTrend:**

ImageTrend, Inc.  
Attn: Mike McBrady  
20855 Kensington Boulevard  
Lakeville, MN 55044

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- p. In the event of any conflict between the terms of this Agreement and the terms of any Work Orders or any such later agreement(s), the terms of this Agreement shall control.

**SIGNATURE PAGE**



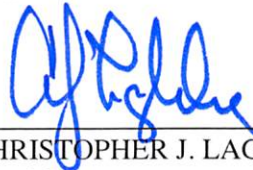
IN WITNESS WHEREOF, the parties hereto have set their hands and seals this 27<sup>th</sup> day of June, 2019.

ATTEST:




JEFFREY A. MODARELLI  
City Clerk

CITY OF FORT LAUDERDALE, a Florida  
municipal corporation of the State of Florida

By:   
CHRISTOPHER J. LAGERBLOOM  
City Manager

Approved as to form:  
ALAIN E. BOILEAU, City Attorney

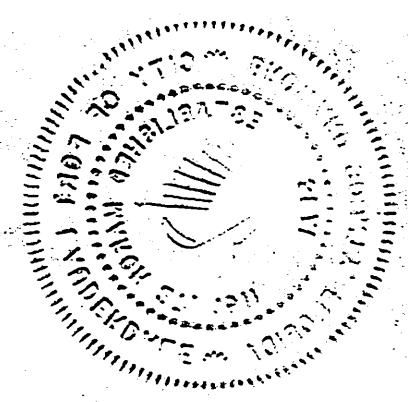
By:   
RHONDA MONTOYA HASAN  
Assistant City Attorney

1778

THE CITY OF NEW YORK

OFFICE OF THE COMPTROLLER

1778





WITNESSES:

Madeline Klingberg  
[Signature]  
[Witness print/type name]

Dylan Murphy  
[Signature]  
[Witness print/type name]

IMAGE TREND, INC., a foreign profit corporation authorized to do business in the State of Florida,

By: Michael J. McBrady  
Michael J. McBrady, President

CORPORATE SEAL

STATE OF Minnesota :  
COUNTY OF Dakota :

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of June, 2019, by Michael J. McBrady, as President of Image Trend, Inc., a foreign profit corporation authorized to do business in the State of Florida, who is ☒ personally known to me or ☐ has produced \_\_\_\_\_ as identification.

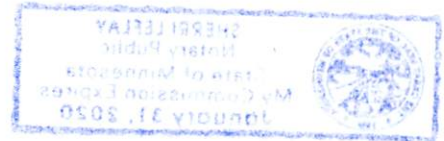
(NOTARY SEAL)



[Signature]  
Notary Public, State of \_\_\_\_\_  
(Signature of Notary Taking Acknowledgment)

Sherri LeFlay  
Name of Notary Typed, Printed or Stamped

My Commission Expires: 1-31-2020





## SOFTWARE LICENSING TERMS ATTACHMENT

To the degree any Work Order involves licensing ImageTrend Software, the following terms shall apply:

**"ImageTrend Elite Data Marts"** means the relational database(s) that contain an enhanced and simplified reporting-ready format of the transactional data collected within ImageTrend Elite. The Elite Data Marts are available for use with the ImageTrend Elite Reporting Tools.

**"ImageTrend Elite Reporting Tools"** means the Transactional Report Writer, Visual Informatics, Analytical Chart Reporting Tool and Analytical Tabular Reporting Tool in the Software that are based on a set of Elite Data Marts.

**"Incident(s)"** means an instance where the Client sends a vehicle or emergency responder to a situation requiring emergency response, as measured by the number of incident reports within ImageTrend Software systems.

**"Licensed Information"** means other Deliverables provided to Client by ImageTrend relating to the operation or design of the Software, or other Deliverables provided to Client by ImageTrend which are common to ImageTrend (e.g. such Deliverables are not unique to Client). A copy of the software specification Licensed Information is available within the Software labeled as "ImageTrend University."

**"The Software"** means the sum of all software licenses granted by this Agreement or Work Order hereto as provided in Section 1 below.

### 1. GRANT OF LICENSE TO SOFTWARE.

Each Work Order for the sale of Software Licenses shall outline which of the below licenses are being granted by the Work Order. The license selection will be evidenced by the title of each SKU in the Work Order, e.g. "Elite EMS SaaS" shall be licensed under the Software as a Service License below. If the license is not apparent by the name of the SKU, then the license shall default to Software as a Service. ImageTrend may discontinue or replace a license in this table by providing Client thirty (30) days written notice of the change. Replacing this table shall not have the effect of revoking previously agreed licenses, rather, ImageTrend's right to replace this table shall apply to only future Work Orders.

Name of License	Terms of License
<b>Software as a Service License (SaaS) or Integration as a Service (IaaS) ("SaaS")</b>	ImageTrend hereby grants Client a non-exclusive, non-transferable license to use the ImageTrend Software product(s) listed in the Work Order for such time as listed in said Work Order. During the term of the Work Order, the Client shall have access to the Software, which will be installed on servers at the ImageTrend hosting facility and subject to the Service Level Agreement attached. All copies of the Software and/or Licensed Information in any form provided by ImageTrend to Client hereunder are the sole property of ImageTrend and/or its suppliers, and that Client shall not have any right, title, or interest to any such Software and/or Licensed Information or copies thereof except as provided in this

Agreement.

## SECTION 16. PROTECTION OF SOFTWARE AND LICENSED INFORMATION

Client agrees to respect and not to, nor permit any third-party to, remove, obliterate, or cancel from view any copyright, trademark, confidentiality or other proprietary notice, mark, or legend appearing on any of the Software or Licensed Information, and to reproduce and include the same on each authorized copy of the Software and Licensed Information.

Client shall not nor shall Client permit any third-party under Client's control to, copy, reverse engineer, or duplicate the Software or any part thereof except for the purposes of system backup, testing, maintenance, or recovery. Client may duplicate the Licensed Information only for internal training, provided that all the names, trademark rights, product names, copyright statement, and other proprietary right statements of ImageTrend are reserved. ImageTrend reserves all rights which are not expressly granted to Client in this Agreement.

Client shall not, nor shall Client permit any third-party to, modify, reverse engineer, disassemble, or decompile the Software, or any portion thereof, and shall not use the software or portion thereof for purposes other than as intended and provided for in this Agreement.

## SECTION 17. IMAGETREND ELITE DATA MARTS NON-EXCLUSIVE USE LICENSE.

In accordance with the terms and conditions hereof, ImageTrend hereby grants the use of the ImageTrend Elite Data Marts only via ImageTrend Elite Reporting Tools, unless an "Elite Data Mart License" is included and detailed in a Work Order. Absent that license, this Agreement does not give the Customer the rights to access and query the ImageTrend Elite Data Marts directly using SQL query tools, reporting tools, ETL tools, or any other tools or mechanisms. Direct access to ImageTrend Elite Data Marts is only available via the aforementioned separately-priced product and service offering from ImageTrend.

## SECTION 18. INSTALLATION, INTRODUCTORY TRAINING AND DEBUGGING.

**IMPLEMENTATION.** ImageTrend shall provide Client with start-up services such as the installation and introductory training relating to the Software, and, if necessary, initial debugging services known as "Implementation". During Implementation, Client must make available sufficient time and resources as is necessary to accomplish the milestones and tasks per the party's project plans (as applicable), typically between 4 and 15 hours a week. Depending on Client's objectives, Client may need to allocate more time or resources to achieve Client's desired timelines.

**TRAIN THE TRAINER.** ImageTrend may provide "Train-the-trainer" training for administrators as detailed in each Work Order. Additionally, online training videos and user guides in electronic format will be made available via ImageTrend University.

**INSTRUCTIONS.** ImageTrend will provide installation instructions and assistance for installation of the Software on the Servers appropriate to the License selection in the Work Order per the table above at (e.g. Client Hosted on premise license) as detailed in Service Level Attachment, below.



**SOFTWARE SUPPORT.** ImageTrend shall provide Software Support as detailed in the Service Level Attachment, below.

**TRAINING USAGE AND EXPIRATION.** The training line items and quantities as detailed in price table attached must be delivered within 2 years of the Effective Date. It shall be Client's responsibility to request the training session(s). Training not used within the 2 year cut-off shall expire and no refund or credit will be payable to Client.

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**SECTION 19. SOFTWARE WARRANTIES.**

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**PERFORMANCE WARRANTY.** However, this warranty shall be revoked in the event that any person other than ImageTrend and its agents make any unauthorized modification or change to the Software in any manner outside of the configuration available within the Software's built-in functionality. This warranty does not apply to data extracted from the system.

**OWNERSHIP WARRANTY.** ImageTrend represents that it is the owner of the entire right, title, and interests in and to the Software, and that it has the sole right to grant licenses thereunder, and that it has not knowingly granted licenses thereunder to any other entity that would restrict rights granted hereunder to Client.

**LIMITATIONS ON WARRANTY.** All of ImageTrend's obligations under this Section shall be contingent on Client's use of the Software in accordance with this Agreement and in accordance with ImageTrend's instructions as provided by ImageTrend in the Licensed Information, and as such instructions may be amended, supplemented, or modified by ImageTrend from time to time. ImageTrend shall have no warranty obligations with respect to usage which does not conform with ImageTrend's instructions as provided by ImageTrend in the Licensed Information. ImageTrend shall have no warranty obligations with respect to any failures of the Software which are the result of accident, abuse, misapplication, extreme power surge or extreme electromagnetic field of a Client device. In addition to any other limitation on warranty or liability. The parties expressly agree and acknowledge that the Licensed Program(s) are "intellectual property" as defined by § 101(35A) of the United States Bankruptcy Code. Should a court order be issued against Client restricting Client's use of any product of a claim, and should ImageTrend's determine not to further appeal the claim issue, at Client's sole option ImageTrend's shall provide, at ImageTrend's a sole expense, the following: a) Purchase for Client the rights to continue using the contested product(s), or b) Provide substitute products to Client which are, of equal or greater quality, or c) Refund the following fees associated with the infringing product, i) Licensed Program(s) License Fees; ii) Consulting, Implementation, and Conversion Services Fees if applicable; and iii) Application Software Maintenance Fee for that year.

THE EXPRESS WARRANTIES PROVIDED HEREIN ARE THE ONLY WARRANTIES MADE BY ImageTrend WITH RESPECT TO THE SOFTWARE AND SUPERSEDE ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY AND WARRANTIES FOR ANY SPECIAL PURPOSE.

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**SECTION 20. MAINTENANCE.**

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ImageTrend shall provide scheduled updates and new releases for the Software, as well as defect correction as needed per the Service Level Agreement, attached for so long as Client has contracted for

support (as indicated by a recurring fee containing the product name and word 'Support'). Specific out-of-scope system enhancement requests are excluded from support. Should Client desire specific source-code level modifications to the system, Client may submit a request to ImageTrend's UserVoice page at <https://ImageTrend.uservoice.com/>.

## SECTION 21. RETURN OF DATA.

Upon termination of this Agreement for any reason, Client may request ImageTrend provide to Client a copy of Client's data. ImageTrend will produce at no charge this data by first using relevant export functionality provided by the application, e.g. for ImageTrend Elite the data would be produced as a NEMSIS Version 3 XML file(s), or by other native data export format should the application provide no export functionality. ImageTrend may redact or remove ImageTrend trade secret and confidential information to the extent that such information is a trade secret or confidential information pursuant to Florida law, such as database schema design details, or data which is used solely in an operational or administrative fashion (e.g. data which was never entered by Client end-users). For clarity, ImageTrend may not redact or remove data that Client or Client's end-users entered. ImageTrend will provide this exported data to Client via secure electronic transfer, such as SFTP/FTPS. ImageTrend shall have 90 days from Client's request to produce the native data export for Client. Should Client desire the data to come in any alternative format, or be in any way different than as described in this section, Client must request those services from ImageTrend separately on a Time and Materials basis under its own time frame. ImageTrend will make efforts to accommodate Client's request, but ImageTrend is under no obligation to do so. CSV format is included as an export format, if requested, upon termination of this Agreement. Final NEMSIS Version 3 XML file(s) are produced with a format allowing import into any NEMSIS industry standard software.

## SECTION 22. IMAGETREND ELITE AUTHORIZED USERS AND SCOPE OF USAGE

This Grant of License is strictly conditioned on the Software being used by only Authorized Users. ImageTrend may audit Client's Software, users, and usage to ensure compliance with the scope of usage detailed by this Agreement, in ImageTrend's discretion. Non-compliance with the scope of usage shall be considered a material breach.

If this Agreement is for the licensing of ImageTrend Elite EMS, the following scope of usage and Authorized User definitions apply.

Organization Type	Organization Definition	Authorized User Definition
Private Agency	Client responds to emergency medical incidents for-profit or not-for-profit and the Client <u>is not</u> a Governmental Entity.	All employees & contractors of Client who respond to emergency medical incidents in the regular scope of their employment
Public Agency, County, Region, or City for its own employed EMS workers ("Public Agency")	Client responds to emergency medical incidents and transports patients therefrom and <u>is</u> a Governmental Entity	All employees & contractors of Client who respond to emergency medical incidents in the regular scope of their employment
Hospital or Health Network	Client is a 1) hospital, 2) health network, 3) or other medical institution that provides care	All employees & contractors of Client who respond to emergency medical incidents in their regular scope of



	which does not involve responding to emergency medical incidents and transporting patients therefrom as a primary service of the organization; and Client is recognized and licensed as such by the Client's governing State	employment at or from the named Hospital brick-and-mortar locations. If the specific brick-and-mortar location(s) is not named in a Work Order, then it shall be interpreted as the brick-and-mortar location from which the Client primary contact, Adam Makarevich or their successor, conducts their job duties most frequently.
State, County, Region, City for its constituents	Client is a Governmental Entity with authority or a official mandate to improve, facilitate, organize, surveil, investigate, report, collect reports of, or otherwise govern public health matters; or another entity acting under a grant or contract of and for equivalent authority	Licensed individuals within Client's legal or governing jurisdiction and geographic boundary, who to respond to emergency medical incidents in the regular scope of their employment, and not individuals whose primary job duty involves law enforcement.
Group Purchase (Multi-Agency)	Client(s) are a plurality of Private Agencies and/or Public Agencies	All employees & contractors of each named organization, who respond to emergency medical incidents
Financing Party (e.g. billing company) on behalf of Agency/City/County third party beneficiary	Client is an entity which does not respond to emergency medical incidents or provide for the care or transportation of patients; rather Client is an entity who procures or pays for a third party beneficiary who is a Private or Public Agency.	All employees & contractors of third party beneficiary Public or Private Agency, who respond to emergency medical incidents in the regular scope of their employment.

## PRICE SHEET AND WORK ORDER ATTACHMENT

The prices below are based on the following SaaS transaction volumes, as provided by Client:  
50,000 to 59,999 Incidents annually

### One Time Fees

Description	SKU	Unit Price	Qty	Extended Amount
Elite™ EMS Setup	ELT.003.002.001	\$0.00	1	\$0.00
Onsite Training Session - 8 Hours	ELT.006.003.004	\$1,400.00	3	\$4,200.00
Travel	ELT.006.003.008	\$1,750.00	1	\$1,750.00

**Total One-Time Fees: \$5,950.00**

### Recurring Fees

Description	SKU	Unit Price	Qty	Extended Amount
Elite™ EMS - SaaS *Includes Elite™ Field	ELT.001.002.010	\$31,820.00	1	\$52,385.00
EMS w/NFIRS Tab	ELT.001.002.020	\$0.00	1	\$0.00
Health Information Hub™ Volume Tier	ELT.002.008.001	\$0.00	1	\$0.00
HIH™ Elite/Hospital Bi-Directional ■ Broward Health	ELT.002.008.007	\$0.00	1	\$0.00
CAD Distribution	ELT.002.007.001	\$3,500.00	1	\$3,500.00
Motorola Premier PrintTrak	ELT.002.007.016	\$0.00	1	\$0.00

**Total Recurring Fees: \$35,320.00**

**TOTAL YEAR 1: \$41,270.00**

## SERVICE LEVEL AGREEMENT ATTACHMENT

This attachment exists for the purpose of creating an understanding between ImageTrend and Client who elects to host the application on ImageTrend's servers. It is part of our guarantee for exceptional service levels for as long as the system annual support fee is contracted. This Service Level Agreement (SLA) applies to any site or application hosted in our datacenter as contracted.

### **Hosting at the ImageTrend's Datacenter**

ImageTrend's hosting environment provides 99.5% availability and is comprised of state-of-the-art Blade Servers and SAN storage that are configured with the no single point of failure through software and infrastructure virtualization, blade enclosure redundancies and backup storage policies. Our Microsoft SOFS SAN has a fiber channel backend, has dual storage controllers with redundant power supplies and redundant paths to disk, and hot swappable drives. We do offsite replication to disk on a second SAN. Scheduled maintenance and upgrades do not apply to the system availability calculation and all Clients are properly notified of such scheduled occurrences to minimize accessibility interruptions. Maintenance occurs the last Wednesday of each month between 9 and 11pm Central.

### **Hardware**

ImageTrend server hardware is configured to prevent data loss due to hardware failure and utilize the following to ensure a quick recovery from any hardware related problems.

- a. Independent Application and Database Servers
  - a. Microsoft SQL Server 2014
  - b. Microsoft Windows Server 2016
- b. Redundant Power Supplies
- c. Off-Site Idle Emergency Backup Servers (optional)
- d. Cisco 5516x ASA Firewall with IDS/IPS and VPN
- e. Redundant Disk configuration
- f. Disk Space allocation and Bandwidth as contracted

### **Physical Facility**

The ImageTrend utilizes industry leading colocation facilities are located in Eagan, Minnesota and Dallas Forth-Worth. Requirements such as power supply and power conditioning, normal and peak bandwidth capacity, security and fail over locations are all part of an overall strategy to provide the most reliable hosting facility possible.

- 1. UL Certified® containerized power units feed each data hall
- 2. High-efficiency Tri-mode cooling design & delivery offers PUE reduction
- 3. Diverse & secure utility entry points
- 4. Dual MMRs (Meet-Me-Rooms) offer unsurpassed network-neutral fiber interconnection to a multitude of providers
- 5. Independent on-site A & B power generation



6. Multi-MegaWatt utility feeds in a fully redundant (2N) A/B configuration
7. 20MW of power capacity

### ***Data Integrity***

ImageTrend applications are backed up daily allowing for complete recovery of data to the most recent backup:

1. Daily Scheduled Database and Application Backups.
2. Daily Scheduled backup Success/Failure notification to ImageTrend staff

### **Application and Hosting Support**

ImageTrend provides ongoing support as contracted for their applications and hosting services, including infrastructure. This includes continued attention to product performance and general maintenance needed to ensure application availability. Support includes technical diagnosis and fixes of technology issues involving ImageTrend software. ImageTrend has a broad range of technical support services available in the areas of:

- Web Application Hosting and Support
- Subject Matter Expert Application Usage Support
- Web Application Development/Enhancement
- Database Administration/Support
- Project Management
- Systems Engineering/Architecture

ImageTrend offers multi-level technical support, based on level-two user support by accommodating both the general inquiries of the administrators and those of the system users. We will give the administrators the ability to field support for the system as the first level of contact while providing them the option to refer inquiries directly to ImageTrend.

ImageTrend's Support Team is available online 24/7 at [www.imagetrend.com/support](http://www.imagetrend.com/support) with the call center staffed Monday through Friday from 7:30 am to 6:00 pm CST at

Toll Free: 1-888-469-7789

Phone: 952-469-1589

### ***Online Support***

ImageTrend offers an online support system which incorporates around-the-clock incident reporting of all submitted tickets to ImageTrend's application support specialists. Once a Client submits a support ticket, he or she can track the progress with a secure login to the support application. The system promotes speedy resolution by offering keyword-based self-help services and articles in the knowledgebase, should Clients wish to bypass traditional support services. Ticket tracking further enhances the efforts of Support Desk personnel by allowing ImageTrend to identify patterns which can then be utilized for improvements in production, documentation, education and frequently asked questions to populate the knowledgebase. The support ticket tracking system ensures efficient

workflow for the support desk specialists while keeping users informed of their incident's status. Support patterns can be referenced to populate additional knowledgebase articles.

### ***Incident Reporting Malfunctions***

ImageTrend takes all efforts to correct malfunctions that are documented and reported by the Client. ImageTrend acknowledges receipt of a malfunction report from a Client and acknowledges the disposition and possible resolution thereof according to the chart below.

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

### ***Service Requests (enhancements)***

ImageTrend maintains a UserVoice page for its products. UserVoice is a voting platform that allows customers to suggest and vote on enhancement ideas. UserVoice helps ImageTrend prioritize the most important product enhancements across all ImageTrend users. That portal is available at <https://imagetrend.uservoice.com> (requires valid ImageTrend credentials). If an enhancement request is specific to one Client and deemed to be outside of the original scope of the product, then the enhancement will be evaluated by the product management team. After this, ImageTrend may present a High Level Estimate of the work effort involved with developing the feature. If that high level estimate is approved by the Client, a Statement of Work is written and presented to the Client. These requests are subject to our standard rates and mutual agreement. Clients review and approve the scope, specification and cost before work is started to ensure goals are properly communicated.

Product release management is handled by ImageTrend using standard development tools and methodologies. Work items including, tasks, issues, and scenarios are all captured within the system. Releases are based on one or more iterations during a schedule development phase. This includes by not limited to: development, architecture, testing, documentation, builds, test and use cases.



Submissions of issues or requests are documented within our Product Management system and from there workflow is created to track the path from initial request to resolution.

### ***Out of Scope***

Client may contract with ImageTrend for Out of Scope services. This will require a separate Statement of Work and will be billed at ImageTrend's standard hourly rate of \$145 per hour.

### ***Maintenance and Upgrades***

System/product maintenance and upgrades, if applicable, are included in the ongoing support and warranty as contracted. These ensure continued attention to product performance and general maintenance. Scheduled product upgrades include enhancements and minor and major product changes. Customers are notified in advance of scheduled maintenance. It is the Client's responsibility to accept all offered updates and upgrades to the system. ImageTrend Elite customers have the option of enrolling in one of the release rounds as detailed below to provide greater control over the update schedule. To choose a release round, please inform your Implementation Coordinator, or ImageTrend Support if you wish to change your original selection. If the Client does not accept these updates, Client is advised that ImageTrend, at its discretion, reserves the right to limit support offered for previous versions. All code releases maintain the integrity of any client specific configurations (i.e. templates, addresses, staff information, active protocols, etc.).

### ***Release Groups***

ImageTrend Elite Release Rounds	
<b>Release Group 1</b>	Updates occur every 2 weeks, and includes the demo site and sites which are still in implementation (not yet live). It occurs between Wednesday and Monday, depending on the specific release.
<b>Release Group 2 (default)</b>	This round includes the majority of current sites. Clients are sent a notification email approximately one week ahead of time with the date/time of the update, and the highlights of the release. Release notes are also made available. These updates occur every two weeks, approximately one week after Release Group 1. This update always occurs on a Wednesday, between 8am and 1pm Central Time.
<b>Release Group 3</b>	This group of sites receives updates once a month. Clients are sent a notification email approximately one week ahead of time with the date/time of the update, and the highlights of the release. This update always occurs on the first Tuesday of every month between 8am and 9am Central Time. This version is the latest Stable release (e.g. not the latest release from Round 1 or 2, instead a trailing release)

### ***Escalation***

Our support staff is committed to resolving your issues as fast as possible. If they cannot resolve your issue, they will identify the course of action that they will be taking and indicate when an answer will be available. They in turn will seek assistance from the designated developer. The next level of escalation goes to the Project Manager, who also addresses all operational issues on an ongoing basis and reviews the issue log regularly to assess product performance and service levels. Senior Management will handle issues requiring further discussion and resolution. Any issues to be determined to be of a critical nature are immediately escalated accordingly.

## **Availability**

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

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

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

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

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

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



## BUSINESS ASSOCIATE AGREEMENT ATTACHMENT

This Business Associate Agreement ("Agreement") dated the last signature date hereto (the "Effective Date"), is entered into by and between **City of Fort Lauderdale** located at 100 N. Andrews Avenue, Fort Lauderdale, Florida 33311 (the "Covered Entity") and ImageTrend, Inc. a Minnesota corporation (the "Business Associate").

**WHEREAS**, Covered Entity (also referred to as "Client") and Business Associate have entered into, or are entering into, or may subsequently enter into, agreements or other documented arrangements (collectively, the "Business Arrangements") pursuant to which Business Associate may provide products and/or services for Covered Entity that require Business Associate to access, create and use health information that is protected by state and/or federal law; and

**WHEREAS**, pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the U.S. Department of Health & Human Services ("HHS") promulgated the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Standards"), at 45 C.F.R. Parts 160 and 164, requiring certain individuals and entities subject to the Privacy Standards (each a "Covered Entity", or collectively, "Covered Entities") to protect the privacy of certain individually identifiable health information ("Protected Health Information", or "PHI"); and

**WHEREAS**, pursuant to HIPAA, HHS has issued the Security Standards (the "Security Standards"), at 45 C.F.R. Parts 160, 162 and 164, for the protection of electronic protected health information ("EPHI"); and

**WHEREAS**, in order to protect the privacy and security of PHI, including EPHI, created or maintained by or on behalf of the Covered Entity, the Privacy Standards and Security Standards require a Covered Entity to enter into a "business associate agreement" with certain individuals and entities providing services for or on behalf of the Covered Entity if such services require the use or disclosure of PHI or EPHI; and

**WHEREAS**, on February 17, 2009, the federal Health Information Technology for Economic and Clinical Health Act was signed into law (the "HITECH Act"), and the HITECH Act imposes certain privacy and security obligations on Covered Entities in addition to the obligations created by the Privacy Standards and Security Standards; and

**WHEREAS**, the HITECH Act revises many of the requirements of the Privacy Standards and Security Standards concerning the confidentiality of PHI and EPHI, including extending certain HIPAA and HITECH Act requirements directly to business associates; and

**WHEREAS**, Business Associate and Covered Entity desire to enter into this Business Associate Agreement;

**NOW THEREFORE**, in consideration of the mutual promises set forth in this Agreement and the Business Arrangements, and other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the Parties agree as follows:

- **Business Associate Obligations.** Business Associate may receive from Covered Entity, or

create or receive on behalf of Covered Entity, health information that is protected under applicable state and/or federal law, including without limitation, PHI and EPHI. All capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Privacy Standards, Security Standards or the HITECH Act, as applicable (collectively referred to hereinafter as the "Confidentiality Requirements"). All references to PHI herein shall be construed to include EPHI. Business Associate agrees not to use or disclose (or permit the use or disclosure of) PHI in a manner that would violate the Confidentiality Requirements if the PHI were used or disclosed by Covered Entity in the same manner.

- **Use of PHI.** Except as otherwise required by law, Business Associate shall use PHI in compliance with 45 C.F.R. § 164.504(e). Furthermore, Business Associate shall use PHI (i) solely for Covered Entity's benefit and only for the purpose of performing services for Covered Entity as such services are defined in Business Arrangements, and (ii) as necessary for the proper management and administration of the Business Associate or to carry out its legal responsibilities, provided that such uses are permitted under federal and state law. Covered Entity shall retain all rights in the PHI not granted herein.
- **Disclosure of PHI.** Subject to any limitations in this Agreement, Business Associate may disclose PHI to any third party persons or entities as necessary to perform its obligations under the Business Arrangement and as permitted or required by applicable federal or state law. Further, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that (i) such disclosures are required by law, or (ii) Business Associate: (a) obtains reasonable assurances from any third party to whom the information is disclosed that it 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 third party; (b) requires the third party to agree to immediately notify Business Associate of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Confidentiality Requirements. Additionally, Business Associate shall ensure that all disclosures of PHI by Business Associate and the third party comply with the principle of "minimum necessary use and disclosure," i.e., only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed; provided further, Business Associate shall comply with Section 13405(b) of the HITECH Act, and any regulations or guidance issued by HHS concerning such provision, regarding the minimum necessary standard and the use and disclosure (if applicable) of Limited Data Sets. If Business Associate discloses PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, to agents, including a subcontractor (collectively, "Recipients"), Business Associate shall require Recipients to agree in writing to the same restrictions and conditions that apply to the Business Associate under this Agreement. Business Associate shall report to Covered Entity any use or disclosure of PHI not permitted by this Agreement, of which it becomes aware, such report to be made within three (3) business days of the Business Associate becoming aware of such use or disclosure. In addition to Business Associate's obligations under Section 9, Business Associate agrees to mitigate, to the extent practical and unless otherwise requested by Covered Entity in writing or as directed by or as a result of a request by Covered Entity to disclose to Recipients, any harmful effect that is known to Business Associate and is the result of a



use or disclosure of PHI by Business Associate or Recipients in violation of this Agreement.

- **Individual Rights Regarding Designated Record Sets.** If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate shall (i) provide access to, and permit inspection and copying of, PHI by Covered Entity or, as directed by Covered Entity, an individual who is the subject of the PHI under conditions and limitations required under 45 CFR §164.524, as it may be amended from time to time, and (ii) amend PHI maintained by Business Associate as requested by Covered Entity. Business Associate shall respond to any request from Covered Entity for access by an individual within five (5) days of such request and shall make any amendment requested by Covered Entity within ten (10) days of such request. Any information requested under this Section 4 shall be provided in the form or format requested, if it is readily producible in such form or format. Business Associate may charge \$145 per hour based upon the Business Associate's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies). Covered Entity shall determine whether a denial is appropriate or an exception applies. Business Associate shall notify Covered Entity within five (5) days of receipt of any request for access or amendment by an individual. Covered Entity shall determine whether to grant or deny any access or amendment requested by the individual. Business Associate shall have a process in place for requests for amendments and for appending such requests to the Designated Record Set, as requested by Covered Entity.
- **Accounting of Disclosures.** Business Associate shall make available to Covered Entity in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual in accordance with 45 CFR §164.528, as amended by Section 13405(c) of the HITECH Act and any related regulations or guidance issued by HHS in accordance with such provision. Business Associate shall provide to Covered Entity such information necessary to provide an accounting within thirty (30) days of Covered Entity's request or such shorter time as may be required by state or federal law. Such accounting must be provided without cost to the individual or to Covered Entity if it is the first accounting requested by an individual within any twelve (12) month period. For subsequent accountings within a twelve (12) month period, Business Associate may charge \$145 per hour based upon the Business Associate's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies) so long as Business Associate informs the Covered Entity and the Covered Entity informs the individual in advance of the fee, and the individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination of this Agreement and shall continue as long as Business Associate maintains PHI.
- **Withdrawal of Authorization.** If the use or disclosure of PHI in this Agreement is based upon an individual's specific authorization for the use of his or her PHI, and (i) the individual revokes such authorization in writing, (ii) the effective date of such authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid, Business Associate agrees, if it has notice of such revocation or invalidity, to cease the use and disclosure of any such individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under

the Confidentiality Requirements expressly applies.

- **Records and Audit.** Business Associate shall make available to the U.S. Department of Health and Human Services or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Covered Entity for the purpose of determining Covered Entity's compliance with the Confidentiality Requirements or any other health oversight agency, in a time and manner designated by the Secretary. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity immediately upon receipt by Business Associate of any and all requests by or on behalf of any and all federal, state and local government authorities served upon Business Associate for PHI.
- **Implementation of Security Standards; Notice of Security Incidents.** Business Associate will use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement. Business Associate will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate acknowledges that the HITECH Act requires Business Associate to comply with 45 C.F.R. §§ 164.308, 164.310, 164.312, 164.314, and 164.316 as if Business Associate were a Covered Entity, and Business Associate agrees to comply with these provisions of the Security Standards and all additional security provisions of the HITECH Act. Furthermore, Business Associate will use commercially reasonable efforts to ensure that the technology safeguards used by Business Associate to secure PHI will render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI in accordance with HHS Guidance published at 74 Federal Register 19006 (April 17, 2009), or such later regulations or guidance promulgated by HHS or issued by the National Institute for Standards and Technology ("NIST") concerning the protection of identifiable data such as PHI. Business Associate acknowledges and agrees that the HIPAA Omnibus Rule finalized January 25, 2013 at 78 Fed. Reg. 5566 requires Business Associate to comply with new and modified obligations imposed by that rule under 45 C.F.R. §164.306, 45 C.F.R. § 164.308, 45 C.F.R. § 163.310, 45 C.F.R. § 164.312, 45 C.F.R. § 164.316, 45 C.F.R. § 164.502, 45 C.F.R. § 164.504. Lastly, Business Associate will promptly report to Covered Entity any successful Security Incident of which it becomes aware. At the request of Covered Entity, Business Associate shall identify: the date of the Security Incident, the scope of the Security Incident, the Business Associate's response to the Security Incident and the identification of the party responsible for causing the Security Incident, if known. Business Associate and Covered Entity shall take reasonable measures to ensure the availability of all affirmative defenses under the HITECH Act, HIPAA, and other state and federal laws and regulations governing PHI and EPHI.
- **Data Breach Notification and Mitigation.**
  - **HIPAA Data Breach Notification and Mitigation.** Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any "breach" of "unsecured PHI" as those terms are defined by 45 C.F.R. §164.402 (hereinafter a "HIPAA Breach"). The parties acknowledge and agree that 45



C.F.R. §164.404, as described below in this Section 9.1, governs the determination of the date of a HIPAA Breach. In the event of any conflict between this Section 9.1 and the Confidentiality Requirements, the more stringent requirements shall govern. Business Associate will, following the discovery of a HIPAA Breach, notify Covered Entity immediately and in no event later than three (3) business days after Business Associate discovers such HIPAA Breach, unless Business Associate is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations. For purposes of reporting a HIPAA Breach to Covered Entity, the discovery of a HIPAA Breach shall occur as of the first day on which such HIPAA Breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate. Business Associate will be considered to have had knowledge of a HIPAA Breach if the HIPAA Breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the HIPAA Breach) who is an employee, officer or other agent of the Business Associate. No later than seven (7) business days following a HIPAA Breach, Business Associate shall provide Covered Entity with sufficient information to permit Covered Entity to comply with the HIPAA Breach notification requirements set forth at 45 C.F.R. §164.400 *et seq.* Specifically, if the following information is known to (or can be reasonably obtained by) the Business Associate, Business Associate will provide Covered Entity with: (i) contact information for individuals who were or who may have been impacted by the HIPAA Breach (e.g., first and last name, mailing address, street address, phone number, email address); (ii) a brief description of the circumstances of the HIPAA Breach, including the date of the HIPAA Breach and date of discovery; (iii) a description of the types of unsecured PHI involved in the HIPAA Breach (e.g., names, social security number, date of birth, address(es), account numbers of any type, disability codes, diagnostic and/or billing codes and similar information); (iv) a brief description of what the Business Associate has done or is doing to investigate the HIPAA Breach, mitigate harm to the individual impacted by the HIPAA Breach, and protect against future HIPAA Breaches; and (v) appoint a liaison and provide contact information for same so that the Covered Entity may ask questions or learn additional information concerning the HIPAA Breach. Following a HIPAA Breach, Business Associate will have a continuing duty to inform Covered Entity of new information learned by Business Associate regarding the HIPAA Breach, including but not limited to the information described in items (i) through (v), above.

- Data Breach Notification and Mitigation Under Other Laws. In addition to the requirements of Section 9.1, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI, and referred to hereinafter as “Individually Identifiable Information”) that, if misused, disclosed, lost or stolen, Covered Entity believes would trigger an obligation under one or more State data breach notification laws (each a “State Breach”) to notify the individuals who are the subject of the information. Business Associate agrees that in the event any Individually Identifiable Information is lost, stolen, used or disclosed in violation of one or more State

data breach notification laws, Business Associate shall promptly: (i) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach; (ii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach conducted by any State Attorney General or State Consumer Affairs Department (or their respective agents); (iii) comply with Covered Entity's determinations regarding Covered Entity's and Business Associate's obligations to mitigate to the extent practicable any potential harm to the individuals impacted by the State Breach; and (iv) assist with the implementation of any decision by Covered Entity or any State agency, including any State Attorney General or State Consumer Affairs Department (or their respective agents), to notify individuals impacted or potentially impacted by a State Breach.

- Breach Indemnification. Business Associate shall indemnify, defend and hold Covered Entity and its officers, directors, employees, agents, successors and assigns harmless, from and against all reasonable losses, claims, actions, demands, liabilities, damages, costs and expenses (including costs of judgments, settlements, court costs and reasonable attorneys' fees actually incurred) (collectively, "Information Disclosure Claims") arising from or related to: (i) the use or disclosure of Individually Identifiable Information (including PHI) by Business Associate in violation of the terms of this Agreement or applicable law, and (ii) whether in oral, paper or electronic media, any HIPAA Breach of unsecured PHI and/or State Breach of Individually Identifiable Information by Business Associate. If Business Associate assumes the defense of an Information Disclosure Claim, Covered Entity shall have the right, at its expense and without indemnification notwithstanding the previous sentence, to participate in the defense of such Information Disclosure Claim. Business Associate shall not take any final action with respect to any Information Disclosure Claim without the prior written consent of Covered Entity. Covered Entity likewise shall not take any final action with respect to any Information Disclosure Claim without the prior written consent of Business Associate. To the extent permitted by law and except when caused by an act of Covered Entity or resulting from a disclosure to a Recipient required or directed by Covered Entity to receive the information, Business Associate shall be fully liable to Covered Entity for any acts, failures or omissions of Recipients in furnishing the services as if they were the Business Associate's own acts, failures or omissions.

- Covered Entity and Business Associate shall seek to keep costs or expenses that the other may be liable for under this Section 9, including Information Disclosure Claims, to the minimum reasonably required to comply with the HITECH Act and HIPAA. Covered Entity and Business Associate shall timely raise all applicable affirmative defenses in the event a violation of this Agreement, or a use or disclosure of PHI or EPHI in violation of the terms of this Agreement or applicable law occurs.

- Term and Termination.
  - This Agreement shall commence on the Effective Date and shall remain in effect until terminated in accordance with the terms of this Section, provided,



however, that termination shall not affect the respective obligations or rights of the parties arising under this Agreement prior to the effective date of termination, all of which shall continue in accordance with their terms.

- Covered Entity shall have the right to terminate this Agreement for any reason upon thirty (30) days written notice to Business Associate.
- Covered Entity, at its sole discretion, may immediately terminate this Agreement and shall have no further obligations to Business Associate if any of the following events shall have occurred and be continuing:
  - Business Associate fails to observe or perform any material covenant or obligation contained in this Agreement for ten (10) days after written notice thereof has been given to the Business Associate by Covered Entity; or
  - A violation by the Business Associate of any provision of the Confidentiality Requirements or other applicable federal or state privacy law relating to the obligations of the Business Associate under this Agreement.
- Termination of this Agreement for either of the two reasons set forth in this Agreement shall be cause for Covered Entity to immediately terminate for cause any Business Arrangement pursuant to which Business Associate is entitled to receive PHI from Covered Entity.
- Upon the termination of all Business Arrangements, either Party may terminate this Agreement by providing written notice to the other Party.
- Upon termination of this Agreement for any reason, Business Associate agrees either to return to Covered Entity or to destroy all PHI received from Covered Entity or otherwise through the performance of services for Covered Entity, that is in the possession or control of Business Associate or its agents. In the case of PHI which is not feasible to "return or destroy," Business Associate 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 Business Associate maintains such PHI. Business Associate further agrees to comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment of such PHI.
- **No Warranty.** PHI IS PROVIDED TO BUSINESS ASSOCIATE SOLELY ON AN "AS IS" BASIS. COVERED ENTITY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.
- **Ineligible Persons.** Business Associate represents and warrants to Covered Entity that Business Associate (i) is not currently excluded, debarred, or otherwise ineligible to participate in any federal health care program as defined in 42 U.S.C. Section 1320a-7b(f) ("the Federal Healthcare Programs"); (ii) has not been convicted of a criminal

offense related to the provision of health care items or services and not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs, and (iii) is not under investigation or otherwise aware of any circumstances which may result in Business Associate being excluded from participation in the Federal Healthcare Programs. This shall be an ongoing representation and warranty during the term of this Agreement, and Business Associate shall immediately notify Covered Entity of any change in the status of the representations and warranty set forth in this section. Any breach of this section shall give Covered Entity the right to terminate this Agreement immediately for cause.

○ **Miscellaneous.**

- **Notice.** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; or (iii) overnight delivery service with proof of delivery. Notices shall be sent to the addresses below. Neither party shall refuse delivery of any notice hereunder.

If to Covered Entity:

ATTN: Compliance Department

ATTN: City Attorney

100 N. Andrews Avenue

Fort Lauderdale, Florida 33311

If to Business Associate:

ImageTrend, Inc.

Attn: Michael J. McBrady

20855 Kensington Blvd.

Lakeville, MN 55044

- **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.
- **Assignment.** Neither Party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.
- **Severability.** Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or



enforceability of such remaining provisions.

- **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangements or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangements are more strict with respect to PHI and comply with the Confidentiality Requirements, or the parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party; provided, however, that upon the enactment of any law, regulation, court decision or relevant government publication and/or interpretive guidance or policy that the Covered Entity believes in good faith will adversely impact the use or disclosure of PHI under this Agreement, Covered Entity may amend the Agreement to comply with such law, regulation, court decision or government publication, guidance or policy by delivering a written amendment to Business Associate which shall be effective thirty (30) days after receipt. No obligation on either Party to enter into any transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement
- **Governing Law.** Venue shall lie in the 17th Judicial Circuit, Broward County, Florida, in the appropriate court or before the appropriate administrative body, or in the event of federal jurisdiction, in the Southern District of Florida' this Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder, shall be in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in Broward County state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency, or other jurisdictional device.
- **Equitable Relief.** The parties understand and acknowledge that any disclosure or misappropriation of any PHI in violation of this Agreement will cause the other irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that the injured party shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as the injured party shall deem appropriate. Such right is to be in addition to the remedies otherwise available to the parties at law or in equity. Each party expressly waives the defense that a remedy in damages will be adequate.
- **Nature of Agreement; Independent Contractor.** 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, or (ii) a relationship of employer and employee between the parties. Business Associate is an independent contractor, and

not an agent of Covered Entity. This Agreement does not express or imply any commitment to purchase or sell goods or services.





# DOCUMENT ROUTING FORM

2006  
6/27/19

Today's Date: 6/24/19

DOCUMENT TITLE: ImageTrend Master Software and Services Agreement

COMM. MTG. DATE: 4/16/19 CAM #: 19-0210 ITEM #: CP-1 CAM attached: ☒ YES ☐ NO

Routing Origin: \_\_\_\_\_ Router Name/Ext: G. Lyrus Action Summary attached: ☐ YES ☒ NO

CIP FUNDED: ☐ YES ☒ NO

Capital Investment / Community Improvement Projects defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, or fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, or real.

2) City Attorney's Office: Documents to be signed/routed? ☒ YES ☐ NO # of originals attached: 2

Is attached Granicus document Final? ☒ YES ☐ NO Approved as to Form: ☒ YES ☐ NO

Date to CCO: \_\_\_\_\_  
Attorney's Name: RMH Initials: DMA

3) City Clerk's Office: # of originals: 2 Routed to: \_\_\_\_\_ Ext: \_\_\_\_\_ Date: 6/26/19

4) City Manager's Office: CMO LOG #: June 107 Document received from: cco  
Assigned to: CHRIS LAGERBLOOM ☒ LINDA LOGAN-SHORT ☐ RHODA MAE KERR ☐  
CHRIS LAGERBLOOM as CRA Executive Director ☐

☐ APPROVED FOR C. LAGERBLOOM'S SIGNATURE ☐ N/A C. LAGERBLOOM TO SIGN

PER ACM: L. L-SHORT \_\_\_\_\_ (Initial/Date) R. KERR \_\_\_\_\_ (Initial/Date)

☐ PENDING APPROVAL (See comments below)  
Comments/Questions: \_\_\_\_\_

Forward 2 originals to ☐ Mayor ☒ CCO Date: 6/27/19

5) Mayor/CRA Chairman: Please sign as indicated. Forward \_\_\_\_\_ originals to CCO for attestation/City seal (as applicable) Date: \_\_\_\_\_

## INSTRUCTIONS TO CITY CLERK'S OFFICE

City Clerk: Retains \_\_\_\_\_ original and forwards \_\_\_\_\_ originals to: \_\_\_\_\_ (Name/Dept/Ext)

Attach \_\_\_\_\_ certified Reso # \_\_\_\_\_ ☐ YES ☐ NO Original Route form to CAO

TRM 19-0833