

MASTER SERVICES AGREEMENT

CONTRACT No.: 325835

BETWEEN

**CITY OF ANN ARBOR
301 E. HURON STREET
ANN ARBOR, MI 48104**

AND

**IMAGETREND, INC.
20855 KENSINGTON BLVD.
LAKEVILLE, MN 55044**

IMAGETREND INC.

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 Ann Arbor (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.

"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 §14(b) below.

"Confidential information" means the proprietary products and trade secrets, including, but not limited to, computer software, code, technical parameters, price lists, customer lists, designs, software documentations, manuals, models and account tables, and any and all information maintained or developed.

"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 Service Order, and each Deliverable is specified in the corresponding Service 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.

“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, state or foreign statutory or common law), business, technical and know-how information, non-public information, and confidential information and rights to limit the use or disclosure thereof by any Person; (v) mask works; (vi) moral rights, author’s rights or rights of publicity; (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 from, 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, delivery of materials, or any other cost reasonably incurred arising out of this Agreement.

“Master Services Agreement” means this document excluding Service 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.

“Service Order” means the technical document which outlines a mutually agreed upon set of services or Deliverables and associated costs, payment terms, and acceptance procedures

“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.

“Receiving Party” means the party receiving Confidential Information from the Disclosing Party

“The Agreement” means collectively this Master Services Agreement and all Service Orders issued from this Master Services Agreement

“Third Party Materials” 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.

SECTION 2. TERM OF AGREEMENT.

The term of this Agreement shall be one year(s) from signature date, subject to §13 of this Agreement. This Agreement shall be subject to automatic annual renewal unless terminated by either party as provided in §13 below, or otherwise. A party that does not wish to automatically renew must provide written notice to the other party no less than 30 days before the automatic renewal date.

SECTION 3. SERVICE ORDERS

- a) **CREATION OF SERVICE 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 Service Order. If the Service Order is for the purchase of COTS Software, the Service Order shall also outline the quantity and SKU of each product or service. Exhibit B, attached hereto and incorporated herein, is the first Service Order pursuant to the Agreement. Any and all future Service Orders must be in writing, executed by the parties authorized representatives to be valid.
- b) **LIMITATIONS OF SERVICE ORDERS.** Service 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 Service Order where the requirement is presented. Additionally, ImageTrend may set forth factual assumptions (“Assumption”) in each Service Order. Notwithstanding anything in this Agreement or the Service Order, a Service Order will be rendered void to the extent that ImageTrend is obligated to perform services which are impossible or impracticable. Further, a Service Order will be rendered void to the extent that ImageTrend is obligated to perform services materially different than originally set out in that Service Order due to an inaccurate Assumption. The parties will make commercially reasonable efforts to negotiate an alternative or modified Service Order in light of the inaccurate Assumption.
- c) **MODIFICATION OF SERVICE ORDERS.** Any modification to the scope or tasks identified within the Service Order that changes the work budget by an estimated 10 hours of work or more shall require a new modified written Service Order or written Change Order. ImageTrend shall not work on the new tasks in the modified Service Order until the Client has provided signed written acceptance of the new Service 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.

- d) **FEE MODEL.** The Service Order will contain fee and payment terms. The following fee models are contemplated:

Model Name	Definition
Fixed Fee	ImageTrend shall perform the work outlined in the Service Order for a fixed flat fee, plus Expenses. The Fixed Fee is exclusive of Expenses unless the Service Order outlines the Expenses. The Fixed Fee model may include milestone payments, with such milestone payments outlined in the Service Order.
Time and Materials	ImageTrend shall perform the work outlined in the Service Order on a Time and Materials basis, at the rate(s) specified in the Service Order.

- e) **LEGAL EFFECT.** Service Orders issued under this Master Services Agreement are incorporated by reference into this Master Services Agreement which collectively is called “the Agreement.” Service Orders do not override the terms of this Master Services Agreement unless specifically stated that they do so. Service Orders may contain their own Fee/Payment Schedules and Payment Terms; those terms are binding insofar as they concern the services or Deliverables contemplated by the Service Order. For Service Orders without their own fee and payment terms, the payment terms in Exhibit B below control.
- f) **CUSTOMIZED SOFTWARE DEVELOPMENT.** The parties may mutually agree to a Service 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 Service Order shall apply, but additionally the parties must work together to mutually define a scope 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 Service Order.
- g) **RECURRING SOFTWARE SUPPORT AND MAINTENANCE**
Any recurring fees under this Agreement or its Service Orders will increase by 3% of the then-current price each year beginning on the first Anniversary of the Effective Date of this Agreement.
- h) ImageTrend acknowledges that, if this agreement extends for several fiscal years, continuation of this agreement is subject to appropriation of funds therefore. If funds to enable Client to effect continued payment under this agreement are not appropriated or otherwise made available, Client shall have the right to terminate this agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to ImageTrend. Client shall give Contractor written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.

SECTION 4. PERFORMANCE OF SERVICES

- a) **COMMENCEMENT.** ImageTrend shall begin services described in the Service Order subsequent mutual signed execution the Service Order. No services shall begin before mutual signed and written final acceptance of each Service Order.
- b) **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 “Data and Intellectual Property” and Exhibit A – Software Licensing Terms.
- c) **MATERIALS.** Materials (including, but not limited to, third party software licenses, physical hardware, test devices, or other items and any other Material) 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 in writing should be acquired, and it shall be the Client’s responsibility to pay for those materials.
- d) **ACCEPTANCE OF SERVICES AND DELIVERABLES.** ImageTrend shall deliver completed Deliverables and services to Client for acceptance. After delivery of the Deliverable or performance of the service, Client shall have no more than 30 days to: 1) accept the deliverable or service, or 2) reject the deliverable or service by providing a written rejection that reasonably sets forth the reason for the rejection and the changes required to gain Client’s acceptance, or 3) provide a written request for a 15 additional day extension to review the Deliverable or service; ImageTrend shall not unreasonably withhold approval of such 15 day extension. If Client does not provide an acceptance within the above time frame inclusive of extensions, the Deliverable or service will be deemed accepted. After delivery of the fourth revision of the service or Deliverable, the service or Deliverable shall be deemed accepted by Client.

SECTION 5. FEES, INVOICING AND PAYMENT TERMS

- a) **FEES.** Client shall owe to ImageTrend such fees and/or billable rates as set forth in each mutually executed Service Order.
- b) **SCHEDULING NON-LOCAL TRAVEL.** For air travel Client may, and is strongly advised to, schedule travel 3 weeks and 1 day 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.
- c) **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 staffed service in a Service Order. If Client fails to provide such notice, Client shall reimburse ImageTrend for lost billable hours or fees 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.
- d) **INVOICING.** Unless otherwise specified in a Service Order, invoices must be paid on net 30 terms. Any objection to an invoice must be made in writing. If no objection to an invoice is made

within 15 days after receipt of the invoice, the invoice is deemed accepted and any right to object to the invoice is waived.

- e) **REMEDIES FOR NON-PAYMENT.** Should Client fail to pay per the terms of this Agreement and this Section 5, ImageTrend may 1) suspend services under all Service Orders until such payment is made in full, or 2) charge a late fee at the lesser of 1.5% or the maximum allowed by law, 3) invoice Client for the costs of collection including reasonable attorney's fees.
- f) **TRAVEL COSTS.** Unless otherwise specified in a Service Order, non-local travel to the continental US shall be billed at a flat \$750 when scheduled 3 weeks and 1 day or more in advance of the first on-site date, and \$1000 when scheduled 3 weeks or less, per each round-trip per person to destinations of Client's choosing and back ("Round Trip Rate"), plus \$149 per diem for accommodations, food, and transportation. Per diem costs are instead \$69 per diem for local travel. Travel outside of the continental US will be quoted by ImageTrend upon request. 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 the Round Trip Rate 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 4 hours of the Business Day for travel time and such hours will be billable hours invoiced to Client.
- g) **TIME AND MATERIALS RATE.** Unless otherwise specified in a Service Order, ImageTrend's Time and Materials rate is \$175 per hour.
- h) **PRICE ESCALATION.** ImageTrend reserves the right to escalate the prices contained herein, and any recurring fee, by no more than 3% of the then current price for each anniversary of the Effective Date. ImageTrend further reserves the right to escalate travel prices once per year upon written notice to Client, with such escalation increasing by an amount sufficient to reasonably cover increases in ImageTrend's average travel expenses over the previous year. The parties may agree and ImageTrend may present different pricing on an ad-hoc basis in any Service Order.

SECTION 6. DATA AND INTELLECTUAL PROPERTY

- a) **CLIENT DATA.** All Client data provided to ImageTrend remains at all times the property of the Client unless otherwise specified by a Service 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 Service Order, and for use in an aggregated manner to monitor, operate, and conduct statistical analyses relevant to the application's proper functioning and maintenance. ImageTrend will not in any way transfer to any third party any Confidential Information of Client.
- a) **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 Service Orders and in accordance with the license selected below at

Exhibit A, conditioned upon full payment of the Service 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 Service Order. New Deliverables utilizing the same Pre-Existing IP may require another license for that new Deliverable. New Custom Intellectual Property developed by the parties in the course of performing a Service Order shall be owned by the party that developed 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 Service Order. In the case of ImageTrend Software products licensed per Exhibit A below, ImageTrend shall own all Intellectual Property related to or arising out of any Service Order which licenses those products or Pre-Existing IP. Notwithstanding the last sentence, where a Service Order is directed towards creation of a Deliverable(s) for Client, to the extent new Intellectual Property is embodied by or contained within the Deliverable(s), Client shall own such Intellectual Property as a Work Made for Hire and ImageTrend hereby assigns and grants all other Intellectual Property rights embodied by and contained within such Deliverable(s).

SECTION 7. CONFIDENTIALITY

- a) **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, and any other information a Party has marked as Confidential, constitute Confidential Information. ImageTrend 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. 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.
- b) **CONFIDENTIALITY OBLIGATIONS.** Each party agrees to keep confidential all confidential information disclosed to it by the other party in accordance 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; (iv) becomes known publicly, without fault on the part of a Party, subsequent to the receipt of the information by Party; or (v) is required by law to be disclosed.
- c) **SURVIVAL.** This §7 shall survive the termination of this Agreement or of any license granted under this Agreement.

SECTION 8. WARRANTIES

- a) **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. ImageTrend certifies it has no financial interest in the services to be provided under this Agreement other than the compensation specified herein. ImageTrend further certifies that it

presently has no personal or financial interest, and shall not acquire any such interest, direct or indirect, which would conflict in any manner with its performance of the services under this Agreement.

- b) 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 Service Order or as otherwise set forth in this Agreement.
- c) EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT ABOVE, THE SERVICES IMAGETREND PROVIDES TO CLIENT IS 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 ANY REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO THE SERVICES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES PROVIDED IN THIS AGREEMENT ARE YOUR SOLE AND EXCLUSIVE REMEDIES.

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 FOR ANY DAMAGES ARISING OUT OF OR IN ANY MANNER RELATED TO THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR BREACH OF CONTRACT, BREACH OF WARRANTY), SHALL BE LIMITED TO THE AMOUNT OF THE FEES PAID BY CLIENT TO IMAGETREND UNDER THIS AGREEMENT.

SECTION 10. MEDIATION

If a dispute arises out of or relates to this contract, or the alleged breach thereof, and if the dispute is not settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation within 30 days administered under the American Arbitration Association procedures for Mediation before resorting to arbitration, litigation, or some other dispute resolution procedure. In the event that parties are unable to agree on a mediator, a mediator shall be appointed by the named administrator. The process shall be confidential based on terms acceptable to the mediator and/or mediation service provider.

SECTION 11. NON-EXCLUSIVITY

Nothing in this Agreement prohibits each Party from providing or seeking similar or the same services from another party.

SECTION 12. AMENDMENTS

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

SECTION 13. TERMINATION

Either Party may terminate this Agreement upon giving the other Party thirty days (30) days' prior written notice in addition to any other remedy or right contained in this Agreement. This right of termination is additive to other rights of termination identified above in this Agreement and does not preclude the exercise of those other rights.

SECTION 14. GENERAL TERMS

- a) Electronic Signatures. The parties agree to conduct transactions primarily via electronic means. Accordingly, each party accepts electronic signatures and Deliverables equally to physical versions of the same.
- 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 Service Order, ImageTrend shall perform services only during business days, from 9:00am CST to 5:00pm CST.
- c) Counterparts. This Agreement may be executed in counterpart originals, duly signed by both parties, each of which will be deemed an original but all of which, together, will constitute one and the same Agreement. Any terms not present in all counterpart copies are severed and void.
- d) 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. This clause shall not apply to costs due to ImageTrend to reimburse cancellation, reschedule, or modification of travel arrangements per §5 above.
- e) Reasonable Cooperation. Client will reasonably cooperate with ImageTrend to the extent reasonably necessary to enable ImageTrend to perform the Services contemplated in each Service Order. Accordingly, Client will provide access, information or other materials in a fashion timely to the schedule of each Service Order. ImageTrend shall have no liability to Client for delays arising out the actions or non-actions of Client.
- f) Non assignability. A party shall not assign this Agreement or its rights hereunder without the prior written consent of the other party.
- g) Jurisdiction and Venue. The parties agree that the law governing this Agreement shall be that of the State of Michigan without regard to its conflict of laws principles.
- h) Entire Agreement. This agreement, including Exhibits A, B, C, and D 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, discharged, or modified except by an instrument in writing signed by the parties.
- i) 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.
- j) 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.

- 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 postmarked 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.

If to Client:

City of Ann Arbor
Attn: Information Technology, First Floor
301 East Huron Street
Ann Arbor, MI 48104

With a copy to:
Office of City Attorney
301 East Huron Street, 3rd Floor
Ann Arbor, MI 48104

If to ImageTrend:

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

Section 15. COMPLIANCE REQUIREMENTS

A. **Nondiscrimination.** ImageTrend agrees to comply, and to require its subcontractor(s) to comply, with the nondiscrimination provisions of MCL 37.2209. ImageTrend further agrees to comply with the provisions of Section 9:158 of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity.

B. **Living Wage.** If ImageTrend is a "covered employer" as defined in Chapter 23 of the Ann Arbor City Code, ImageTrend agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. ImageTrend agrees to pay those employees providing Services to Client under this Agreement a "living wage," as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3); to post a notice approved by Client of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this Agreement are working; to maintain records of compliance; if requested by Client, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave

available to any employee or person contracted for employment in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

Section 16. INSURANCE/INDEMNIFICATION

- A. IMAGETREND shall procure and maintain the following insurance during the term of this contract: (1) Commercial General Liability, with the Client as an additional insured (with \$1,000,000 for each occurrence for bodily injury or property damage; \$2,000,000 per job general aggregate, and \$1,000,000 personal and advertising injury); (2) Worker's Compensation (as required by state and federal statutes), (3) Errors and Omissions Insurance protecting IMAGETREND and its employees in an amount not less than \$1,000,000; and (4) Cyber Liability insurance in the amount of \$1,000,000. For all insurance required herein, the insurance provider shall be authorized to do business in Michigan, shall carry and maintain a minimum rating of "A-" from A.M. Best and Co., with a minimum financial size category of "V", the insurance shall be considered primary and the Client shall not be required to contribute its insurance, IMAGETREND agrees to waive its right to recover against the Client, and there shall be a 30-day, unqualified duty to give written notice of cancellation to the Client. Proof of such insurance shall be provided through Client-approved means (currently MyCOI) and shall include all information necessary to establish required coverage. Compliance with this section is a condition of Client's payment to IMAGETREND. IMAGETREND should add registration@mycoitracking.com to its safe-senders list.

- B. To the fullest extent permitted by law, ImageTrend shall indemnify, defend and hold Client, its officers, employees and agents harmless from all suits, claims, judgments and expenses, including attorney's fees, resulting or alleged to result, from any acts or omissions by ImageTrend or its employees and agents occurring in the performance of or breach in this Agreement, except to the extent that any suit, claim, judgment or expense are finally judicially determined to have resulted from Client's negligence or willful misconduct or its failure to comply with any of its material obligations set forth in this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF: the parties hereto have executed this Agreement by a duly authorized representative on the date set forth above

FOR IMAGETREND	FOR CLIENT - THE CITY OF ANN ARBOR
By _____ Type Name Its	By _____ Christopher Taylor, Mayor By _____ Jacqueline Beaudry, City Clerk
	Approved as to substance _____ Howard S. Lazarus, City Administrator _____ Type Name Service Area Administrator
	Approved as to form and content _____ Stephen K. Postema, City Attorney

EXHIBIT A – SOFTWARE LICENSING TERMS

To the degree any Service 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 to a potential or actual patient.

1. GRANT OF LICENSE TO SOFTWARE

Each Service Order for the sale of Software Licenses shall outline which of the below licenses are being granted by the Service Order. The license selection will be evidenced by the title of each SKU in the Service 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 reasonable written notice of the change.

Name of License	Terms of License
<p><i>Software as a Service License (SaaS) or Integration as a Service (IaaS) (“SaaS”)</i></p>	<p>IMAGETREND hereby grants CLIENT a non-exclusive, non-transferable license to use the IMAGETREND Software product(s) listed in the SERVICE ORDER for such time as listed in said SERVICE ORDER. During the term of the SERVICE 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.</p>
<p><i>ImageTrend Hosted License (“License”)</i></p>	<p>IMAGETREND will grant CLIENT a non-exclusive, non-transferable, perpetual use license without rights of resale or sublicensing, to the IMAGETREND Software product(s) listed in the SERVICE ORDER. 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.</p>
<p><i>Client Hosted License (“On Premise License”)</i></p>	<p>IMAGETREND will grant CLIENT a non-exclusive, non-transferable, perpetual use license without rights of resale or sublicensing, to the IMAGETREND Software product(s) listed in the SERVICE ORDER. CLIENT shall have access to the Software, which will be installed on servers at the CLIENT hosting facility and subject to the attached Service Level Agreement. 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.</p> <p>Initial set up will require direct access to CLIENT servers by IMAGETREND personnel. However, after the installation is complete, management of non- IMAGETREND software, operating systems, ancillary systems and the responsibility for keeping non- IMAGETREND software updated will be the sole responsibility of CLIENT. IMAGETREND disclaims any</p>

	<p>and all liability arising from out of out-of-date or otherwise insufficiently maintained non-IMAGETREND software or hosting environment. CLIENT agrees to ensure that IMAGETREND will have sufficient server access. Maintenance of Client Hardware, physical environment, storage, processing, patching, operating system maintenance, network device maintenance, Client 3rd party licenses (as outlined below), or any other task which is required to maintain the Client application hosting environment and is not directly arising out of a requirement of or defect to the ImageTrend application(s) are the sole responsibility of Client. It will not be ImageTrend's responsibility to maintain or resolve problems with Client's hosted environment. ImageTrend's sole responsibility shall be to provide application support for ImageTrend developed applications. Tasks which are ultimately discovered to be maintenance of the Client Hosting environment may be charged to Client at ImageTrend's out-of-scope rate of \$175/hr.</p>
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2. IMAGETREND ELITE DATA MARTS NON EXCLUSIVE USE LICENSE

In accordance with the terms and conditions hereof, IMAGETREND agrees to grant the use of the ImageTrend Elite Data Marts only via ImageTrend Elite Reporting Tools, unless an "Elite Data Mart License" included and detailed in a SERVICE 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 available via the aforementioned separately-priced product and service offering from IMAGETREND.

3. 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 to, copy 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.

4. INSTALLATION, INTRODUCTORY TRAINING AND DEBUGGING

- A. 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.
- B. IMAGETREND shall provide "Train-the-trainer" training for administrators as detailed in each Service Order. Additionally, online training videos and user guides in electronic format will be made available.
- C. IMAGETREND will provide installation instructions and assistance for installation of the Software on the Servers appropriate to the License selection in the Service Order per the table above at Section 1 of this Exhibit.
- D. IMAGETREND shall provide introductory training relating to the Software

5. WARRANTIES

A. PERFORMANCE.

IMAGETREND warrants that the Software will conform to the specifications as set forth in the Licensed Information. However, this warranty shall be revoked in the event that any person other than IMAGETREND and its agents make any unauthorized amendment or change to the Software in any manner.

B. OWNERSHIP.

IMAGETREND represents and warrants 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.

C. LIMITATIONS ON WARRANTY.

All of IMAGETREND's obligations under this Section 5 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 any failures of the Software which are the result of accident, abuse, misapplication, extreme power surge or extreme electromagnetic field.

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.

6. MAINTENANCE

IMAGETREND shall provide scheduled updates and new releases for the Software, as well as defect correction as needed per the Service Level Agreement. Specific out-of-scope system enhancement requests are not included.

EXHIBIT B – SERVICE ORDER 001 – SOFTWARE LICENSING

All pricing is based on 7,000 annual Incidents.

Description	Fee Type	Units	Unit Price	Total Regional Price	Ann Arbor Price (35.23% of Total)
ImageTrend Elite™ Rescue License (Fire & EMS)	One-Time	1	\$23,677.58	\$23,677.68	\$8,341.79
ImageTrend Elite™ Field Site License <i>Credit for State provided Elite Field</i>	One-Time	1	\$14,206.55	Included	Included
ImageTrend Elite™ Rescue Setup and Project Management Fee	One-Time	1	\$4,735.52	\$4,735.52	\$1,668.36
ImageTrend Elite™ Mobile Fire Inspections Setup Fee	One-Time	1	\$4,500.00	N/A	\$4,500.00
Permits Setup Fee	One-Time	1	\$1,250.00	N/A	\$1,250.00
Investigations Setup Fee	One-Time	1	\$1,250.00	N/A	\$1,250.00
Target Solutions Integration Annual Fee	One-Time	1	\$2,500.00	N/A	\$2,500.00
Telestaff Integration Setup Fee <i>Requires CAD Integration</i>	One-Time	1	\$5,000.00	N/A	\$5,000.00
DataMart License – FTP Delivery (1 Data Source Included) Setup Fee <i>Customer FTP Site Frequency: Annual Data Source: Fire (required for FireView data feed)</i>	One-Time	1	\$5,000.00	N/A	\$5,000.00
DataMart License – FTP Delivery (Additional Data Source) Setup Fee <i>Customer FTP Site Frequency: Annual Data Source: EMS (required for FireView data feed)</i>	One-Time	1	\$2,500.00	N/A	\$2,500.00
Training Sessions – Onsite (Full Day M-F)	One-Time	4	\$947.10	\$3,788.40	\$1,334.68
Travel per Trainer for Onsite Training	One-Time	2	\$1,750.00	\$3,500.00	\$1,233.08
Webinar Training Sessions (2 hour session M-F during ImageTrend’s Standard Business Hours)	One-Time	6	\$236.78	\$1,420.68	\$500.52
TOTAL One-Time Fees					<u>\$35,078.43</u>

Recurring Fees	Fee Type	Units	Unit Price	Total Regional Price	Extended
ImageTrend Elite™ Rescue Annual Support	Recurring	1	\$3,788.41	\$3,788.41	\$1,334.69
ImageTrend Elite™ Rescue Annual Hosting	Recurring	1	\$5,682.62	\$5,682.62	\$2,002.03
ImageTrend Elite™ Field Annual Support	Recurring	1	\$2,273.05	N/A	Included
CAD Integration Annual Fee	Recurring	1	\$3,500.00	N/A	\$3,500.00
ImageTrend Elite™ Mobile Fire Inspections Annual Fee	Recurring	1	\$792.00	N/A	\$792.00
Permits Annual Fee	Recurring	1	\$440.00	N/A	\$440.00
Investigations Annual Fee	Recurring	1	\$440.00	N/A	\$440.00

Target Solutions Integration Annual Fee	Recurring	1	\$875.00	N/A	\$875.00
Telestaff Integration Annual Fee <i>Requires CAD Integration</i>	Recurring	1	\$1,750.00	N/A	\$1,750.00
DataMart License – FTP Delivery (1 Data Source Included) <i>Frequency: Annual Data Source: Fire (required for FireView data feed)</i>	Recurring	1	\$800.00	N/A	\$800.00
DataMart License – FTP Delivery (Additional Data Source) <i>Frequency: Annual Data Source: EMS (required for FireView data feed)</i>	Recurring	1	\$400.00	N/A	\$400.00
TOTAL Recurring Fees					<u>\$12,333.72</u>

TOTAL Year 1 \$47,412.15

Optional*	Units	Price	Extended
Out of Scope billed at \$175/Hour		\$175.00	
Onsite Training Sessions @ \$1,000/day		\$1,000.00	
Travel per Trainer (for Onsite Training at Client's Facility Training) @ \$1,750/trainer/trip		\$1,750.00	
Webinar Training Sessions (2 hour session M-F during ImageTrend's Standard Business Hours) \$250/session		\$250.00	

EXHIBIT C – SERVICE LEVEL AGREEMENT

SOFTWARE AS A SERVICE (SAAS)

VERSION 4.1

This agreement exists for the purpose of creating an understanding between ImageTrend and CLIENT who elect 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. The Licensed ImageTrend Master Service Agreement guarantees your web application's availability, reliability and performance. This Service Level Agreement (SLA) applies to any site or application hosted on our network as contracted.

1. Hosting at the ImageTrend's Datacenter

ImageTrend's hosting environment provides 99.9% 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.

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

Physical Facility

The ImageTrend utilizes industry leading colocation facilities that 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.

- UL Certified® containerized power units feed each data hall
- High-efficiency Tri-mode cooling design & delivery offers PUE reduction
- Diverse & secure utility entry points

- Dual MMRs (Meet-Me-Rooms) offer unsurpassed network-neutral fiber interconnection to a multitude of providers
- Independent on-site A & B power generation
- Multi-MegaWatt utility feeds in a fully redundant (2N) A/B configuration
- 20MW of power capacity

Data Integrity

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

Daily Scheduled Database and Application Backups.

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 24/7 at www.imagetrend.com/support as well as 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	Examples of each Severity Level:	Notification Acknowledgement: ImageTrend Return Call to Licensee after initial notification of an Error	Action Expectation: Anticipated Error resolution notification after ImageTrend Return Call to Licensee of Notification Acknowledgement of an error.
High/Site Down	- Complete shutdown or partial shutdown of one or more Software functions - Access to one or more Software functions not available - Major subset of Software application impacted	Within one (1) hour of initial notification during business hours or via support.imagetrend.com	Six hours
Medium	- Minor subsystem failure -Data entry or access impaired on a limited basis – usually can be delegated to local client contact as a first level or response for resolution – usually user error (i.e. training) or forgotten passwords	Within four (4) hours of initial notification	24 Business hours
Low	- System operational with minor issues; suggested enhancements as mutually agreed upon – typically covered in a future release as mutually agreed upon.	Same day or next business day of initial notification	Future Release

Service Requests (enhancements)

Any service requests that are deemed to be product enhancements are detailed and presented to the development staff, where the assessment is made as to whether these should be added to the future **product** releases and with a priority rating. If an enhancement request is specific to one client and deemed to be outside of the original scope of the product, then a change order 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.

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. If the Client does not

accept these, Client should be advised that ImageTrend, at its discretion, may offer limited support for previous versions. All code releases also maintain the integrity of any client specific configurations (i.e. templates, addresses, staff information, active protocols, etc.) that have been implemented either by ImageTrend's implementation staff or the client's administrative staff.

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.

EXHIBIT D – BUSINESS ASSOCIATE AGREEMENT

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) is made and entered into between the City of Ann Arbor (the “Covered Entity”) having its principal place of business at 301 East Huron Street, Ann Arbor, MI 48104, and ImageTrend, Inc. (“Business Associate” or “BA”), having its principal place of business at 20855 Kensington Blvd., Lakeville, MN 55044.

RECITALS

A. Covered Entity is a Michigan Municipal Corporation, and is a “covered entity” within the meaning of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH”), the standards for the Privacy of Individually Identifiable Health Information (“Privacy Rule”), the standards for the Security of Electronic Protected Health Information (the “Security Rule”) and the Breach Notification Rule which regulations were promulgated by the United States Department of Health and Human Services (“DHHS”) pursuant to HIPAA and HITECH. The term “HIPAA” as used in this BAA refers to HIPAA, HITECH, and all of the Rules promulgated thereto.

B. BA provides Software Licensing services to Covered Entity, which services necessarily involve the access to, generation of, use of, maintenance of, transmission of, or disclosure of health information that identifies individual patients (“Protected Health Information” or “PHI”) some of which is in electronic form (“Electronic Protected Health Information” or “EPHI”). Accordingly, BA is a business associate of Covered Entity pursuant to HIPAA.

C. Covered Entity is obligated by HIPAA to obtain “satisfactory assurances” from its business associates as a precondition to permitting a business associate to access, generate, use, maintain, or disclose PHI and EPHI on its behalf or in the course of performing services for it.

D. For the foregoing reasons, Covered Entity and BA desire to enter into an agreement that complies with all the requirements of HIPAA regarding business associate “satisfactory assurances.”

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises contained herein, Covered Entity and BA agree as follows:

1. **DEFINITION OF TERMS**

1.1 Any terms used in this BAA that are defined in HIPAA shall have the same meaning when used in this BAA as they have in HIPAA.

2. **OBLIGATIONS OF BUSINESS ASSOCIATE**

2.1 BA is authorized to access, generate, maintain, use, disclose or transmit PHI and EPHI only as necessary and appropriate to perform the services described in the 2018 Master Services Agreement between BA and Covered Entity.

2.2 Except as otherwise limited in this BAA, BA may also use and disclose PHI and EPHI for the proper management and administration of BA or to carry out the legal responsibilities of BA, and as required by law, all in accordance with the terms of 45 CFR 164.502 and 164.504. BA may also use PHI and EPHI received from or pertaining to Covered Entity to de-identify the PHI or EPHI in any manner permitted by the Privacy Rule and the Office of Civil Rights (“OCR”) guidelines regarding de-identification. Once de-identified, BA may use this data for any lawful purpose since it is no longer PHI protected by HIPAA.

2.3 BA shall not use or further disclose PHI and EPHI other than as permitted or required by this BAA or as required by law. BA acknowledges that it is obligated to independently comply with the Security Rule, certain provisions of the Privacy Rule as mandated by HITECH, and the Breach Notification Rule, and that it may be directly liable to the government for fines and other sanctions imposed by DHHS, and the State Attorney General for non-compliance.

2.4 BA agrees to use appropriate safeguards to prevent use or disclosure of PHI and EPHI other than as provided for by this BAA. BA further agrees to implement the requirements of the Security Rule to protect EPHI in its possession, including administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that it creates, receives, maintains, or transmits on behalf of Covered Entity. “Appropriate Safeguards” include, but are not limited to, physical, administrative and technical safeguards such as locking cabinets or rooms where PHI is housed, using computer passwords or other security measures to prevent unauthorized access to PHI in electronic format, providing encryption or comparable protection for EPHI at rest and in motion, implementing policies and procedures describing authorized access and use for BA’s work force, and human resources policies and procedures to enforce these rules.

2.5 In making a permitted or required use or disclosure of PHI or EPHI, BA shall comply with HIPAA’s minimum necessary requirements.

2.6 BA agrees to perform such activities as are necessary or appropriate to mitigate, to the extent practicable, any harmful effect that is either independently known to BA or brought to BA’s attention by Covered Entity, as a result of a wrongful use or disclosure of PHI or EPHI by BA. This obligation is in addition to the obligations stated in paragraph 2.7 of this BAA.

2.7 BA agrees to report to Covered Entity any use or disclosure of PHI or EPHI in violation of this BAA. Without limiting the generality of the first sentence of this paragraph, BA agrees to notify Covered Entity of any Breach of unsecured PHI or EPHI that BA discovers or should have discovered. BA further agrees to report to Covered Entity, at such time and in such manner as Covered Entity determines and requests, any successful security incident regarding EPHI of which it becomes aware. Security incidents could include the following types of activity, but are not limited to: attempts to gain unauthorized access to EPHI or a system that contains EPHI; unwanted disruption or denial of service to systems that contain EPHI; unauthorized use of a system for the processing or storage of EPHI data; changes to system hardware, firmware, or software characteristics without the owner’s knowledge, instruction, or consent. BA shall provide notification of a successful security incident or Breach within five (5) business days of the date upon which it discovered the Breach or successful security incident.

BA shall provide to Covered Entity the following information regarding a Breach or successful security incident: the BA's name and point of contact; names, addresses, telephone numbers, and email addresses of each individual affected by a successful security incident or Breach; a description of the data involved in the security incident or Breach; a description of what happened (including the date of the successful security incident or Breach and the date of discovery) and how it happened; and a description of all internal steps that the BA has taken to prevent a future similar security incident or Breach. BA shall cooperate with Covered Entity in the investigation of a security incident or Breach, preparation and distribution of notices of the Breach to the affected individuals, and with providing notice to DHHS and media outlets as required by HIPAA. BA shall pay all expenses of applicable investigations and Breach notification whenever BA caused the security incident or Breach.

2.8 BA agrees to ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI or EPHI received from, or created or received by BA on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this BAA to BA, including that each such agent or subcontractor agrees to implement reasonable and appropriate safeguards to protect EPHI. BA shall accomplish this by executing a proper business associate agreement that is at least as stringent as this BAA with each such Subcontractor, as described in the Privacy Rule. BA further agrees that no Subcontractors located or doing business in foreign countries will be used, without the express prior written consent of the Covered Entity.

2.9 BA agrees to notify Covered Entity within five (5) business days of receipt of a request by an individual for access to the individual's PHI or EPHI. Once Covered Entity has determined that the individual is entitled to access to the requested PHI or EPHI pursuant to the Privacy Rule and so notifies BA (whether the individual's request was first made to BA or directly to Covered Entity), then BA shall provide access to PHI and EPHI in a Designated Record Set to an individual or to an individual's designee, in order to meet the inspection and copying requirements of the Privacy Rule. If the Covered Entity determines that the individual is not permitted access to PHI or EPHI pursuant to the Privacy Rule, then BA shall take such action as the Covered Entity requests in order to satisfy the Covered Entity's obligations under the Privacy Rule for denied requests for access.

2.10 BA agrees to notify Covered Entity within five (5) business days of receipt of a request by an individual to amend the individual's PHI or EPHI. When notified by Covered Entity that Covered Entity has agreed to an individual's request for an amendment to the individual's PHI or EPHI (whether the individual's request was first made to BA or directly to Covered Entity), BA shall make the amendment to PHI or EPHI in a Designated Record Set, and incorporate such amendments into the PHI and EPHI in a Designated Record Set. If Covered Entity does not agree to a requested amendment, BA shall take such action as Covered Entity requests in order to satisfy Covered Entity's obligations under the Privacy Rule for denied requests for amendment.

2.11 To the extent that BA is required pursuant to this BAA to carry out one or more of Covered Entity's obligations under the Privacy Rule, BA shall comply with the requirements of the Privacy Rule applicable to the Covered Entity's performance of such obligation.

2.12 BA agrees to make its internal practices, books, and records relating to its use and disclosure of PHI and EPHI available to Covered Entity or the Secretary of DHHS (or his/her designee), for purposes of the Secretary of DHHS (or his/her designee) determining Covered Entity's and BA's compliance with HIPAA, or for purposes of Covered Entity's auditing and monitoring of BA's performance. In addition, Covered Entity may, at its option, conduct on-site audits of BA's handling of PHI and EPHI that BA received or generated on behalf of Covered Entity. If Covered Entity elects to conduct an on-site audit, Covered Entity shall give BA reasonable advance notice and use its best efforts not to disrupt BA's workflow during the audit. Covered Entity shall not have access to PHI or EPHI that BA received or generated for other entities besides Covered Entity.

2.13 BA agrees to document all disclosures of PHI and EPHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI and EPHI in accordance with the Privacy Rule and HITECH. Within five (5) business days of Covered Entity's request, BA shall provide to Covered Entity the information so collected to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI and EPHI. To the extent that BA holds PHI or EPHI from an Electronic Health Record ("EHR") used by Covered Entity, BA further agrees to provide to a requesting individual an accounting of disclosures of EPHI it has made, including an accounting of disclosures for treatment, payment and health care operations during the three years prior to the individual's request. If an individual makes a request for an accounting of PHI or EPHI directly to BA in circumstances in which BA does not hold EPHI from an EHR, then BA shall notify the Covered Entity of the request within five (5) business days of receiving the request from the individual and provide the Covered Entity with the information about disclosures that BA has documented, in the same manner as if the individual's request was made directly to the Covered Entity.

2.14 BA agrees to honor any restriction on the use or disclosure of PHI or EPHI that Covered Entity agrees to, provided that Covered Entity notifies BA of such restriction.

2.15 BA shall establish specific procedures and mechanisms to implement BA's obligations pursuant to HIPAA and pursuant to this BAA. Such procedures and mechanisms shall be in writing, and shall be available to Covered Entity for review upon request.

3. OBLIGATIONS OF COVERED ENTITY

3.1 Covered Entity shall provide BA with the notice of privacy practices and minimum necessary policy that Covered Entity produces in accordance with the Privacy Rule, as well as any changes to such notice or policy.

3.2 Covered Entity shall notify BA of any restriction to the use or disclosure of PHI and EPHI that Covered Entity has agreed to in accordance with the Privacy Rule.

3.3 Covered Entity shall not request BA to use or disclose PHI or EPHI in any manner that would not be permissible under the Privacy Rule or the Security Rule if done by Covered Entity, except for uses or disclosures of PHI for the proper administration and management of BA or as required by law.

4. TERM AND TERMINATION

4.1 The term of this BAA shall commence on the date it is signed by both parties and shall continue conterminously with the term of all services being performed by BA for or on behalf of Covered Entity that necessarily and routinely involve PHI and EPHI, unless sooner terminated in accordance with paragraph 4.2 hereof.

4.2 Upon Covered Entity's knowledge of a material breach by BA, or BA's knowledge of a material breach by Covered Entity, Covered Entity or BA (as applicable) shall, at its sole option, do either of the following:

4.2.1 Provide a 15 day opportunity for the breaching party to cure the breach to the satisfaction of the non-breaching party, or terminate this BAA and the services relationship with BA if the breaching party does not cure the breach to the satisfaction of the non-breaching party; or

4.2.2 Immediately terminate this BAA and the services relationship with BA without an opportunity to cure if the non-breaching party determines, in its sole discretion, that cure is not possible.

4.3 In addition to the termination for cause provisions stated in paragraph 4.2, this BAA may also be terminated in any of the following circumstances:

4.3.1 The services relationship between BA and Covered Entity is terminated for any reason;

4.3.2 The provisions of HIPAA are amended, modified or changed such that a BAA such as this is no longer mandated;

4.3.3 By the mutual agreement of Covered Entity and BA, provided that a new BAA is substituted if the services relationship continues between BA and Covered Entity and the relationship requires BA to access, use, generate, maintain, disclose or transmit PHI or EPHI.

4.4 Effect of Termination.

4.4.1 Except as provided in paragraph 4.4.2, upon termination of this BAA for any reason, BA shall return or destroy all PHI and EPHI received from Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI and EPHI that is in the possession of subcontractors or agents of BA. BA shall retain no copies of PHI or EPHI.

4.4.2 In the event that BA believes that returning or destroying PHI or EPHI in its entirety is infeasible, BA shall provide to Covered Entity an explanation of the conditions that make return or destruction infeasible. Upon Covered Entity's concurrence that return or destruction of PHI or EPHI is infeasible, BA shall extend the protections of this Agreement to

such PHI and limit further uses and disclosures of such PHI and EPHI to those purposes that make the return or destruction infeasible, for so long as BA maintains such PHI or EPHI.

4.4.3 If this BAA is terminated and not immediately replaced with a substitute business associate agreement, and if the Privacy Rule and/or the Security Rule in effect at that time continues to mandate the execution of a business associate agreement between covered entities and their business associates, then BA shall immediately terminate the services provided to Covered Entity to the extent that BA's services continue to necessarily and routinely involve access, use, generation, maintenance, disclosure or transmission of PHI or EPHI.

5. GENERAL PROVISIONS

5.1 BA shall indemnify, defend and hold harmless Covered Entity, its directors, officers, employees and agents (the "Indemnified Parties"), from and against any liabilities, claims, causes of action, and losses (including reasonable attorneys' fees) that result from or are related to any act or omission of BA that violates this BAA or HIPAA. Without limiting the generality of the foregoing, BA's obligation pursuant to this paragraph includes indemnifying, defending and holding harmless the Indemnified Parties from and against any civil or criminal fines imposed upon any Indemnified Party by the federal or state government pertaining to the privacy or security of PHI and EPHI.

5.2 BA agrees that the terms and conditions of this BAA shall be construed as a general confidentiality agreement that is binding upon BA even if it is determined that BA is not a business associate as that term is used in HIPAA.

5.3 Covered Entity and BA shall not be deemed to be partners, joint ventures, agents or employees of each other solely by virtue of the terms and conditions of this BAA. BA is an independent contractor of Covered Entity for all purposes, including the application of the federal common law.

5.4 This BAA shall not be modified or amended except by a written document that is signed by both parties. Covered Entity and BA agree to modify or amend this BAA if HIPAA changes in a manner that affects the terms and conditions of this BAA, or the obligations of covered entities and/or business associates.

5.5 Any communications between Covered Entity and BA regarding this BAA shall be in writing, whether or not oral communications have also occurred. Such communications shall be sent to Covered Entity and BA at the following addresses:

To Covered Entity: City of Ann Arbor Attn: City Attorney 301 East Huron Street, Third Floor Ann Arbor, MI 48104	To BA: ImageTrend, Inc Attn: Mike McBrady 20855 Kensington Boulevard Lakeville, MN 55044
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Written communications may be sent by certified or registered U.S. Mail, receipted courier service, receipted hand delivery, receipted fax, or by receipted email.

5.6 No waiver of any provision of this BAA, including this paragraph, shall be effective unless the waiver is in writing and signed by the party making the waiver.

5.7 This BAA is entered into solely for the benefit of the parties, and is not entered into for the benefit of any third party, including without limitation, any patients of Covered Entity or their legal representatives.

5.8 This BAA is not assignable or delegable without the express advance written consent of the party not seeking to assign or delegate.

5.9 This BAA shall be governed by and construed in accordance with the laws of the United States of America and the laws of the state of Michigan. This BAA shall be interpreted and construed so as to render it compliant with HIPAA.

5.10 If any provision of this BAA is determined by a court of competent jurisdiction to be invalid or unenforceable, this BAA shall be construed as though such invalid or unenforceable provision were omitted, provided that the remainder of this BAA continues to satisfy all of HIPAA requirements for a business associate agreement. If it does not, then the parties shall immediately renegotiate this BAA so that it does comply with the requirements of HIPAA or terminate this BAA and the service relationship between the BA and Covered Entity to the extent that BA's services necessarily and routinely involve access, use, generation, maintenance, disclosure or transmission of PHI or EPHI.

5.11 This BAA contains the entire agreement between the parties pertaining to this subject matter, and supersedes all prior understandings, whether written or oral, regarding the same subject matter.

5.12 The provisions of this BAA dealing with indemnification, breach notification, the construction of this BAA as a general confidentiality agreement, and BA's obligations to return or destroy PHI and EPHI upon termination of this BAA and to maintain protections for any PHI and EPHI that is unfeasible to return or destroy upon termination of this BAA shall be deemed to be continuing obligations of BA that survive the termination of this BAA for any season.

[SIGNATURE PAGE FOLLOWS]

In Witness Whereof, the parties have executed this Business Associate Agreement on the dates noted below.

The City of Ann Arbor

By: Howard Lazarus

Its: City Administrator

Date: _____

ImageTrend

By: _____

Its: _____

Date: _____