

# SOFTWARE LICENSING AGREEMENT

CONTRACT No.: 316892

BETWEEN

CITY OF NORTH PORT, FLORIDA  
FIRE RESCUE DISTRICT  
4980 CITY CENTER BLVD  
NORTH PORT, FL 34286

AND

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

**IMAGETREND®**

**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 North Port, Florida, Fire Rescue District (hereinafter "CLIENT").

## **RECITALS**

**WHEREAS**, IMAGETREND owns the Firehouse Software system known as "Software;" and

**WHEREAS**, CLIENT desires to obtain a license for the Software mentioned above; and

**WHEREAS**, IMAGETREND is willing to provide CLIENT with a non-exclusive license for the Software on the terms and conditions contained herein;

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

### **SECTION 1. DEFINITIONS.**

**"Authorized personnel"** means employees of CLIENT that use the Software in the scope of their employment, or CLIENT's contractors where the contractor's services must necessarily require access to the Software. Personnel who intend to: reverse engineer, disclose, or use or acquire for any purpose not in the scope of the personnel's employment or necessary for contractor services, any Confidential Information, are not Authorized Personnel.

**"Confidential information"** means the proprietary products and trade secrets of IMAGETREND and/or its suppliers, including, but not limited to, computer software, computer code, technical parameters, price lists, customer lists, designs, software documentations, manuals, models and account tables, and any and all information maintained or developed by CLIENT pursuant to this AGREEMENT which is deemed confidential under existing state and/or federal law.

**"Custom Development"** means that CLIENT contracts with IMAGETREND through a signed and mutually accepted Statement of Work to customize the Software. CLIENT shall have a non-exclusive license to utilize such Software. Such Software may then become a part of the core product purchased by CLIENT and be distributed to CLIENT. Custom Development may require ongoing support and/or hosting and shall be subject to support and/or hosting fee increases. IMAGETREND maintains ownership of all Custom Development.

**"ePCR"** means an Electronic Patient Care Report.

**"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.

**"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.

**"Perpetual License"** means an unlimited use of Software without rights for resale.

**"Reference"** means referral in the promotion of IMAGETREND'S software to other potential clients.

**"Run(s)"** means an incident where the CLIENT sends a vehicle to a potential or actual patient.

**"Software"** means the computer program(s) in machine readable object code form listed in Exhibit "A," including the executable processing programs comprising the various modules from the Software and the Licensed Information.

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

**"Support"** means interactive telephone and e-mail support, computer based online training, product upgrades and enhancements, along with defect corrections, delivered from IMAGETREND to CLIENT.

**"Upgraded Version"** means the Licensed Software and/or Licensed Information to which updates, enhancements, corrections, installations of patches or other changes have been made. The exterior form of the Updated Version is reflected by changes to the version numbers.

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

The term of this AGREEMENT shall be one year from signature date, subject to Section 13 of this AGREEMENT. This AGREEMENT shall be subject to automatic annual renewal unless terminated by either party as provided in Section 13, below.

## **SECTION 3. GRANT OF LICENSE.**

### **A. NON-EXCLUSIVE PERPETUAL USE LICENSE.**

In accordance with the terms and conditions hereof, IMAGETREND agrees to grant to CLIENT and CLIENT agrees to accept a non-transferable and non-exclusive perpetual use license of the Software. During the term of the AGREEMENT, 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 hereto as Exhibit B. CLIENT expressly acknowledges that 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.

### **B. 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 as included and detailed in Exhibit A, attached hereto. This AGREEMENT does not give the CLIENT 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 separately-priced product and service offerings from IMAGETREND. This Section 3.B, is subject to the Non-Exclusive Use License as covered in Section 3.A and terms of this AGREEMENT.

**C. 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.

**D. DATA OWNERSHIP AND DATA PROTECTION.**

All CLIENT data collected with IMAGETREND Software remains at all times the property of the CLIENT. IMAGETREND will not use or make available any personally identifiable information other than for administering the CLIENT's account and collecting usage statistics in order to improve its products and services specifications. During the term of this AGREEMENT, and after termination or expiration of this AGREEMENT, IMAGETREND will not in any way transfer to any third party or use in direct or indirect competition with the other party, any information or data posted by CLIENT or others on IMAGETREND's website and acknowledges that all such information is confidential. CLIENT shall have access to creative tools within the Elite Software platform. Use of these features is conditioned upon assignment to IMAGETREND of all copyrights in any work created within and using the Elite software platform, the terms of use for such creative tool features will prompt all users upon first use to agree to terms of use; those terms are hereby incorporated as part of this AGREEMENT and valid whether accepted before or after execution of this AGREEMENT. Please contact IMAGETREND for a copy of these terms prior to final acceptance of this AGREEMENT, if necessary.

**E. CLIENT DATA.**

Within thirty (30) days after the expiration of this AGREEMENT, the termination of this AGREEMENT, or if IMAGETREND is no longer in business, IMAGETREND will deliver to the CLIENT its data, in machine readable format, on appropriate media, at the CLIENT's option. If the CLIENT wants the data to be delivered in a medium other than tape or CD, IMAGETREND shall do its best to accommodate the CLIENT, provided the CLIENT shall provide the medium on which the data is to be provided and shall pay for any additional cost incurred by IMAGETREND in accommodating this request.

**SECTION 4. SOFTWARE ABSTRACT.**

- A. The IMAGETREND Elite contains and stores the data elements of an emergency medical database, including data schema and values that may originate from traditional computer aided dispatch (CAD) sources and data values that may be used in billing from pre-hospital patient care. The emergency medical database may contain certain vehicle transport information but does not contain data elements and/or values specific to the vehicle path tracking such as automatic vehicle location (AVL) or third party AVL integrations. The emergency medical database does support integrations to third

party CAD and billing solutions. The emergency medical database does not support any AVL, CAD or billing functions executed directly from the database. CLIENT shall not use IMAGETREND Software to integrate patient information from a clinical encounter associated with a patient incident requiring emergency medical care by the emergency transport crew with flight information relating to an emergency transport crew dispatch to produce an encounter record indicative of the patient's clinical encounter.

- B. The IMAGETREND Elite contains and stores the data elements of an emergency medical database as defined, described and mandated by the National EMS Information System (NEMSIS). The dataset was adopted by IMAGETREND for State and local regulatory authorities as required by NEMSIS. The NEMSIS data schema and elements are the sole work of the NEMSIS organization in conjunction with the National Highway Traffic Safety Administration (NHTSA). The NEMSIS dataset contains data elements and data structures originating and potentially owned by a number of nonprofit third party organizations and government agencies such as the World Health Organization (ICD 9 and ICD 10), International Health Terminology Standards Development Organization (SNOMED), U.S Department of the Interior and U.S. Geological Survey (GNIS), National Institute of Standards and Technology (FIPS), Health Level Seven International (HL7), Joint APCO/NENA Data Standardization Working Group (AACN). The NEMSIS dataset offers customer driven extensibility that allows the end user to extend and define the dataset at their own discretion.

#### **SECTION 5. SERVICES PROVIDED BY IMAGETREND.**

##### **A. SUPPLY OF SOFTWARE AND LICENSED INFORMATION.**

IMAGETREND shall provide CLIENT the Software and services as detailed in Exhibit A.

##### **B. MODIFICATIONS, IMPROVEMENTS AND ENHANCEMENTS.**

During the term of this AGREEMENT, and any extensions made under Section 2, IMAGETREND will provide CLIENT with error corrections, bug fixes, patches or other updates to the Software in object code form, to the extent available in accordance with IMAGETREND's release schedule. If CLIENT desires to add new functions or make enhancements to the Software, CLIENT must, for additional consideration, negotiate with IMAGETREND to develop new functions or improvements to the existing Software. All such error corrections, bug fixes, patches, updates, or other improvements or modifications shall be the sole property of IMAGETREND.

##### **C. INSTALLATION, INTRODUCTORY TRAINING AND DEBUGGING.**

1. 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.
2. "Train-the-trainer" training for administrators will be provided as detailed in Exhibit A. Additionally, online training videos and user guides in electronic format will be made available.
3. Introductory training relating to the Software will be provided as detailed in Exhibit A. The parties may enter into a supplemental written agreement in the event CLIENT desires that IMAGETREND provide additional training.

#### **SECTION 6. MAINTENANCE AND SUPPORT.**

##### **A. Application use support is detailed in Service Level Agreement Exhibit B.**

- B. Server hosting environment is monitored and supported 24/7. Emergency support information is available on the IMAGETREND Support site for emergency purposes.

- C. Maintenance of IMAGETREND software, which includes scheduled updates and new releases, as well as defect correction as needed, is included in the AGREEMENT price. Specific out-of-scope

system enhancement requests will be reviewed with the CLIENT and subject to approval if additional charges are necessary.

#### **SECTION 7. FEES.**

- A. Except as otherwise provided in this AGREEMENT, IMAGETREND shall offer the Products and the Services at the prices set forth on Exhibit A.

IMAGETREND will perform price increases of the recurring fees. The first price increase will occur with the fees due for Year 2. These price increases will occur once every year and may not exceed 3% of the price then currently in effect.

- B. The fees for this AGREEMENT are as detailed in the attached Exhibit A.
- C. At any time during this AGREEMENT, the CLIENT may contract with IMAGETREND for additional software and services not covered by this AGREEMENT, with fees to be negotiated on an item-by-item basis. The CLIENT may contract Custom Development by IMAGETREND for additional fees as outlined and agreed to in a signed and accepted Statement of Work.
- D. If there is a delay in acceptance on the remaining items for longer than 60 days, IMAGETREND has the option to invoice the remaining balance on any or all of the open items for Year 1 and begin the Recurring Fees schedule.

#### **SECTION 8. PROTECTION AND CONFIDENTIALITY.**

##### **A. ACKNOWLEDGEMENT.**

CLIENT hereby acknowledges and agrees that the Software and Licensed Information provided hereunder constitute and contain valuable proprietary products and trade secrets of IMAGETREND and/or its suppliers; embodying substantial creative efforts and confidential information, ideas and expressions. Accordingly, CLIENT agrees to treat (and take precautions to ensure that its authorized personnel treat) the Software and Licensed Information as confidential in accordance with the confidentiality requirements and conditions set forth below. Except as otherwise required by law, CLIENT acknowledges and agrees that CLIENT shall not permit any non-Authorized User from accessing the Software made available to the CLIENT.

##### **B. MAINTENANCE OF CONFIDENTIAL INFORMATION.**

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 Section 8 shall not apply to information which: (i) is in the public domain; (ii) has been acquired by CLIENT by normal means upon the disclosure of the information by IMAGETREND; (iii) is duly obtained by CLIENT directly or indirectly from a third party who has independently developed the information and is entitled to disclose the information to CLIENT, 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 CLIENT, subsequent to the receipt of the information by CLIENT.

##### **C. SURVIVAL.**

This Section 8 shall survive the termination of this AGREEMENT or of any license granted under this AGREEMENT.

#### **SECTION 9. PUBLIC RECORDS LAW.**

In accordance with Florida Statutes, Section 119.0701, IMAGETREND shall comply with all Florida public records laws, and shall specifically:

A. Keep and maintain public records required by the CLIENT to perform the service.

(i) The timeframes and classifications for records retention requirements must be in accordance with the General Records Schedule GS1-SL for State and Local Government Agencies.  
(See <http://dos.dos.state.fl.us/library-archives/records-management/general-records-schedules/>).

(ii) "Public records" means and includes those items specified in Florida Statutes, Section 119.011(12), as amended from time to time, and currently defined as: All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the CLIENT. IMAGETREND's records under this AGREEMENT include but are not limited to, supplier/subcontractor invoices and contracts, project documents, meeting notes, e-mails and all other documentation generated during this AGREEMENT.

B. Upon request from the CLIENT's custodian of public records, provide the CLIENT, at no cost, with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided for by law. All records kept electronically must be provided to the CLIENT, upon request from the CLIENT's custodian of public records, in a format that is compatible with the information technology systems of the CLIENT. Notwithstanding the previous sentences, if the requested records may be obtained via the Software's user interface it shall be the duty of the CLIENT to retrieve and copy those records. For clarity, ImageTrend shall only have an obligation under this Section 9 for records which CLIENT may not obtain by "self-service" from the Software.

C. Ensure that records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the AGREEMENT term and, if IMAGETREND does not transfer the records to CLIENT following completion of the AGREEMENT, for the time period specified in General Records Schedule GS1-SL for State and Local Government Agencies.

D. Upon completion of the AGREEMENT, transfer, at no cost, to the CLIENT all public records in IMAGETREND's possession or keep and maintain public records required by the CLIENT to perform the service. If IMAGETREND transfers all public records to the CLIENT upon completion of the AGREEMENT, IMAGETREND shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If IMAGETREND keeps and maintains public records upon the completion of the AGREEMENT, IMAGETREND shall meet all applicable requirements for retaining public records.

E. IF IMAGETREND HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE IMAGETREND'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CUSTODIAN OF PUBLIC RECORDS, 4970 CITY HALL BOULEVARD, NORTH PORT, FLORIDA 34286, 941.429.7056 OR HOTLINE 941-429-7270; E-MAIL: [padkins@cityofnorthport.com](mailto:padkins@cityofnorthport.com).

## **SECTION 10. 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 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 9 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.

**SECTION 11. 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, negligence, strict liability, or tort), shall be limited to two-times (2x) the amount of the fees paid by CLIENT to IMAGETREND under this AGREEMENT

**SECTION 12. INDEMNIFICATION.**

**A. INDEMNITY.**

IMAGETREND (WHICH INCLUDES ITS AGENTS, EMPLOYEES AND SUBCONTRACTORS, IF ANY) AGREES TO INDEMNIFY CLIENT, AS WELL AS ANY AGENTS THEREOF FROM ALL DAMAGES, JUDGMENTS, LOSS AND EXPENSES, BUT NOT INCLUDING CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF:

- (i) ANY PERSONAL INJURIES, PROPERTY DAMAGE, OR DEATH THAT CLIENT MAY SUSTAIN WHILE USING IMAGETREND'S, AS WELL AS ANY AGENTS THEREOF, CONTROLLED PROPERTY OR EQUIPMENT IN THE PERFORMANCE OF THIS AGREEMENT; OR
- (ii) ANY PERSONAL INJURY OR DEATH WHICH RESULTS OR INCREASES BY ANY ACTION TAKEN TO MEDICALLY TREAT CLIENT'S AGENTS, EMPLOYEES AND SUBCONTRACTORS;

EXCEPT FOR THE FOREGOING CLAIMS, CLIENT, AS WELL AS ANY AGENTS THEREOF AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS IMAGETREND FROM ALL CLAIMS, LAWSUITS, DAMAGES, JUDGMENTS, LOSS, LIABILITY, OR EXPENSES, ARISING OUT OF ANY CLAIM OR ACTION BROUGHT AGAINST IMAGETREND ARISING OUT OF THE NEGLIGENCE OR RECKLESSNESS OF CLIENT, AS WELL AS ANY AGENTS THEREOF IN THE PERFORMANCE OF THIS AGREEMENT. THE AGREEMENT DOES NOT CONSTITUTE A

WAIVER OF SOVEREIGN IMMUNITY OR CONSENT BY THE CLIENT OR ITS SUBDIVISIONS TO SUIT BY THIRD PARTIES.

- (iii) IN THE EVENT OF A CLAIM, THE CLIENT SHALL PROMPTLY NOTIFY IMAGETREND IN WRITING BY PREPAID CERTIFIED MAIL (RETURN RECEIPT REQUESTED) OR BY DELIVERY THROUGH ANY NATIONALLY RECOGNIZED COURIER SERVICE (SUCH AS FEDERAL EXPRESS OR UPS) WHICH PROVIDES EVIDENCE OF DELIVERY, AT THE ADDRESS PROVIDED FOR RECEIPT OF NOTICES IN THIS AGREEMENT.
- (iv) THE CLIENT SHALL PROVIDE ALL AVAILABLE INFORMATION AND ASSISTANCE THAT IMAGETREND MAY REASONABLY REQUIRE REGARDING ANY CLAIM. THIS AGREEMENT FOR INDEMNIFICATION SHALL SURVIVE TERMINATION OR COMPLETION OF THE AGREEMENT. THE INSURANCE COVERAGE AND LIMITS REQUIRED IN THIS AGREEMENT MAY OR MAY NOT BE ADEQUATE TO PROTECT THE CLIENT AND SUCH INSURANCE COVERAGE SHALL NOT BE DEEMED A LIMITATION ON IMAGETREND'S LIABILITY UNDER THE INDEMNITY PROVIDED IN THIS SECTION. IN ANY PROCEEDINGS BETWEEN THE PARTIES ARISING OUT OF OR RELATED TO THIS INDEMNITY PROVISION, THE PREVAILING PARTY SHALL BE REIMBURSED ALL COSTS, EXPENSES AND REASONABLE ATTORNEY FEES THROUGH ALL PROCEEDINGS (AT BOTH TRIAL AND APPELLATE LEVELS).
- (v) NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO AFFECT THE RIGHTS, PRIVILEGES AND IMMUNITIES OF THE CLIENT AS SET FORTH IN FLORIDA STATUTES, SECTION 768.28.
- (vi) THE TERMS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT

**B. ENTIRE LIABILITY.**

SECTION 11 STATES THE PARTIES ENTIRE LIABILITY AND SECTION 12 STATES THE PARTIES SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS OF INDEMNIFICATION. SECTION 10 OF THIS AGREEMENT STATES THE FULL EXTENT OF IMAGETREND'S WARRANTY AND SECTION 11 PROVIDES NO ADDITIONAL WARRANTY OF ANY KIND. ANY OTHER WARRANTY, EXPRESS OR IMPLIED OUTSIDE OF THIS AGREEMENT, INCLUDING THOSE ARISING OUT OF THE UNIFORM COMMERCIAL CODE, ARE WAIVED.

**SECTION 13. INSURANCE REQUIREMENTS.**

IMAGETREND will provide standard insurance coverage as detailed in a Certificate of Insurance, if requested.

**SECTION 14. TERMINATION.**

**A. TERMINATION WITHOUT CAUSE.**

Following the expiration of the original term of this AGREEMENT, either party shall have the right to terminate this AGREEMENT, without cause, by giving not less than sixty (60) days written notice of termination to the other party.

**B. CUSTOM DEVELOPMENT TERMINATION.**

Either party shall have the right to terminate any Custom Development portion(s) of this AGREEMENT, without cause, by giving not less than thirty (30) days written notice of termination to the other party.

**C. TERMINATION FOR CAUSE.**

This AGREEMENT may be terminated by the non-defaulting party by giving not less than thirty (30) days written notice of termination to the other party if any of the following events of default occur: (i) if

a party materially fails to perform or comply with this AGREEMENT or any provision hereof; (ii) if either party fails to strictly comply with the provisions of Section 8, above, or makes an assignment in violation of Section 15, below; (iii) if a party becomes insolvent or admits in writing to its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; (iv) if a petition under any foreign, state, or United States bankruptcy act, receivership statute, or the like, as they now exist, or as they may be amended from time to time, is filed by a party; or (v) if such a petition is filed by any third party, or an application for a receiver is made by anyone and such petition or application is not resolved favorably within ninety (90) days.

**D. TERMINATION WITH OR WITHOUT CAUSE.**

The performance of work under this AGREEMENT may be terminated with or without cause by the City Manager in whole or in part or whenever the City Manager determines that termination is in the City's best interest. Any such termination shall be effected by the delivery to IMAGETREND of a written notice of termination at least (30) days before the date of termination, specifying the extent to which performance of the work under the Agreement is terminated and the date upon which such termination becomes effective.

**SECTION 15. COOPERATIVE USE.**

Public and nonprofit agencies that have entered into a Cooperative Purchasing Agreement with the CLIENT are eligible to participate in any subsequent Agreement. The parties agree that these lists are subject to change. Any such usage by other municipalities and government agencies must be in accord with the ordinance, charter, rules and regulations of the respective political entity and with applicable State and Federal laws.

Any orders placed to, or services required from IMAGETREND, will be requested by each participating agency. Payment for purchases made under this AGREEMENT will be the sole responsibility of each participating agency. The CLIENT shall not be responsible for any disputes arising out of transactions made by others. IMAGETREND shall be responsible for correctly administering this AGREEMENT in accordance with all terms, conditions, requirements, and approved pricing to any eligible procurement unit.

**SECTION 16. NONASSIGNABILITY.**

Neither party shall assign this AGREEMENT or its rights hereunder without the prior written consent of the other party.

**SECTION 17. GOVERNING LAW.**

The rights, obligations and remedies of the parties under this AGREEMENT shall be governed by the laws of the State of Florida and the exclusive venue for any legal or judicial proceedings in connection with the enforcement or interpretation of this AGREEMENT shall be in Sarasota County, Florida.

**SECTION 18. COMPLIANCE WITH LAWS.**

IMAGETREND shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

**SECTION 19. WAIVER.**

Any waiver by either party of any default or breach hereunder shall not constitute a waiver of any provision of this AGREEMENT or of any subsequent default or breach of the same or a different kind.

**SECTION 20. NOTICES.**

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and addressed to the respective parties as follows:

**TO CLIENT:**

City of North Port, Florida  
Fire Rescue District  
4980 City Center Blvd  
North Port, FL 34286

ATTENTION: Fire Chief

**WITH COPY TO:**

City of North Port, Florida  
City Manager  
4970 City Hall Boulevard  
North Port, FL 34286

**TO IMAGETREND:**

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

ATTENTION: Mike McBrady

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

**SECTION 21. FORCE MAJEURE.**

Neither party shall be liable in damages or have the right to terminate this AGREEMENT for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

**SECTION 22. MEDIATION.**

If a dispute arises out of or relates to this contract, or the alleged breach thereof (each a "Dispute"), the parties shall use their best efforts to settle such Dispute in a reasonable manner through amicable negotiations. The City Manager and a representative for IMAGETREND, or their designated representatives, shall use reasonable best efforts to meet as soon as possible, ideally within forty-eight (48) hours following either parties request, to review such Dispute, options for resolution to attempt to resolve such Dispute. Any Dispute not resolved by the representatives shall be referred to the City Manager and IMAGETREND to address. The decision of the City Manager and IMAGETREND regarding the Dispute shall be final when put in writing and signed by both parties. In the event the City Manager and IMAGETREND are unable to agree, then the matter shall be referred to the City Commission, who shall decide.

**SECTION 23. INTERPRETATION.**

This AGREEMENT has been negotiated between persons sophisticated and knowledgeable in the matters dealt with in this AGREEMENT. Each party further acknowledges that it has not been influenced to any extent whatsoever in executing this AGREEMENT by any other party hereto or by any person representing it, or both. Accordingly, any rule or law or legal decision that would require interpretation of any ambiguities in this AGREEMENT against the party that has drafted it is not applicable and is waived. The provisions of this AGREEMENT shall be interpreted in a reasonable manner to effect the purpose of the parties and this AGREEMENT.

**SECTION 24. SIGNATOR'S WARRANTY AND ACCEPTANCE BY PERFORMANCE.**

Each party warrants to each other party that he or she is fully authorized and competent to enter into this AGREEMENT, in the capacity indicated by his or her signature and agrees to be bound by this AGREEMENT. CLIENT understands and agrees that if CLIENT accepts any Software, goods, or services from IMAGETREND prior to IMAGETREND receiving a final, mutually signed copy of this AGREEMENT, that CLIENT has accepted this AGREEMENT and all of its terms and conditions.

**SECTION 25. PRIOR AGREEMENTS AND AMENDMENTS.**

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may only be modified by a written amendment duly executed by the parties to this AGREEMENT.

**SECTION 26. NONDISCRIMINATION.**

The City of North Port, Florida, does not discriminate on the basis of race, color, national origin, sex, age, disability, family or religious status in administration of its programs, activities or services.

**WITNESS THE EXECUTION HEREOF** on the day and year last written below.

APPROVED AS:

"CLIENT"

*Cari Branco*

By: *Cari Branco* *for POL*

Name: Peter D. Lear, CPA, CGMA

Title: City Manager

Dated: 6/19/18

"IMAGETREND"

By: *Michael J. McGrady*

Name: Michael J. McGrady

Title: President

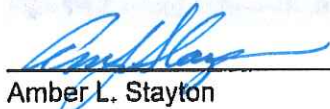
Dated: 5-30-2018

ATTEST:

*Patsy C. Adkins*

Patsy C. Adkins, MMC  
City Clerk

APPROVED AS TO FORM AND CORRECTNESS:



Amber L. Stayton  
City Attorney

## **EXHIBITS**

**EXHIBIT A – Pricing Agreement**

**EXHIBIT B – Service Level Agreement**

**EXHIBIT C – HIPAA Business Associate Agreement**

**EXHIBIT D – Insurance Certificate**

**EXHIBIT E – Tax Exemption Certificate**

**EXHIBIT F – ePHI Data Export Sign Off**

## EXHIBIT A – PRICING AGREEMENT

IMAGETREND's license and annual support are based upon 10,000 annual incidents as provided by CLIENT. IMAGETREND reserves the right to audit the annual incident volume and the option to increase future support costs, with prior notification to the CLIENT, if the number of annual incidents increases substantially and has a resulting effect of increased support calls to IMAGETREND.

### Pricing Agreement

| Description                                                                                                                          | Units | Price       | Extended    |
|--------------------------------------------------------------------------------------------------------------------------------------|-------|-------------|-------------|
| ImageTrend Elite™ Rescue License (Fire & EMS)<br><i>SIN 132-32 Rescue 10000 GSA Schedule 70</i>                                      | 1     | \$21,309.82 | \$21,309.82 |
| ImageTrend Elite Rescue Setup Fee and Project Management<br><i>SIN 132-34 Resc Imp10000 GSA Schedule 70</i>                          | 1     | \$4,735.52  | \$4,735.52  |
| ImageTrend Elite Field Site License<br><i>SIN 132-32 Site 10000 GSA Schedule 70</i>                                                  | 1     | \$9,471.03  | \$9,471.03  |
| Visual Informatics™ Setup Fee<br><i>EMS Cube</i>                                                                                     | 1     | \$10,000.00 | \$10,000.00 |
| Visual Informatics™ Additional Cubes Setup Fee<br><i>Fire Cube</i>                                                                   | 1     | \$5,000.00  | \$5,000.00  |
| ImageTrend Vault™ Setup Fee                                                                                                          | 1     | \$2,500.00  | \$2,500.00  |
| Training Sessions – Onsite (Full Day M-F)<br><i>SIN 132-50 GSA Schedule 70</i>                                                       | 2     | \$947.10    | \$1,894.20  |
| Travel per Trainer per Trip for Onsite Training                                                                                      | 1     | \$1,750.00  | \$1,750.00  |
| Webinar Training Sessions (a 2 hour session M-F during<br>ImageTrend's Standard Business Hours)<br><i>SIN 132-50 GSA Schedule 70</i> | 2     | \$236.78    | \$473.56    |

**TOTAL One-Time Fees**

**\$57,134.13**

| Recurring Fees                                                                                         | Units | Price      | Extended   |
|--------------------------------------------------------------------------------------------------------|-------|------------|------------|
| ImageTrend Elite Rescue Annual Support<br><i>SIN 132-34 Resc Sup10000 GSA Schedule 70</i>              | 1     | \$3,409.57 | \$3,409.57 |
| ImageTrend Elite Rescue Annual Hosting<br><i>SIN 132-52 Elite Host10000 GSA Schedule 70</i>            | 1     | \$5,114.36 | \$5,114.36 |
| ImageTrend Elite Field Site License Annual Support<br><i>SIN 132-34 Field Sup10000 GSA Schedule 70</i> | 1     | \$1,515.37 | \$1,515.37 |
| Visual Informatics™ Annual Support<br><i>EMS Cube</i>                                                  | 1     | \$1,600.00 | \$1,600.00 |
| Visual Informatics™ Additional Cubes Annual Support<br><i>Fire Cube</i>                                | 1     | \$800.00   | \$800.00   |
| CAD Integration Annual Support and Hosting<br><i>EMS and Fire</i><br><i>Vendor: Intergraph</i>         | 1     | \$3,500.00 | \$3,500.00 |
| ImageTrend Vault™ SaaS                                                                                 | 22500 | \$0.03     | \$675.00   |

**TOTAL Recurring Fees**

**\$16,614.30**

**TOTAL Year 1**

**\$73,748.43**

| Optional*                                                                                                   | Units | Price      | Extended   |
|-------------------------------------------------------------------------------------------------------------|-------|------------|------------|
| Out of Scope billed at \$175/Hour                                                                           | TBD   | \$175.00   |            |
| Onsite Training Sessions @ \$1,000/day                                                                      | 2     | \$ 947.10  | \$1,894.20 |
| Travel per Trainer (for Onsite Training at Client's Facility Training)***<br>@ \$1,750/trainer/trip         | 1     | \$1,750.00 | \$1,750.00 |
| Webinar Training Sessions (2 hour session M-F during<br>ImageTrend's Standard Business Hours) \$250/session | 2     | \$236.78   | \$473.56   |

\*The CLIENT may elect to purchase additional services as set forth in the options identified above at any time during the contract term. The CLIENT shall exercise said options by written notice to IMAGETREND. The prices above are valid for one year from contract signature.

\*Vault is subject to the terms and conditions listed below at Exhibit G.

**Payment Terms:**

- a. The above mentioned items will be invoiced upon Agreement signature with payment terms of in compliance with the Local Government Prompt Payment Act, Florida Statutes, section 218.70, *et seq.*
- b. The Recurring Annual Fees will be invoiced annually and in advance of the new term.
- c. In accordance with the Local Government Prompt Payment Act, Florida Statutes, section 218.70, *et seq.*, CLIENT's payments shall be due forty-five (45) days after receipt of invoice. Overdue amounts shall bear interest from thirty (30) days after the due date at the rate of one percent (1.0%) per month on the unpaid balance. IMAGETREND must invoice CLIENT for any interest accrued in order to receive the interest payment.
- d. CLIENT agrees IMAGETREND may, in IMAGETREND's discretion, cease to provide access, hosting, support or otherwise disable the Software listed in Exhibit A due to CLIENT's breach of contract, overdue payments, or missed payments.
- e. IMAGETREND will invoice sales tax to non-exempt CLIENTS where applicable.

*Note: If CLIENT would like to schedule Onsite Training on the weekend, additional fees may apply.*

*Note: IMAGETREND is not responsible for any CAD Vendor requirements and any associated fees*

*Note: CAD data will only be available for 60 days in the dispatch database; which may impact CAD Recon Reports*

**Pricing escalation factors:**

- a. IMAGETREND will perform price increases on recurring fees. The first price increase will occur with the fees due for Year 2. These price increases will occur once every year and may not exceed 3% of the price then currently in effect.
- b. All Annual SaaS Fees are based upon anticipated usage and are subject to an annual usage audit, which may affect future fees.
- c. All hosting fees are based upon anticipated usage and includes 30 GB of Storage total. These fees are subject to annual usage audits, which may affect future fees at an increase of \$15/10GB/month for Storage.

**Statements/Invoices should be mailed to:**

Finance Department  
City of North Port, Florida  
4970 City Hall Blvd  
North Port, FL 34286  
941-429-7107

**ImageTrend Salesperson Contact:**

Kevin Fink

952-469-1589

[kfink@imagetrend.com](mailto:kfink@imagetrend.com)

[contracts@imagetrend.com](mailto:contracts@imagetrend.com)

## **EXHIBIT B – SERVICE LEVEL AGREEMENT**

### **PERPETUAL USE LICENSE, IMAGETREND HOSTED SOLUTION VERSION 4.0**

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 IMAGETREND's guarantee for exceptional service levels for as long as the system annual support fee is contracted. The Licensed IMAGETREND Hosted Solution Service Level Agreement guarantees CLIENT's web application's availability, reliability and performance. This Service Level Agreement (SLA) applies to any site or application hosted on IMAGETREND's 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 Compellent SAN has a fiber channel backend, currently hosts 8TB of storage, 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.

##### ***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 2012
  - Microsoft Windows Server 2012
- Redundant Power Supplies
- Off-Site Idle Emergency Backup Servers (optional)
- Sonicwall VPN Firewall
- Redundant Disk configuration
- Disk Space allocation and Bandwidth as contracted

##### ***Physical Facility***

The IMAGETREND hosting facilities are located in downtown Minneapolis and Chicago with every industry standard requirement for hosting not only being met, but exceeded. 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.

- Redundant, high-speed Internet connections over fiber optics.
- Power protection via an in-line 80kVa UPS with a 150 KW backup diesel generator
- Temperature controlled
- Waterless Fire Protection and Clean agent fire suppression
- Secured site access
- Steel Vault Doors
- 21" concrete walls and ceiling

### ***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

## **2. 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 Monday through Friday from 7:00 am to 6:00 pm CST via the Support Suite, email or telephone.

Support Suite: [www.imagetrend.com/support](http://www.imagetrend.com/support)  
Email: [support@imagetrend.com](mailto:support@imagetrend.com)  
Toll Free: 1-888-730-3255  
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.

|                |                                                                                                                                                                                                                                                                                                   | 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. |
|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| Severity Level | Examples of each Severity Level:                                                                                                                                                                                                                                                                  |                                                                                                         |                                                                                                                                                     |
| High/Site Down | <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</li> </ul>                                            | Within one (1) hour of initial notification during business hours or via support.imagetrend.com         | Six hours                                                                                                                                           |
| Medium         | <ul style="list-style-type: none"> <li>- Minor subsystem failure</li> <li>-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</li> </ul> | Within four (4) hours of initial notification                                                           | 24 Business hours                                                                                                                                   |
| Low            | <ul style="list-style-type: none"> <li>- System operational with minor issues; suggested enhancements as mutually agreed upon – typically covered in a future release as mutually agreed upon.</li> </ul>                                                                                         | 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 C – HIPAA BUSINESS ASSOCIATE AGREEMENT**

### **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement ("Agreement") dated \_\_\_\_\_, 2018 (the "Effective Date"), is entered into by and between City of North Port, Florida, Fire Rescue District, a Florida municipal corporation (the "Covered Entity") and ImageTrend, Inc., a Minnesota corporation (the "Business Associate").

**WHEREAS**, Covered Entity 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 ("EPI"); 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:

1. **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.

2. **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. Use, creation and disclosure of de-identified health information by Business Associate are not permitted unless expressly authorized in writing by Covered Entity.
3. **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.
4. **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 a reasonable fee 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.

5. **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 a reasonable fee 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.
6. **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.
7. **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.
8. **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, **to the extent feasible, 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.

**9. Data Breach Notification and Mitigation.**

- a. **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.
- b. **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.

- c. **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.

- i. Covered Entity shall indemnify, defend and hold Business Associate 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 Covered Entity, its subcontractors, agents, or employees 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 Covered Entity, its subcontractors, agents, or employees.

- ii. 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.

#### 10. **Term and Termination.**

- a. This Agreement shall commence on the Effective Date and shall remain in effect until terminated in accordance with the terms of this Section 10, 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.
- b. Covered Entity shall have the right to terminate this Agreement for any reason upon thirty (30) days written notice to Business Associate.

- c. 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:
    - i. 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
    - ii. 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.
  - d. Termination of this Agreement for either of the two reasons set forth in Section 10.c above 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.
  - e. Upon the termination of all Business Arrangements, either Party may terminate this Agreement by providing written notice to the other Party.
  - f. 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.
11. **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.
12. **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.
13. **Miscellaneous.**
- a. **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:

Compliance Office

Fire Chief  
North Port Fire Rescue  
4980 City Center Blvd  
North Port, FL 34286

If to Business Associate:

ImageTrend, Inc.  
Attn: Michael J. McBrady  
20855 Kensington Blvd.  
Lakeville, MN 55044

14. **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.
15. **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.
16. **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.
17. **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.
18. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the state in which Business Associate is located, excluding its conflicts of laws provisions. Jurisdiction and venue for any dispute relating to this Agreement shall exclusively rest with the state and federal courts in the county in which Business Associate is located.
19. **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 and further waives any requirement in an action for specific performance or injunction for the posting of a bond.

20. **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.
21. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this Agreement is sought. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in portable document format (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same force and effect as physical execution and delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**COVERED ENTITY:**

City of North Port

By: \_\_\_\_\_

Peter D. Lear, CPA CGMA  
(Print or Type Name)

City Manager  
(Title)

Date: \_\_\_\_\_

6-12-18

**BUSINESS ASSOCIATE:**

ImageTrend, Inc.

By: \_\_\_\_\_

Michael J. McBrady  
(Print or Type Name)

President  
(Title)

Date: \_\_\_\_\_

5-30-2018

**ATTEST:**

Patsy C. Adkins  
City Clerk

Approved as to form and correctness

Amber L. Slayton  
City Attorney

## EXHIBIT D – INSURANCE CERTIFICATE

Intentionally left blank

## **EXHIBIT E – TAX EXEMPTION CERTIFICATE**

CLIENT to provide completed Tax Exemption Form, Tax Exemption Certificate, or other applicable documentation from the State Department regarding their Tax Exemption Status.

## **EXHIBIT F – INSURANCE REQUIREMENTS**

See attached certificate of insurance.

## **EXHIBIT G - LEGACY DATA IMPORT AND IMAGETREND VAULT™ TERMS OF USE**

**"NEMSIS"** is the National Emergency Medical Services Information System (NEMSIS), and provides standardized data formats for submission of EMS Data.

**"Legacy Data"** means data originated by any system which is not ImageTrend Elite

**"Legacy Data System"** means the particular software application which generated, stored, or created the Legacy Data.

### **1. ImageTrend Vault EMS Legacy Data Import Specifications**

#### **a. ImageTrend Vault™ Licensing Terms**

i. Notwithstanding anything in this Agreement to the contrary, CLIENT is hereby granted the following license rights to ImageTrend Vault. All other rights not explicitly granted reserved by ImageTrend.

1. Client shall have a non-transferrable, non-exclusive license to use ImageTrend Vault for the Term of this Agreement as described in this Exhibit at 1(a)(ii) below, and such license shall expire simultaneously with this Agreement.

#### **ii. Term**

1. Notwithstanding anything in the Agreement to the contrary, the Term of the license to ImageTrend Vault shall be one years from the date of mutual execution by the last signature to this Agreement ("Initial Term"). Upon expiration of a Term, the Term shall automatically renew under the same terms and conditions for additional subsequent one year term ("Renewal Term"), unless terminated under the terms of this Agreement or by otherwise giving the other party no less than 30 days of written notice prior to the last day of the then-current Term.
2. ImageTrend reserves the right to monitor and audit the quantity of records stored in ImageTrend Vault and to increase future fees (e.g. fees on Renewal Terms or subsequent Agreements of the parties, after expiration of this Agreement or its Initial Term) in accordance with the then-current price.

#### **b. Description:**

- i. ImageTrend Vault can store additional data fields from ImageTrend Service Bridge, Fire Bridge, State Bridge, or Rescue Bridge ("ImageTrend Version 2 Products") products. These are the data fields beyond the NEMSIS National Data Elements but supported by ImageTrend Version 2 Products. These data fields have the ImageTrend "IT" flag in the NISE export file as exported by the ImageTrend Version 2 Products. ImageTrend Vault may also import related incident attachments and pre-existing attached PDFs from ImageTrend Version 2 Products. ImageTrend Vault cannot accept nor store data beyond the elements identified here for legacy data ImageTrend Version 2 products. ImageTrend makes no promise to accept or store data in ImageTrend Vault except as identified herein.

- c. ImageTrend Vault can import NEMSIS 2.2.1 standardized Legacy Data with the following limitations:

- i. NEMSIS 2.2.1 XML Legacy Data from non-ImageTrend vendors may be imported into ImageTrend Vault provided the NEMSIS 2.2.1 XML Legacy Data is the same compatible format as the NEMSIS 2.2.1 XML Legacy Data System's State NEMSIS submission and otherwise conforming with the NEMSIS Data Dictionary v2.2.1 available at [https://nemsis.org/media/nemsis\\_v2/documents/NEMSIS\\_Data\\_Elements\\_Definitions\\_v2.2.1.xls](https://nemsis.org/media/nemsis_v2/documents/NEMSIS_Data_Elements_Definitions_v2.2.1.xls) ("Conforming Legacy Data File"). It shall be the CLIENT and/or CLIENT Vendor's responsibility to ensure ImageTrend is supplied with a conforming NEMSIS 2.2.1 XML Legacy Data file.
- ii. As part of the ImageTrend Vault product and service package, ImageTrend shall perform a one (1) time import of Legacy data by either 1) Importing data from CLIENT's ImageTrend Version 2 Product(s) utilizing ImageTrend tools, or 2) importing a Conforming Legacy Data File. Additional uploads, corrections or modifications to uploaded data elements, or any other activity related to importing Legacy Data after ImageTrend has completed the one-time import is out of scope. ImageTrend may or may not choose to undertake this additional work at ImageTrend's sole discretion. CLIENT shall have the option to contract ImageTrend to undertake this work per "Creation of Statements of Work" below.

## **2. ImageTrend Elite Legacy Fire and EMS Data Import Specifications**

- a. The following types of data may be available for import into ImageTrend Elite Fire or EMS, depending on details specific to Client:
  - a. Data contained in a NFIRS 5.0 or NEMSIS v3.3.4 and/or 3.4 compatible data file
  - b. Staff data export (requires Client to complete ImageTrend provided workbook)
  - c. Location addresses (requires Client to complete ImageTrend provided workbook)
  - d. Occupant addresses (requires Client to complete ImageTrend provided workbook)
  - e. Vehicles (requires Client to complete ImageTrend provided workbook)
  - f. Zones (requires Client to complete ImageTrend provided workbook)
  - g. Districts (requires Client to complete ImageTrend provided workbook)
  - h. Agency/Station Locations (requires Client to complete ImageTrend provided workbook)
  - i. Destination Facility information (requires Client to complete ImageTrend provided workbook)
  - j. Repeat Patient information (requires Client to complete ImageTrend provided workbook)
- b. The following types of data are not available for import into ImageTrend Elite Fire or EMS products, or may only be available for import under Statement of Work:
  - i. Checklist data
  - ii. Inspections data
  - iii. Inventory data
  - iv. Quality Assurance data
  - v. Scheduling data
  - vi. Preplan data with attachments

- vii. Training templates with documentation
  - viii. Fire Inspection templates
  - ix. Activity templates
  - x. Fire Investigation data
- c. **CREATION OF STATEMENTS OF WORK.** For Legacy Data which may not be imported into ImageTrend Vault or ImageTrend Elite per this Exhibit, the parties may still contract for specialized data migration services provided by ImageTrend. In that case, ImageTrend may meet with Client to discuss the specifications of the data migration services upon mutual agreement of the parties. Upon mutual agreement of the parties following that meeting(s), ImageTrend shall produce for Client a written Statement of Work for the proposed data migration discussed at the meeting(s). Client shall be billed for time spent discovering requirements, designing and other time spent creating the Statement of Work, at ImageTrend's standard hourly rate of \$175/hour.
- d. **ESTIMATE.** The Statement of Work is only an informed prediction and estimate. Data migration is unique to each and every situation, thus unforeseen issues may arise which require more or less work than originally estimated. ImageTrend shall make efforts to inform Client of issues as they arise. Further, ImageTrend shall notify Client prior to exceeding the allotted Time and Materials hours available under this Agreement; ImageTrend shall not exceed the allotted budget of hours without receiving prior approval from Client.

