

# Master Software and Services Agreement

**CONTRACT NUMBER: 00000459.0**

*BETWEEN*

City of Corona  
400 S. Vicentia Ave.  
Corona, California 92882

*AND*

**IMAGE TREND®**

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

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

## **RECITALS**

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

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

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

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

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

### **SECTION 1. DEFINITIONS**

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

**"Business Day"** means a single 8 hour period occurring on a Monday, Tuesday, Wednesday, Thursday or Friday, 9:00am CST to 5:00pm CST, excluding holidays per Section 15 (C) below. Unless specified in a Service Order, ImageTrend personnel will only perform services during Business Days.

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

**"Confidential information"** means the proprietary products and trade secrets, including, but not limited to, computer software, code, technical parameters, price lists, methods of pricing, customer lists, designs, software documentations, manuals, models and account tables, and any and all information maintained or developed. Information shall be considered Confidential Information if it is identified in writing as confidential or proprietary, or if disclosed verbally or visually in discussion, upon written notice specifying and describing the nature of the orally disclosed Confidential Information at that time, or within fifteen (15) days of such disclosure.

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

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

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

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

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

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

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

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

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

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

**“Materials” and “Expenses”** means but is not limited to third party software licenses, physical hardware, test devices, or other items, reasonable travel expenses (including but not limited to food, lodging, and transportation), printing, delivery of materials, or any other cost reasonably incurred arising out of this Agreement.

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

**“Pre-Existing Materials”** means code, documentation, frameworks, development accelerators, tool sets or any other materials owned by ImageTrend and not developed as part of the services performed for

Client. It may include, without limitation, Security Framework, Dashboard, ImageTrend Frameworks, Report Writer and any other tools or Intellectual Property made or used by ImageTrend unrelated to this Agreement.

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

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

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

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

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

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

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

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

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

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

The Term of this Agreement shall be 12 months from the Effective Date of this Agreement (“Initial Term”). Upon expiration of a Term, the Term shall automatically renew under the same terms and conditions for additional subsequent 12 month 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.

## **SECTION 3. WORK ORDERS**

**CREATION OF WORK ORDERS.** The parties may, from time to time, work together to detail the specific engagement scope, pricing, acceptance criteria, and terms of services to be performed and Deliverables to be delivered by ImageTrend. ImageTrend will set forth these details as a Work Order. If the Work Order is for the purchase of COTS Software, the Work Order shall also outline the quantity and SKU of

each product or service as applicable. Should a Work Order contain no term regarding a topic, the terms of this Master Software and Services Agreement shall hold instead.

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

**FEE MODEL.** The Work Order will contain fee and payment terms. The following fee models are contemplated:

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

**LEGAL EFFECT.** Work Orders issued under this Master Services Agreement are incorporated by reference into this Master Services Agreement which collectively is called “the Agreement.” Work Orders do not override the terms of this Master Services Agreement unless specifically stated that they do so. Work Orders may contain their own Fee/Payment Schedules and Payment Terms; those terms are binding insofar as they concern the services or Deliverables contemplated by the Work Order. For Work Orders without their own fee and payment terms, the payment terms in the Price Sheet and Work Order Attachment below control.

**CUSTOMIZED SOFTWARE DEVELOPMENT.** The parties may mutually agree to a Work Order also known as a Statement of Work for the development of new or custom software, also known as “Modified Off The Shelf” or MOTS. All normal requirements of the Work Order shall apply, but additionally the parties must work together to mutually define a Statement of Work which outlines the tasks, and their timelines, to be undertaken as part of the project. Any Customized Software or MOTS Software developed under this Agreement will be Intellectual Property owned by ImageTrend. Should Client desire ownership of any Intellectual Property developed by ImageTrend, this must be embodied by a

separate, mutually executed contract. For clarity, Client shall not and will not own any ImageTrend Intellectual Property under any circumstance under this Agreement. Client may only receive a license thereto as outlined in each Work Order.

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

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

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

**MATERIALS.** Materials (including, but not limited to, third party software licenses, physical hardware, test devices, or other items and any other Material) that will be used in the development of the Software will be identified by ImageTrend to Client. ImageTrend shall acquire such Materials as the parties mutually agree should be acquired, and it shall be the Client’s responsibility to pay for those materials.

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

*After delivery of the Deliverable or performance of the service, Client shall have no more than 15 days to: 1) accept the deliverable or service, or 2) reject the deliverable or service by providing a written rejection that reasonably sets forth the reason for the rejection and the changes required to gain Client’s acceptance, or 3) provide a written request for a 15 additional day extension to review the Deliverable or service; ImageTrend shall not unreasonably withhold approval of such 15 day extension. If Client does not provide an acceptance within the above time frame inclusive of extensions, the Deliverable or service will be deemed accepted. After delivery of the fourth revision of the service or Deliverable, the service or Deliverable shall be deemed accepted by Client.*

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

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**PROMPT PAYMENT ACTS. IF CLIENT IS A GOVERNMENTAL ENTITY, THE FOLLOWING PARAGRAPH**

**APPLIES:** To the degree any term in this Section 5, or any payment related term in any Work Order, conflicts with the governing prompt payment act or similar procurement act which unambiguously limits

client's ability to agree or comply with any term in this section 5 or in any payment related term in any work order ("The PPA"), the term in the PPA will instead control. For clarity, unless there is an unambiguous conflict between the terms of this Section 5 or in any Work Order, the PPA shall not control and this Agreement shall still control.

**FEES.** Client shall owe to ImageTrend such fees as set forth in each mutually executed Work Order.

**SCHEDULING NON-LOCAL TRAVEL.** For any on-site service requested by Client that requires an ImageTrend employee to travel by air, Client shall request such service no less than 3 weeks in advance from the desired on-site date. Requests for such on-site service will be made by written request. ImageTrend reserves the right to approve or deny travel requests on a per-request basis. ImageTrend reserves the right to invoice costs to Client due to scheduling changes requested by the Client when requests are made within 3 weeks of the scheduled on-site date. Requests for on-site service that requires air travel made in writing within 3 weeks of the requested on-site date may be approved by ImageTrend. ImageTrend reserves the right to invoice costs to Client due to scheduling air travel when requests are made within 3 weeks of the requested on-site date.

**CANCELLATION, RESCHEDULE, OR DELAY.** Client will provide to ImageTrend (10) ten business days prior written notice of Client's intent to delay, reschedule, or cancel ("Staffing Change") any service in a Work Order which requires an ImageTrend employee to perform work at a specific location or at a specific time (e.g. face-to-face meetings, on-site visits, after hours on-call status). If Client fails to provide such notice, Client shall reimburse ImageTrend for loss caused by the Staffing Change. ImageTrend shall use commercially reasonable efforts to mitigate any losses that would be incurred by a Staffing Change and due to ImageTrend by Client.

**INVOICING.** Unless otherwise specified in a Work Order, invoices must be paid on Net 30 terms. Any objection to an invoice must be made in writing. Client may request up to an additional 15 days to review Deliverables associated with an invoice, approval to which ImageTrend shall not unreasonably withhold. If Client does not object to an invoice, or request an extension to review Deliverables, within 15 days after receipt of the invoice then the invoice is deemed accepted and any right to object to the invoice is waived. Payment shall be made by check or by ACH transfer to ImageTrend.

**REMEDIES FOR NON-PAYMENT.** Should Client fail to pay per the terms of this Agreement and this Section 5, ImageTrend may 1) suspend services under all Work Orders until such payment is made in full, and/or 2) charge a late fee at the lesser of 1.5% or the maximum allowed by law, and/or 3) invoice Client for the costs of collection including reasonable attorney's fees.

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

Business Day for travel time.

**TIME AND MATERIALS RATE.** Unless otherwise specified in a Work Order, ImageTrend's Time and Materials rate is \$175.00 per hour.

**PRICE ESCALATION.** ImageTrend reserves the right to escalate the prices contained herein, and any recurring fee, by no more than 3 % of the then current price for each anniversary of the Effective Date beginning on 05/28/2020. ImageTrend further reserves the right to escalate travel prices once per year upon written notice to Client. Such travel price increases will only affect future travel prices and will not change the price or amount due to ImageTrend for previously rendered travel.

## **SECTION 6. DATA AND INTELLECTUAL PROPERTY**

**DE-IDENTIFICATION.** ImageTrend may create a de-identified data set of Client's data ("the De-identified Data Set") and ImageTrend may, in ImageTrend's discretion, transform, analyze, distribute and redistribute, create derivative works of, license, make available to 3rd party researchers, or otherwise use the De-identified Data Set except as limited by: 1) this Agreement, 2) applicable law and regulation, e.g. State and Local data privacy law and HIPAA/HITECH, 3) notwithstanding any of the prior, ImageTrend shall create the De-identified Data Set in accordance with the then current HIPAA Safe Harbor Rule at 45 CFR § 164.514(2)(i) by removing the 18 listed data elements, and any additional data element designated as 'Personal Information' by State and Local data breach law (or equivalent laws). The § 164.514(2)(i) data elements are reproduced below at Attachment A. ImageTrend shall ensure its methods for creating the De-identified Data Set comport with industry best practices and guidance such as NISTIR 8053 'De-Identification of Personal Information' (available at <http://dx.doi.org/10.6028/NIST.IR.8053>). ImageTrend shall use reasonable administrative, technical, and physical safeguards to protect and prevent unauthorized disclosure of the De-identified Data Set. ImageTrend shall not attempt to re-identify any de-identified records.

**GRANT OF LICENSE TO IMAGETREND'S PRE-EXISTING IP AND OWNERSHIP OF NEW IP.** All Intellectual Property Rights connected to the ImageTrend pre-existing materials such as architectural structure, modules, processes, and Know-How that may be used in Deliverables ("Pre-existing IP"), shall remain owned by ImageTrend. ImageTrend agrees to grant to Client a royalty-free, worldwide, transferable, non-exclusive, use license for these architectural structures, modules, and processes that may be used solely in conjunction with the Deliverables and services performed under Work Orders and in accordance with the license selected below, conditioned upon full payment of the Work Order from which the Deliverable containing Pre-Existing IP originates. This license may not be transferred, and Client may not sublicense, use, reproduce, distribute or prepare derivative works of ImageTrend's Pre-Existing IP except to the extent strictly necessary to fulfill the purpose of a Work Order. New Deliverables utilizing the same Pre-Existing IP may require another license for that new Deliverable, in ImageTrend's discretion. New Custom Intellectual Property authored by the parties in the course of performing a Work Order shall be owned by the party that authored the Intellectual Property

and in the case of derivative works, it shall be owned by the party who owns the work from which the derivative is made, or as otherwise set forth in the Work Order. In the case of ImageTrend Software products licensed per Software Licensing Terms Attachment below, or “Modified Off The Shelf Software” as defined above, ImageTrend shall own all Intellectual Property related to or arising out of any Work Order. A Work Order may specify who owns the intellectual property embodied in a Deliverable; however, absent such terms in the Work Order, the terms of this Agreement shall control. Any right not hereby granted is reserved.

## **SECTION 7. CONFIDENTIALITY**

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**CONFIDENTIALITY ACKNOWLEDGEMENT.** Each party hereby acknowledges and agrees that the other Party’s Data, potential clients or customers, client or customer lists, business plans, pricing structures, software and database designs, and any other information a Party has marked as Confidential, constitute Confidential Information. Each party agrees to treat (and take precautions to ensure that its authorized personnel treat) Confidential Information as confidential in accordance with the confidentiality requirements and conditions set forth below. Orally transmitted information shall not be Confidential Information unless specified as such in a writing transmitted from the Disclosing party to the Receiving party within 15 days of the oral transmission, with such writing providing a reasonable description and scope of the Confidential Information transmitted. This section does not apply to the disclosure of any documents that are required to be disclosed pursuant to applicable state or federal law or court order.

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

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

## **SECTION 8. WARRANTIES**

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

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

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT ABOVE, THE SERVICES IMAGETREND PROVIDES

TO CLIENT ARE PROVIDED WITHOUT ADDITIONAL WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND

FITNESS FOR A PARTICULAR PURPOSE AND ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS, OR STATEMENTS MADE PRIOR TO THIS AGREEMENT. IMAGETREND HEREBY EXPRESSLY DISCLAIM, AND CLIENT HEREBY WAIVES, ANY REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO THE SERVICES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES PROVIDED IN THIS AGREEMENT ARE CLIENT'S SOLE AND EXCLUSIVE REMEDIES.

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

EACH PARTY SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OR LOSSES ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF THAT PARTY IS ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. EACH PARTY'S CUMULATIVE LIABILITY ARISING OUT OF OR IN ANY MANNER RELATED TO THIS SHALL BE LIMITED TO THE AMOUNT OF CLIENT'S INSURANCE COVERAGE REQUIREMENTS UNDER THIS AGREEMENT. SEE ATTACHED FOR ADDITIONAL INSURANCE COVERAGE LIMITATIONS.

## **SECTION 10. DISPUTE RESOLUTION**

### **DUTY TO NEGOTIATE IN GOOD FAITH PRIOR TO FORMAL DISPUTES. IF CLIENT IS A GOVERNMENTAL ENTITY, THE FOLLOWING 2 PARAGRAPHS APPLY:**

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

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

### **ARBITRATION. If Client is NOT a Governmental Entity the following paragraph applies:**

Any dispute between ImageTrend and Client under this Agreement shall be resolved by arbitration by an arbitrator selected under the rules of the American Arbitration Association in the State of the defending party and the arbitration shall be conducted in that same location under the rules of said Association. If an arbitrator cannot be agreed upon by the parties, ImageTrend and Client shall each choose an arbitrator, and those two chosen arbitrators shall choose a third arbitrator, that third arbitrator shall preside over any dispute. ImageTrend and Client shall each be entitled to present evidence and argument to the arbitrator. The arbitrator shall have the right only to interpret and apply the provisions of this Agreement and may not change any of its provisions. The arbitrator shall permit reasonable pre-hearing discovery of facts, to the extent necessary to establish a claim or a defense to a claim, subject to supervision by the arbitrator. The arbitrator shall endeavor to keep costs as low as possible while still

allowing for the just and fair disposition of the dispute. The determination of the arbitrator shall be conclusive, final and binding upon the parties and judgment upon the same may be entered in any court having jurisdiction thereof. The arbitrator shall give written notice to the parties stating his determination, and shall furnish to each party a signed copy of such determination. ImageTrend and Client shall equally share the cost of the arbitrator(s) fees. The arbitrator may award reasonable costs and expenses, including reasonable attorney fees, to the prevailing party.

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

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

## **SECTION 12. AMENDMENTS**

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

## **SECTION 13. TERMINATION**

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

## **SECTION 14. INDEMNIFICATION**

**IMAGETREND INDEMNITY.** ImageTrend shall defend and indemnify Client from and against third party claims, actions, suits, demands, damages, obligations, losses, settlements, judgments, costs, and expenses ("Claims"), which arise out of any negligent act or omission, or willful misconduct of ImageTrend or patent infringement claims as well as third party intellectual property infringement claims. Client shall promptly notify ImageTrend for any actual or prospective Claim for which indemnification is sought. In the event that any third-party Claim is made and Client invokes this clause, ImageTrend shall have the right and option to undertake and control such defense of such action with counsel of ImageTrend's choice with control to settle any such Claim. ImageTrend shall have no obligation to defend or indemnify Client from Claims arising out of Client's negligent or intentional wrongful acts or omissions. Because ImageTrend must provide its own insurers with notice of a claim within 60 days of actual knowledge of a Claim, Client accordingly must provide ImageTrend written notice no more than 60 days after Client has actual knowledge of a Claim else ImageTrend shall have no obligation to indemnify Client.

**CLIENT INDEMNITY. IF CLIENT IS A GOVERNMENTAL ENTITY THE FOLLOWING PARAGRAPH DOES NOT APPLY.** Client shall defend and indemnify ImageTrend from and against third party claims, actions, suits, demands, damages, obligations, losses, settlements, judgments, costs, and expenses ("Claims"), which arise out of any negligent act or omission, or willful misconduct of Client. ImageTrend shall promptly notify Client for any actual or prospective Claim for which indemnification is sought. In the event that any third-party Claim is made and Client invokes this clause, Client shall have the right and option to undertake and control such defense of such action with counsel of Client's choice with control to settle any such Claim. Client shall have no obligation to defend or indemnify ImageTrend from Claims arising out of Client's negligent or intentional wrongful acts or omissions. ImageTrend accordingly must provide

Client written notice no more than 60 days after ImageTrend has actual knowledge of a Claim else Client shall have no obligation to indemnify Client.

## **SECTION 15. GENERAL TERMS**

- a. **INSURANCE REQUIREMENTS.** ImageTrend will provide to Client a Certificate of Insurance upon request. Further insurance requirements are included below as an attachment.
- b. **ELECTRONIC SIGNATURES.** The parties agree to conduct transactions primarily via electronic means. Accordingly, each party accepts electronic signatures and Deliverables as equivalent to physical versions of the same.
- c. **BUSINESS DAYS AND HOLIDAYS.** The parties agree a business day is 8 hours long, and excludes Saturdays, Sundays, and days reasonably considered a holiday by either party per each party's written policies. Unless otherwise specified in a Work Order, ImageTrend shall perform services only during business days, from 9:00am CST to 5:00pm CST.
- d. **COUNTERPARTS.** This Agreement may be executed in counterpart originals, duly signed by both parties, each of which will be deemed an original but all of which, together, will constitute one and the same Agreement. Any terms not present in all counterpart copies are severed and void. Electronic counterparts are equally as valid as original counterparts.
- e. **FORCE MAJEURE.** Neither party will be liable for delays nor for non-performance due to an unforeseeable event, external to this Agreement and the parties, where the occurrence of the event beyond the non-performing or delayed party's reasonable control ("Force Majeure Events.") This clause shall not apply to costs due to ImageTrend to reimburse cancellation, reschedule, or modification of travel arrangements per §5 above. Force Majeure Events may include, but are not limited to: war, terrorism or threats of terrorism, civil disorder, labor strikes, fire, disease, medical epidemics or outbreaks, events which curtail necessary transportation facilities (e.g. airports), or other unforeseeable events where the occurrence of the event is beyond the non-performing or delayed party's control.
- f. **REASONABLE COOPERATION.** Client will reasonably cooperate with ImageTrend to the extent reasonably necessary to enable ImageTrend to perform the Services contemplated in each Work Order. Accordingly, Client will provide access, information or other materials in a fashion timely to the schedule of each Work Order. ImageTrend shall have no liability to Client for delays arising out the actions or non-actions of Client.
- g. **NON ASSIGNABILITY.** A party shall not assign this Agreement or its rights hereunder without the prior written consent of the other party.
- h. **JURISDICTION AND VENUE.** This agreement and performance hereunder shall be governed by the laws of the State of California, County of Riverside..

- i. **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the parties, with respect to this subject matter, including, but not limited to the services, goods, products, and Software provided by ImageTrend for Client and the compensation provided by Client for said provision of such services therefore, and supersedes all previous proposals, both oral and written, negotiations, representations, writings and all other communications between the parties. This Agreement may not be released, discharged, or modified except by an instrument in writing signed by the parties.
- j. **SEVERABILITY.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.
- k. **WAIVER.** No waiver by either party of any of any provision hereof shall constitute a waiver of any other term of this Agreement nor shall it preclude either party from enforcing its rights.
- l. **NONAPPROPRIATION. IF CLIENT IS A GOVERNMENTAL ENTITY THE FOLLOWING PARAGRAPH APPLIES.** The continuation of this Agreement is contingent upon the appropriation of funds by the legislature or other sources as applicable to fulfill the requirements of the Agreement. If the insufficient monies are appropriated to provide for the continuation of the Contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the applicable appropriation laws or regulations for any lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of this Agreement or any Work Order hereto, the Agreement or applicable Work Order(s) shall terminate on the date of the beginning of the first fiscal year for which funds have not been appropriated. ImageTrend shall be entitled to payment for deliverables in progress, to the extent work has been performed pursuant to this Agreement or any Work Order hereto; obligations that have been incurred that extend beyond the date of termination; and reasonable contract close-out costs.
- m. **ATTORNEYS' FEES.** In any action between the parties to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover reasonable expenses, including reasonable attorneys' fees.
- n. **INDEPENDENT CONTRACTORS.** It is the express intention of Client and ImageTrend that ImageTrend and its employees and agents will perform the services hereunder as independent contractors to Client. Nothing in this Agreement shall in any way be construed to constitute ImageTrend or its employees or agents as an agent, employee or representative of Client. Without limiting the generality of the foregoing, ImageTrend is not authorized to bind Client to any liability or obligation or to represent ImageTrend has any such authority. Client and ImageTrend agree that neither ImageTrend employees nor its agents will receive Client - sponsored benefits from Client.
- o. **NOTICES.** Any notice required to be given by either party to the other shall be deemed given if in writing on the date actually delivered (including electronic methods such as e-mail), or if deposited in the United States mail in registered or certified form with return receipt requested,

postage prepaid, on the postmarked date and addressed to the notified party at the address set forth below, or to such other address as a party may designate from time to time by means of notice given hereunder to the other party.

**If to Client:**

City of Corona Attn: Chief Brian Young  
400 S. Vicentia Ave.  
Corona, California 92882

**If to ImageTrend:**

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

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**IN WITNESS WHEREOF:** the undersigned parties, each having authority to bind their respective organizations, hereby agree

**CITY OF CORONA**

By:

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Mitch Lansdell  
Acting City Manager

**IMAGE TREND**

Signature

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Name (Print)

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Reviewed by:

---

Title:

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Brian Young  
Fire Chief

Date:

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By:

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Cita Longsworth  
Purchasing Manager

Attest

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Sylvia Edwards  
City Clerk

## SOFTWARE LICENSING TERMS ATTACHMENT (Exhibit A)

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

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

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

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

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

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

### SECTION 1 GRANT OF LICENSE TO SOFTWARE.

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

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

	and/or Licensed Information or copies thereof except as provided in this Agreement.
<b>ImageTrend Hosted License ("License")</b>	ImageTrend will grant Client a non-exclusive, non-transferable, perpetual use license without rights of resale or sublicensing, to the ImageTrend Software product(s) listed in the Work Order. Client shall have access to the Software, which will be installed on servers at the ImageTrend hosting facility and subject to the Service Level Agreement attached. All copies of the Software and/or Licensed Information in any form provided by ImageTrend to Client hereunder are the sole property of ImageTrend and/or its suppliers, and that Client shall not have any right, title, or interest to any such Software and/or Licensed Information or copies thereof except as provided in this Agreement.
<b>Client Hosted License ("On Premise License")</b>	ImageTrend will grant Client a non-exclusive, non-transferable, perpetual use license without rights of resale or sublicensing, to the ImageTrend Software product(s) listed in the Work Order. Client shall have access to the Software, which will be installed on servers at the Client hosting facility and subject to the attached Service Level Agreement. All copies of the Software and/or Licensed Information in any form provided by ImageTrend to Client hereunder are the sole property of ImageTrend and/or its suppliers, and that Client shall not have any right, title, or interest to any such Software and/or Licensed Information or copies thereof except as provided in this Agreement.  Initial set up will require direct access to Client servers by ImageTrend personnel. However, after the installation is complete, management of non- ImageTrend software, operating systems, ancillary systems and the responsibility for keeping non- ImageTrend software updated will be the sole responsibility of Client. ImageTrend disclaims any and all liability arising out of out-of-date or otherwise insufficiently maintained non- ImageTrend software or hosting environment. ImageTrend has no duty to maintain the Client's hosted environment's cybersecurity. Client agrees to ensure that ImageTrend will have sufficient server access to fulfill ImageTrend's duties hereunder. Maintenance of Client Hardware, physical environment, storage, processing, patching, operating system maintenance, network device maintenance, Client 3rd party licenses (as outlined below), or any other task which is required to maintain the Client application hosting environment and is not directly arising out of a requirement of or defect to the ImageTrend application(s) are the sole responsibility of Client. It will not be ImageTrend's responsibility to maintain or resolve problems with Client's hosted environment. ImageTrend's sole responsibility shall be to provide application support for ImageTrend developed applications. Tasks which are ultimately discovered to be maintenance of the Client Hosting environment may be charged to Client at ImageTrend's out-of-scope rate of 175.00.

## **SECTION 2. PROTECTION OF SOFTWARE AND LICENSED INFORMATION**

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

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

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

## **SECTION 3. IMAGETREND ELITE DATA MARTS NON-EXCLUSIVE USE LICENSE.**

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

## **SECTION 4. INSTALLATION, INTRODUCTORY TRAINING AND DEBUGGING.**

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

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

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

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

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

## **SECTION 5. SOFTWARE WARRANTIES.**

**PERFORMANCE WARRANTY.** 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 modification or change to the Software in any manner outside of the configuration available within the Software's built-in functionality. This warranty does not apply to data extracted from the system.

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

**LIMITATIONS ON WARRANTY.** All of ImageTrend's obligations under this Section shall be contingent on Client's use of the Software in accordance with this Agreement and in accordance with ImageTrend's instructions as provided by ImageTrend in the Licensed Information, and as such instructions may be amended, supplemented, or modified by ImageTrend from time to time. ImageTrend shall have no warranty obligations with respect to usage which does not conform with ImageTrend's instructions as provided by ImageTrend in the Licensed Information. ImageTrend shall have no warranty obligations with respect to any failures of the Software which are the result of accident, abuse, misapplication, extreme power surge or extreme electromagnetic field of a Client device. In addition to any other limitation on warranty or liability; Client's sole remedy for breach of warranty related to or arising out of the Software, or a defect with the Software, shall be at Client's option 1) repair of the Software or defect, 2) termination of this Agreement for convenience as outlined elsewhere in this Agreement.

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 6. MAINTENANCE.**

ImageTrend shall provide scheduled updates and new releases for the Software, as well as defect correction as needed per the Service Level Agreement, attached for so long as Client has contracted for support (as indicated by a recurring fee containing the product name and word 'Support' and/or 'SaaS'). Specific out-of-scope system enhancement requests are excluded from support. Should Client desire specific source- code level modifications to the system, Client may submit a request to ImageTrend's UserVoice page at <https://ImageTrend.uservoice.com/>.

## **SECTION 7. RETURN OF DATA.**

Upon termination of this Agreement for any reason, Client may request ImageTrend provide to Client a

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

## **SECTION 8. IMAGETREND ELITE AUTHORIZED USERS AND SCOPE OF USAGE**

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

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

Organization Type	Organization Definition	Authorized User Definition
Private Agency	Client responds to emergency medical incidents for-profit or not-for-profit and the Client <u>is not</u> a Governmental Entity.	All employees & contractors of Client who respond to emergency medical incidents in the regular scope of their employment
Public Agency, County, Region, or City for its own employed EMS workers ("Public Agency")	Client responds to emergency medical incidents and transports patients therefrom and <u>is</u> a Governmental Entity	All employees & contractors of Client who respond to emergency medical incidents in the regular scope of their employment
Hospital or Health Network	Client is a 1) hospital, 2) health network, 3) or other medical institution that provides care which does not involve responding to emergency medical incidents and transporting patients therefrom as a primary service of the organization; and Client is recognized and licensed as such by the Client's governing State	All employees & contractors of Client who respond to emergency medical incidents in their regular scope of employment at or from the named Hospital brick-and-mortar locations. If the specific brick-and-mortar location(s) is not named in a Work Order, then it shall be interpreted as the brick-and-mortar location from which the Client primary contact, Chief Chris Cox or their successor, conducts their job duties most frequently.

State, County, Region, City for its constituents	Client is a Governmental Entity with authority or a official mandate to improve, facilitate, organize, surveil, investigate, report, collect reports of, or otherwise govern public health matters; or another entity acting under a grant or contract of and for equivalent authority	Licensed individuals within Client's legal or governing jurisdiction and geographic boundary, who to respond to emergency medical incidents in the regular scope of their employment, and not individuals whose primary job duty involves law enforcement.
Group Purchase (Multi-Agency)	Client(s) are a plurality of Private Agencies and/or Public Agencies	All employees & contractors of each named organization, who respond to emergency medical incidents
Financing Party (e.g. billing company) on behalf of Agency/City/County third party beneficiary	Client is an entity which does not respond to emergency medical incidents or provide for the care or transportation of patients; rather Client is an entity who procures or pays for a third party beneficiary who is a Private or Public Agency.	All employees & contractors of third party beneficiary Public or Private Agency, who respond to emergency medical incidents in the regular scope of their employment.

## PRICE SHEET AND WORK ORDER ATTACHMENT

The prices below are based on the following SaaS transaction volumes, as provided by Client:  
13,000 Incidents annually

### One Time Fees

Description	SKU	Unit Price	Qty	Extended Amount
<b>Elite™ Rescue Setup</b>	ELT.003.002.003	\$5,795.00	1	\$5,795.00
<b>Sub-Agency Data Migration</b>	ELT.006.003.022	\$2,500.00	2	\$5,000.00
<b>MARS Setup</b>	ELT.003.002.015	\$5,000.00	1	\$5,000.00
<b>Webinar Training 2hr Session</b>	ELT.006.003.009	\$350.00	2	\$700.00
<b>Travel</b>	ELT.006.003.008	\$1,750.00	2	\$3,500.00
<b>Legacy Data Conversion - Hourly</b>	ELT.006.003.003	\$175.00	15	\$2,625.00
<b>Onsite Training Session - 8 Hours</b>	ELT.006.003.004	\$1,400.00	4	\$5,600.00
<b>Continuum™ Setup</b>	ELT.003.002.014	\$1,500.00	1	\$1,500.00

**Total One-Time Fees: \$29,720.00**

### Recurring Fees

Description	SKU	Unit Price	Qty	Extended Amount
<b>Elite™ Rescue - SaaS *Includes Elite™ Field</b>	ELT.001.002.015	\$28,970.00	1	\$28,970.00
<b>Statewide Elite™ Field Credit - SaaS</b>	ELT.SWFCSaaSRes	\$(6,955.00)	1	\$(6,955.00)
<b>Visual Informatics™ Fire Cube</b>	ELT.001.002.024	\$0.00	1	\$0.00
<b>Mapping and Reporting System (MARS)</b>	ELT.001.002.028	\$6,000.00	1	\$6,000.00
<b>Visual Informatics™</b>	ELT.001.002.032	\$3,000.00	2	\$6,000.00
<b>Visual Informatics™ EMS Cube</b>	ELT.001.002.023	\$0.00	1	\$0.00
<b>CAD Distribution</b>	ELT.002.007.001	\$5,000.00	1	\$5,000.00
<b>Spillman</b>	ELT.002.007.022	\$0.00	1	\$0.00
<b>TeleStaff Distribution</b>	ELT.002.011.004	\$10,000.00	1	\$10,000.00
<b>Mobile Fire Inspections - SaaS</b>	ELT.001.002.014	\$5,625.00	1	\$5,625.00
<b>Continuum™</b>	ELT.001.002.005	\$7,500.00	1	\$7,500.00

Investigations	ELT.001.002.018	\$3,500.00	1	\$3,500.00
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**Total Recurring Fees: \$65,640.00**

**TOTAL YEAR 1: \$95,360.00**

**Send Invoices To:**

Accounts Payable  
[Accounts.payable@coronaca.gov](mailto:Accounts.payable@coronaca.gov)  
 400 S. Vicentia Ave.  
 Corona, California 92882

**Payment Terms:**

- “One Time Fees” are due once, as specified by the Milestone terms below.
- “Recurring Fees are annual fees which recur each year. They are due on each anniversary of the fee. Recurring fees will be prorated at \$5,761.67 per month from contract signature through June 30, 2019. Commencing July 1, 2019, the Recurring Fees of \$69,140.00 will be due annually in July. The Recurring Fees will escalate in price annually by 3% beginning on 07/01/2020 and each year thereafter.
- ImageTrend may temporarily suspend performance (e.g. cease to provide access, hosting, support) due to Client’s breach of contract provided Client shall have 30 days to cure such breach before ImageTrend may suspend performance.
- ImageTrend may charge to Client a late fee of 1.5% per month, or the highest rate allowed under the law, whichever is lower, on any overdue amounts. Client also agrees ImageTrend may charge to Client all reasonable costs and expenses of collection, including attorneys' fees where, in ImageTrend's discretion, payments are consistently deficient or late.
- All Annual SaaS Fees are based upon anticipated transaction volumes (as provided by Client) and are subject to an annual usage audit. ImageTrend reserves the right to increase fees in accordance with increased transaction volume per the Unit Price listed in the tables above. ImageTrend agrees to provide a 30 day notice prior to any increase in fees resulting from an increase in run volume. Below are the run volume tiers:

Tier 1: 0-1,2500	Tier 10: 30,001-40,000	Tier 19: 150,001-175,000
Tier 2 1,251-2,500	Tier 11: 40,001-50,000	Tier 20: 175,001-200,000
Tier 3:2,501-4,000	Tier 12: 50,001-60,000	Tier 21: 200,001-225,000
Tier 4:4,001-6,000	Tier 13: 60,001-70,000	Tier 22: 225,001-250,000
Tier 5: 6,001-8,000	Tier 14: 70,001-80,000	Tier 23: 250,001-275,000
Tier 6: 8,001-10,000	Tier 15: 80,001-90,000	Tier 24:275,001-300,000
Tier 7: 10,001-15,000	Tier16: 90,001-100,000	Tier 25: 300,001-325,00
Tier 8: 15,001-20,000	Tier17:100,001-125,000	Tier 26: 325,001-350,000
Tier 9: 20,001-30,000	Tier 18: 125,001-150,000	

- ImageTrend will not be responsible for third-party fees related to this Agreement unless specifically outlined by this Agreement

Optional Items

Items in the table below are not goods or services currently contracted or provided by this Agreement, rather, they are included to allow Client to add those goods or services by first providing written notice to ImageTrend, subsequently ImageTrend will provide Client with a Work Order for the Optional item, and upon Client's signature of that Work Order, ImageTrend will begin the work.

Product	SKU	Unit Price	Description
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CrewCare

ELT.001.002.037 \$2,500.00

CrewCare provides visibility into crew stressors via anonymous aggregated data, which allows organizations to address variables associated with improving mental

			health. CrewCare for the organization includes: a unique Department Code, up to five Crisis & Support contacts, up to 15 custom Life Tile questions, and an annual overall CrewCare Results Report. All contacts, questions, and results are evaluated by the ImageTrend Epidemiologist. Includes: 1 CrewCare Results Report, 1 set of custom Life Tile questions (up to 15 questions), 1 set of custom agency specific Crisis & Support contacts (up to 5 contacts), and 1 additional "mini results" report of the custom Life Tile questions.
CrewCare - Additional Full Report	ELT.001.002.038	\$1,000.00	This report represents an extensive data analysis performed by the ImageTrend Epidemiologist. Results displayed are non-identifiable and represent the organization at the aggregate level. Results provide insight into organization strengths and weaknesses pertaining to stress and mental health well-being. Results are also compared to all CrewCare users within that industry.
CrewCare - Additional Mini Report for Custom Life Tile Results	ELT.001.002.043	\$500.00	
CrewCare - Additional Custom Life Tile	ELT.001.002.044	\$500.00	
Connect Conference (per Attendee)	ELT.007.004.001	\$645.00	This includes the pre-purchase of the conference registrations in the contract. ImageTrend Connect is an annual user's conference that offers education from those who know the industry and ImageTrend best - your peers and the ImageTrend team. Attendees come from nationwide to connect with and learn from each other, share ideas and processes, examine key issues, celebrate successes and discuss challenges. This does not include travel or accommodations.

#### MILESTONE 1

**Site Available.** ImageTrend software is available via the Web. This Site Available Milestone is complete when ImageTrend has provided Client: 1) at least one web URL to the ImageTrend software, and 2) a

system administrator account with login credentials, and 3) Client is able to log into the ImageTrend software at that URL.

Description	Unit Price	Quantity	Extended Amount
<b>Elite™ Rescue - SaaS *Includes Elite™ Field</b>	\$28,970.00	1	\$28,970.00
<b>Elite™ Rescue Setup</b>	\$5,795.00	1	\$5,795.00
<b>MARS Setup</b>	\$5,000.00	1	\$5,000.00
<b>Visual Informatics™ Fire Cube</b>	\$0.00	1	\$0.00
<b>Mapping and Reporting System (MARS)</b>	\$6,000.00	1	\$6,000.00
<b>Visual Informatics™</b>	\$3,000.00	2	\$6,000.00
<b>Visual Informatics™ EMS Cube</b>	\$0.00	1	\$0.00
<b>Mobile Fire Inspections - SaaS</b>	\$5,625.00	1	\$5,625.00
<b>Continuum™</b>	\$7,500.00	1	\$7,500.00
<b>Investigations</b>	\$3,500.00	1	\$3,500.00
<b>Continuum™ Setup</b>	\$1,500.00	1	\$1,500.00
<b>Milestone 1 Total</b>			<b>\$69,890.00</b>

## MILESTONE 2

**Go Live.** The parties understand that while the system can be infinitely configured and refined, that the software system must reach a level of readiness and it must “go-live” for usage by the end-users in its intended use cases. Client may desire staged roll out of different features or products for large implementations, or Client may desire to have all functions go live all at once. In the interest of defining a fair and objective measurement point, this Go Live Milestone will be complete when the Client’s Software system processes, receives, transmits, generates, or otherwise interacts with the first non-test data record, excluding non-test data which is migrated on a one-time basis from another system.

Description	Unit Price	Quantity	Extended Amount
<b>Sub-Agency Data Migration</b>	\$2,500.00	2	\$5,000.00
<b>Webinar Training 2hr Session</b>	\$350.00	2	\$700.00
<b>Travel</b>	\$1,750.00	2	\$3,500.00
<b>Legacy Data Conversion - Hourly</b>	\$175.00	15	\$2,625.00
<b>CAD Distribution</b>	\$5,000.00	1	\$5,000.00
<b>Spillman</b>	\$0.00	1	\$0.00
<b>TeleStaff Distribution</b>	\$10,000.00	1	\$10,000.00
<b>Onsite Training Session - 8 Hours</b>	\$1,400.00	4	\$5,600.00
<b>Milestone 2 Total</b>			<b>\$32,425.00</b>

## Insurance Requirement Attachment

Time for Compliance. Promptly following the Effective Date of this Agreement, but in no event before ImageTrend commences any Services under this Agreement, ImageTrend shall provide evidence satisfactory to the City that it has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

Minimum Requirements. ImageTrend shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the ImageTrend, its agents, representatives, employees or subImageTrends. ImageTrend shall also require all of its subconsultants to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto), or if ImageTrend has no owned autos, Code 8 (hired) and 9 (non-owned); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. ImageTrend shall maintain limits no less than: (1) *General Liability* **\$1,000,000** per occurrence for bodily injury, personal injury, advertising injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: **\$1,000,000** per accident for bodily injury and property damage; (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of **\$1,000,000** per accident for bodily injury or disease; and (4) Cyber Liability of \$5,000,000 Aggregate Limit.

Professional Liability ImageTrend shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than **\$1,000,000** ImageTrend shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$2,000,000 minimum per claim or occurrence or \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by ImageTrend in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including, but not limited to infringement of copyright, trademark or other intellectual property, trade dress, invasion of privacy violations, electronic information or data theft, loss of, breach of, damage to, destruction of or misuse of electronic information or data, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs, regulatory fines and penalties and credit monitoring expenses with limits sufficient to respond to these obligations.

Insurance Endorsements. The insurance policies shall contain or be endorsed (amended) to include the following provisions:

(A) General Liability. The general liability policy shall state that: (1) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to liability arising out of work or operations performed by or on behalf of ImageTrend, including materials, parts or equipment furnished in connection therewith (the endorsement form shall be at least as broad as ISO Form CG 20 10 11 85 or both CG 20 37 and one of the following: CG 20 10, CG 20 26, CG 20 33 or CG 20 38); and (2) the insurance coverage shall be primary insurance coverage as respects the City, its directors, officials, officers, employees, agents, and volunteers (the endorsement form shall be at least as broad as ISO CG 20 01 04 13). Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of ImageTrend's insurance and shall not be called upon to contribute with it in any way.

(B) Waiver of Subrogation – Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work or Services performed by ImageTrend.

(C) All Coverages. If ImageTrend maintains broader coverage and/or higher limits than the minimums shown above, the City is entitled to the broader coverage and/or higher limits maintained by ImageTrend. Thus, any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

3.2.10.5 Other Provisions; Endorsements Preferred. ImageTrend shall endeavor to provide endorsements regarding the following provisions, but nonetheless understands, acknowledges and agrees that the following provisions shall apply and that failure to comply shall be considered to be a breach of this Agreement by ImageTrend:

(A) Waiver of Subrogation – All Other Policies. ImageTrend hereby waives all rights of subrogation any insurer of ImageTrend's may acquire against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of any insurance policy which arise from work or Services performed by ImageTrend. ImageTrend understands, acknowledges and agrees that this provision is in full force and effect even if the City does not receive a waiver of subrogation endorsement from the insurer.

(B) Notice. ImageTrend shall either: (1) require its insurer to provide thirty (30) days prior written notice to the City before coverage is suspended, voided, or canceled; or (2) notify City in writing that such notice is not available and forward any notice of such actions to the City within two (2) business days from date of receipt by ImageTrend. ImageTrend understands, acknowledges and agrees that this provision is in full force and effect even if the City does not receive a waiver of subrogation endorsement from the insurer.

Claims Made Policies. The following provisions shall apply to all policies that provide coverage on a claims-made basis: (A) the retroactive date must be shown and must be before the date on which any Services under this Agreement commence; (B) the insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Project; and (C) if coverage is canceled or not renewed and is not replaced with another claims-made policy with a retroactive date prior to the date on which any Services under this Agreement commence, ImageTrend must purchase "extended reporting" coverage for a minimum of five (5) years after completion of Project.

Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require ImageTrend to provide proof of ability to pay losses and related investigation, claims administration and defense expenses within the deductible or self-insured retention. The

deductible or self-insured retention may be satisfied by either the named insured or the City.

Acceptability of Insurers. Unless under the circumstances a different rating is otherwise acceptable to the City in its sole and absolute discretion, insurance is to be placed with insurers which are satisfactory to the City and which meet either of the following criteria : (1) an insurer with a current A.M. Best's rating no less than A:VII and licensed as an admitted insurance carrier in California; or (2) an insurer with a current A.M. Best's rating no less than A:X and authorized to issue the required policies in California.

Verification of Coverage. ImageTrend shall furnish City with original certificates of insurance, as well as amendatory endorsements or copies of the applicable policy language effecting coverage required by this Agreement. All documents must be received and approved by the City before any Services commence; provided, however, that failure to obtain the required documents prior to the commencement of Services shall not waive ImageTrend's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Reporting of Claims. ImageTrend shall report to the City, in addition to ImageTrend's insurer, any and all insurance claims submitted by ImageTrend in connection with the Services under this Agreement.

## SERVICE LEVEL AGREEMENT ATTACHMENT

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

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

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

Maintenance occurs the last Wednesday of each month between 9 and 11pm Central.

### **Hardware**

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

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

### **Physical Facility**

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

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

## 7. 20MW of power capacity

### ***Data Integrity***

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

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

### **Application and Hosting Support**

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

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

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

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

Toll Free: 1-888-469-7789

Phone: 952-469-1589

### ***Online Support***

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

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

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

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

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

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

Product release management is handled by ImageTrend using standard development tools and methodologies. Work items including, tasks, issues, and scenarios are all captured within the system. Releases are based on one or more iterations during a schedule development phase. This includes by not limited to: development, architecture, testing, documentation, builds, test and use cases. Submissions of issues or requests are documented within our Product Management system and from there workflow is created to track the path from initial request to resolution.

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

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

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

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

### ***Release Groups***

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

### ***Escalation***

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

## **Availability**

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

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

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

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

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

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

# **BUSINESS ASSOCIATE AGREEMENT ATTACHMENT**

## **CITY OF CORONA HIPAA BUSINESS ASSOCIATE AGREEMENT IMAGETREND, INC.**

### **1. PARTIES AND DATE.**

This Agreement is made and entered into this 23rd day of August, 2019 by and between the CITY OF CORONA, a municipal corporation organized under the laws of the State of California with its principal place of business at 400 South Vicentia Avenue, Corona, California 92882 ("Covered Entity") and IMAGETREND, INC. a Minnesota Corporation with its principal place of business at 20855 Kensington Blvd. Lakeville, MN 55044 ("Business Associate"). Covered Entity and Business Associate are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

### **2. RECITALS.**

#### **2.1 Purposes of Agreement.**

This Agreement is executed for the purpose of ensuring that Business Associate carries out its obligations to Covered Entity in accordance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"); regulations promulgated thereunder by the U.S. Department of Health and Human Services ("HIPAA Regulations"); the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH Act"); and other applicable laws.

This Agreement encompasses Business Associate's assurance to protect the confidentiality, integrity and security of any personally identifiable Protected Health Information ("PHI") that is collected, processed or learned as a result of the services provided to Covered Entity by Business Associate, including any such information stored and transmitted electronically (referred to as electronic Protected Health Information ("e-PHI") herein).

This Agreement is also executed for purposes of complying with the HITECH Act, which requires Covered Entity to enter into a contract prior to the disclosure of PHI and ePHI, as set forth in, but not limited to, the Privacy Rule and Security Rule set forth in Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("CFR").

### **3. TERMS.**

#### **3.1 Definitions.**

**3.1.1 Partial List; Regulatory Default.** For purposes of this Agreement, the following definitions shall apply:

**"Agreement"** shall mean this Business Associate Agreement.

**“Breach”** shall have the meaning given to such a term under the HITECH Act [42 U.S.C. Section 17921].

**“Business Associate”** refers to the entity contracting with Covered Entity and described in Section 1 (Parties and Date) of this Agreement, and shall have the meaning given to such term under the Privacy Rule and HITECH Act, including, but not limited to, 45 CFR §160.103 and 42 U.S.C. §17938.

**“Covered Entity”** refers to the City of Corona, and shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 CFR §160.103.

**“Data Aggregation”** shall have the meaning given to such term under the Privacy Rule, including but not limited to 45 CFR §164.501.

**“Designated Record Set”** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR §164.501.

**“Electronic PHI”** or **“ePHI”** shall have the meaning given to such term under the Privacy and Security Rules, including, but not limited to, 45 CFR §160.103.

**“Limited Data Set”** shall have the meaning given to such term under 45 CFR §164.514(e)(2).

**“Privacy Rule”** shall mean the HIPAA Regulations relating to the privacy of PHI that is codified at 45 CFR Parts 160 and 164.

**“Protected Health Information or PHI”** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (ii) that identifies the individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR §164.501. Protected Health Information includes ePHI.

**“Protected Information”** shall mean PHI provided by Covered Entity to Business Associate in connection with Business Associate’s performance of services under the Agreement or any PHI created or received by Business Associate on Covered Entity’s behalf in connection with Business Associate’s performance of services under the Agreement.

**“Security Incident”** shall mean a Breach, breach of physical or electronic security where PHI is stored, or any other unauthorized use or disclosure of PHI, both secured and unsecured as defined by the HITECH Act and any guidance issued to such Act, including, but not limited to, 42 U.S.C. §17932(h).

**“Security Rule”** shall mean HIPAA Regulations relating to the security of PHI that is codified at 45 CFR Parts 160 and 164.

**“Unsecured PHI”** shall have the meaning given to such a term under the HITECH Act and any guidance issued to such Act, including, but not limited to, 42 U.S.C. §17932(h).

Any additional terms not defined herein shall have the meanings set forth in 45 CFR §160.103 and §160.501.

### **3.2 Obligations of Business Associate.**

**3.2.1 Permitted Uses and Disclosures.** Business Associate shall not use or disclose Protected Information except for the purpose of performing Business Associate’s obligations to Covered Entity and as permitted under this Agreement. Further, Business Associate shall not use or disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if disclosed by Covered Entity, except that Business Associate may use Protected Information in the following ways:

A. Underlying Agreement. To provide those services described in that Master Software and Services Agreement Agreement entered into by and between Covered Entity and Business Associate on or about 08/23/19, which agreement and any properly executed amendments thereto are incorporated herein by reference (“Underlying Agreement”);

B. Management and Administration. For the proper management and administration of Business Associate;

C. Legal Responsibilities. To carry out the legal responsibilities of Business Associate (including without limitations, as required for Business Associate to comply with applicable professional standards and obligations);

D. Data Aggregation. For Data Aggregation purposes; or

E. Required by Law. If required by law.

**3.2.2 Assurances and Agreements Prior to Disclosure.** To the extent that Business Associate discloses Protected Information to a third party, Business Associate must obtain, prior to making any such disclosure, the following:

A. Assurances. Reasonable assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and

B. Agreement. An agreement from such third party to immediately notify Business Associate of any incident involving the security or confidentiality of Protected Information, to the extent it has obtained knowledge of such an incident.

**3.2.3 Prohibited Uses and Disclosures.** Business Associate will neither use nor disclose Covered Entity’s Protected Information, except as permitted or required by this Agreement, by Covered Entity in writing, or as required by law. This Agreement does not

authorize Business Associate to use or disclose Covered Entity's Protected Information in a manner that would violate the Privacy Rule or the HITECH Act if done by Covered Entity.

**3.2.4 Restriction Agreements and Confidential Communications.** Business Associate will comply with any agreement that Covered Entity makes that either:

A. **Restrictive Use or Disclosure.** Restricts use or disclosure of Covered Entity's Protected Information pursuant to 45 CFR §164.522(a); or

B. **Required Confidential Communication.** Requires confidential communication about Covered Entity's Protected Information pursuant to 45 CFR §164.522(b), provided that Covered Entity notifies Business Associate in writing of the restriction or confidential communication obligations that Business Associate must follow.

Covered Entity will promptly notify Business Associate in writing of the termination of any such restriction agreement or confidential communication requirement.

**3.2.5 Appropriate Safeguards.** Business Associate shall implement and use the following types of safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI, including ePHI, that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity as required by the HITECH Act:

A. **Administrative.** Administrative safeguards as required by 45 CFR Section §164.308;

B. **Physical.** Physical safeguards as required by 45 CFR §164.310; and

C. **Technical.** Technical safeguards as required by 45 CFR Section §164.312

The purpose of such safeguards is to prevent the use or disclosure of PHI in violation of this Agreement. Such safeguards shall conform with, but are not limited to, the standards and implementation specifications required by the HIPAA Security Standards for the protection of ePHI. Business Associate shall comply with the policies and procedures and documentation requirements of the Security Rule, including, but not limited to, 45 CFR §164.316.

**3.2.6 Reporting of Improper Use, Disclosure or Security Incident.** Business Associate shall report to Covered Entity in writing any Security Incident involving, or use or disclosure of, Protected Information, including ePHI, other than those permitted for by this Agreement, within five (5) business days of the date on which any owner, partner, director, official, officer, employee, volunteer, agent or subcontractor of Business Associate becomes aware of such Security Incident, use or disclosure.

**3.2.7 Business Associate's Agents.** Business Associate shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI, as well implement the safeguards required by Section 3.2.5 above with respect to ePHI. Business

Associate shall implement and maintain sanctions against any agents that violate such restrictions and conditions, and shall mitigate the effects of any such violation.

3.2.8 Access to Protected Information. For any reason, including enabling Covered Entity to fulfill its obligations under the Privacy Rule, Business Associate shall make Protected Information maintained by Business Associate or its agents, including subcontractors, in Designated Record Sets available to Covered Entity for inspection and copying within ten (10) business days of a request by Covered Entity. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. §17935(e).

3.2.9 Amendment of PHI. For any reason, including enabling Covered Entity to fulfill its obligations under the Privacy Rule, within ten (10) days of receipt of a request from Covered Entity for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Business Associate or its agents, including subcontractors, shall make such Protected Information available to Covered Entity for amendment and incorporate any such amendment. If any individual requests an amendment of Protected Information directly from Business Associate or its agents, including subcontractors, Business Associate must notify Covered Entity in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by Business Associate or its agents, including subcontractors, shall be the responsibility of Covered Entity.

3.2.10 Accounting Rights. Within ten (10) days of notice by Covered Entity of a request for an accounting of disclosures of Protected Information, Business Associate and its agents, including subcontractors, shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR §164.528 and the HITECH Act, including, but not limited to, 42 U.S.C. §17935(c) as determined by Covered Entity. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents, including subcontractors, for at least six (6) years prior to the request, but not before the effective date of the Agreement. At a minimum, such information shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. If the request for an accounting is delivered directly to Business Associate or its agents, including subcontractors, Business Associate shall within ten (10) business days of a request forward it to Covered Entity in writing. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any Protected Information except as set forth in Section 3.2.1 of this Agreement. The provisions of this paragraph shall survive the expiration or termination of this Agreement and the Underlying Agreement.

3.2.11 Governmental Access to Records. Business Associate shall make its internal practices, books, and records relating to the use and disclosure of Protected Information available to the Secretary of the U.S. Department of Health and Human Services (the

“Secretary”) for purposes of determining Business Associate’s compliance with the Privacy Rule. Business Associate shall provide to Covered Entity a copy of any Protected Information that Business Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary.

3.2.12 Data Ownership. Business Associate acknowledges that Business Associate has no ownership rights with respect to the Protected Information.

3.2.13 Minimum Necessary. Business Associate, and its agents, including subcontractors, shall request, use, and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure. Business Associate shall limit, to the extent practicable, the use, disclosure, or request of PHI to the Limited Data Set. Business Associate and Covered Entity acknowledge that the phrase “minimum necessary” shall be interpreted in accordance with the HITECH Act and government guidance on the definition.

3.2.14 Breach Pattern or Practice. Pursuant to 42 U.S.C. §17934(b), if Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of Covered Entity’s obligations under this Agreement, or of the Privacy and Security Rules or HITECH Act, Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, Business Associate must terminate this Agreement and related contracts (including the Underlying Agreement), if feasible, or if termination is not feasible, report the problem to the Secretary of DHHS. Business Associate shall provide written notice to Covered Entity of any pattern of activity or practice of Covered Entity that Business Associate believes constitutes a material breach or violation of Covered Entity under this paragraph within five (5) days of discovery, and shall meet with Covered Entity, upon its written request, to discuss or attempt to resolve the problems as one of the reasonable steps to cure the breach or end the violation.

3.2.15 Retention of Protected Information. Notwithstanding Section 3.3.3 of this Agreement, Business Associate and its agents, including subcontractors, shall retain all Protected Information throughout the term of this Agreement and the Underlying Agreement. Upon termination of this Agreement or the Underlying Agreement, Business Associate shall follow the procedures set forth in Section 3.4.5 of this Agreement with respect to the handling of Protected Information.

3.2.16 Audits, Inspection, and Enforcement. For the purpose of determining whether Business Associate has complied with this Agreement, within ten (10) days of a written request by Covered Entity, Business Associate and its agents, including subcontractors, shall allow Covered Entity or its agents to conduct a reasonable inspection of any facilities, systems, books, records, agreements, policies, and procedures relating to the use or disclosure of Protected Information under this Agreement. Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection; provided, however, that each Party’s agreement shall not be unreasonably withheld. Covered Entity and its agents shall take all reasonable steps to protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity and its agents have access during the course of inspection. If requested by Business Associate, Covered Entity and its

agents shall execute a nondisclosure agreement, upon terms mutually agreed upon by the Parties; provided, however, that each Party's agreement shall not be unreasonably withheld.

None of the following shall constitute, or be used to imply, Covered Entity's acceptance of a violation of this Agreement, a waiver of Covered Entity's enforcement rights under this Agreement, or a waiver of Business Associate's responsibility to comply with this Agreement and applicable law: (i) the fact that Covered Entity and its agents have the right to inspect Business Associate's facilities, systems, books, records, agreements, policies and procedures; (ii) the fact that Covered Entity, or its agents, actually inspect Business Associate's facilities, systems, books, records, agreements, policies and procedures; (iii) the fact that Covered Entity, or its agents, fail to inspect Business Associate's facilities, systems, books, records, agreements, policies and procedures; (iv) failure by Covered Entity or its agents to detect a violation of this Agreement or a practice that is otherwise unsatisfactory; (v) failure by Covered Entity or its agents to notify Business Associate of a detected violation of this Agreement or a practice that is otherwise unsatisfactory; and (vi) failure by Covered Entity or its agents to require Business Associate to address a detected violation of this Agreement or a practice that is otherwise unsatisfactory.

Business Associate shall notify Covered Entity within ten (10) days of learning that Business Associate has become the subject of an audit, compliance review or compliant investigation by the Office for Civil Rights or other government agency.

3.2.17 Notification of Breach. During the term of this Agreement, Business Associate shall notify Covered Entity within twenty-four (24) hours of any suspected or actual Security Incident of which Business Associate becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Business Associate shall take (i) prompt corrective action to cure any such deficiencies, and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. The notice required by this paragraph shall contain at least the following information:

A. Nature of Incident. The nature of the Security Incident, including a brief description of the incident, whether in Business Associate's opinion the incident involved Unsecured PHI and why, the date it occurred, and the date it was discovered;

B. Protected Information. The Protected Information subject to the Security Incident and identity of each individual whose information may have been accessed, acquired, or disclosed during the incident;

C. Involved Persons/Entities. Who made the non-permitted use or disclosure and who received the Protected Information;

D. Corrective Action. Corrective action taken by Business Associate to prevent further unauthorized use or access and to mitigate loss;

E. Protective Steps. Identify steps that individuals whose information was accessed should take to protect themselves; and

F. Other Information. Any other information, including a written report, that Covered Entity may reasonably request.

3.2.18 Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself, and any employees or agents, including subcontractors, assisting Business Associate in the performance of its obligations under the Agreement, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officials, officers, employees or agents based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy of health information, except where Business Associate, or its employee or agent, including a subcontractor, is named as an adverse party.

3.2.19 Compliance with Standard Transactions. If Business Associate conducts Standard Transactions (as defined in 45 CFR Parts 160 and 162 or other applicable laws or regulations, as may be amended from time to time) with or on behalf of Covered Entity, Business Associate will require any agent, including subcontractor, involved with the conduct of such Standard Transactions to comply with each applicable requirement of 45 CFR Part 162 or other applicable laws or regulations, as may be amended from time to time. Business Associate agrees to demonstrate compliance with the Standard Transactions by allowing Covered Entity to test the Standard Transactions and content requirements upon a mutually agreeable date. Business Associate will not enter into, or permit its agents, including subcontractors, to enter into, any trading partner agreement in connection with the conduct of Standard Transactions for or on behalf of Covered Entity that: (i) changes the definition, data condition, or use of a data element or segment in a Standard Transaction; (ii) adds any data elements or segments to the maximum defined data set; (iii) uses any code or data element that is marked “not used” in the Standard Transaction’s implementation specification or is not in the Standard Transaction’s implementation specification; or (iv) changes the meaning or intent of the Standard Transaction’s implementation specification.

### **3.3 Obligations of Covered Entity.**

3.3.1 Applicable Law. Covered Entity shall comply with HIPAA and the HITECH Act, along with any applicable state law in disclosing Protected Information to Business Associate.

3.3.2 Notice of Privacy Practices. Covered Entity shall provide Business Associate with a copy of its Notice of Privacy Practices (“Notice”) currently in use, upon Business Associate’s request. If requested and if such Notice is modified in the future, Covered Entity shall provide Business Associate with such modified Notice promptly following adoption.

3.3.3 Change in Consent or Authorization. Covered Entity shall notify Business Associate of any change in, or the withdrawal of, the consent or authorization of an individual regarding the use or disclosure of Protected Information to the extent that such change or withdrawal may affect Business Associate’s use or disclosure of PHI.

3.3.4 Appropriate Requests. Covered Entity shall not request Business Associate to use or disclose Protected Information in any manner that would not be permissible under HIPAA or the HITECH Act if done by Covered Entity.

3.3.5 Breach Pattern or Practice If Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate's obligations under this Agreement, or of the Privacy and Security Rules or HITECH Act, Covered Entity must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, Covered Entity must terminate this Agreement and related contracts (including the Underlying Agreement), if feasible, or if termination is not feasible, report the problem to the Secretary of DHHS.

### **3.4 Term and Termination.**

3.4.1 Term. This Agreement shall remain in full force and effect until expressly terminated as provided for herein.

3.4.2 Material Breach. A breach by Business Associate of any material provision of this Agreement, as determined by Covered Entity, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination for cause by Covered Entity of the Agreement, and any underlying contract necessitating this Agreement (including the Underlying Agreement), if Business Associate has failed to cure such breach within thirty (30) days of written notice by Covered Entity.

3.4.3 Judicial or Administrative Proceedings. Covered Entity may terminate for cause this Agreement and related contracts (including the Underlying Agreement), effective immediately, if: (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Regulations, HITECH Act, or other security or privacy laws; or (ii) a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA, the HIPAA Regulations, HITECH Act, or other security or privacy laws is made in any administrative or civil proceeding in which Business Associate has been joined.

3.4.4 Termination by Business Associate. Business Associate shall have no right to terminate this Agreement so long as the Underlying Agreement is in effect. Following expiration or termination of the Underlying Agreement, Business Associate shall continue to fully comply with the terms of this Agreement, including, but not limited to, Section 3.4.5, until the purposes of this Agreement have been fully accomplished. Thereafter, and with the prior written consent of Covered Entity, Business Associate may terminate this Agreement.

3.4.5 Effect of Termination. Upon termination of this Agreement for any reason, Business Associate shall, at the option of Covered Entity, return or destroy all Protected Information that Business Associate or its agents, including subcontractors, still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by Covered Entity, Business Associate shall continue to extend the protections of Section 3.2 of this Agreement to such information and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. If Covered

Entity elects destruction of the PHI, Business Associate shall confirm in writing to Covered Entity that such PHI has been destroyed.

### **3.5 Indemnification.**

3.5.1 Obligation. To the fullest extent permitted by law, Business Associate shall defend, indemnify and hold Covered Entity, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, lawsuits, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Business Associate, its officials, officers, employees, consultants or agents, including subcontractors, in connection with the performance this Agreement, any alleged breach of any provision of this Agreement, or any alleged violation of HIPAA, the HIPAA Regulations, HITECH Act, or other security or privacy laws, including, without limitation, the payment of all expert witness fees and attorney's fees and other related costs and expenses.

3.5.2 Additional Indemnity Obligations. Business Associate shall defend, with Counsel of Covered Entity's choosing and at Business Associate's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.5.1 that may be brought or instituted against Covered Entity or its directors, officials, officers, employees, volunteers and agents. Business Associate shall pay and satisfy any judgment, award or decree that may be rendered against Covered Entity or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Business Associate shall also reimburse Covered Entity for the cost of any settlement paid by Covered Entity or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for Covered Entity's attorney's fees and costs, including expert witness fees. Business Associate shall reimburse Covered Entity and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Business Associate's obligation to indemnify shall survive termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the Covered Entity, its directors, officials officers, employees, agents, or volunteers.

3.5.3 Right to Control Resolution. Covered Entity shall have the sole right and discretion to settle, compromise or otherwise resolve any and all claims, causes of action, liabilities, or damages against it, notwithstanding that Covered Entity may have tendered its defense to Business Associate. Any such resolution will not relieve Business Associate of its obligation to indemnify Covered Entity and its directors, officials, officers, employees, volunteers and agents under this Agreement.

### **3.6 General Provisions.**

3.6.1 Disclaimer. Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement, HIPAA or the HIPAA Regulations, or HITECH Act will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

3.6.2 Changes in Applicable Law; Amendments. The Parties understand, acknowledge and agree that this Agreement incorporates by reference all applicable provisions of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, and other applicable laws relating to the security or confidentiality of PHI, as they currently exist or as they may be amended from time to time. To this end, therefore, the Parties specifically understand, acknowledge and agree to take such actions as are necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, and other applicable laws relating to the security or confidentiality of PHI, as they currently exist or as they may be amended from time to time, regardless of whether a written amendment to this Agreement is approved and executed by the Parties. The Parties understand, acknowledge and agree that state and federal laws relating to data security and privacy are rapidly evolving, and that amendments to this Agreement may be required by Covered Entity, in its sole but reasonable discretion, to best document procedures to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, and other applicable laws relating to the security or confidentiality of PHI. Business Associate understands, acknowledges and agrees that by entering into this Agreement it is providing written assurance to Covered Entity that Business Associate will adequately safeguard all Protected Information by negotiating and executing such amendments in good faith. Upon the request of Covered Entity, Business Associate agrees to promptly enter into negotiations concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other applicable laws. Covered Entity may terminate this Agreement, pursuant to the provisions of Section 3.4, in the event Business Associate does not promptly enter into negotiations to amend this Agreement when required by Covered Entity or if Business Associate does not approve and execute a reasonable amendment to this Agreement as provided for herein.

3.6.3 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate, and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

3.6.4 Interpretation; Construction; References; Captions. The Parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule, and the Security Rule. In addition, since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Business Associate include all personnel, employees and agents, including subcontractors, of Business Associate, except as otherwise specified in this Agreement. All references to Covered Entity include its elected officials, officers, employees, agents and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

3.6.5 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.6.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.6.7 Assignment or Transfer. Business Associate shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the Covered Entity. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.6.8 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.6.9 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.6.10 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.6.11 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.6.12 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.6.13 Authority to Enter Agreement. Business Associate represents that it has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.6.14 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6.15 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements

**[SIGNATURES ON NEXT PAGE]**

**SIGNATURE PAGE FOR  
CITY OF CORONA  
HIPAA BUSINESS ASSOCIATE AGREEMENT  
IMAGETREND, INC.**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the 30th day of October 2019

**CITY OF CORONA**

By:

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Mitch Lansdell  
Acting City Manager

Reviewed by:

By:

---

Cita Longsworth  
Purchasing Manager

Attest

---

Sylvia Edwards  
City Clerk

**IMAGETREND, INC.  
a Minnesota Corporation**

By:

---

Signature

---

Name (Print)

---

Title (Print)

Date: