

# SOFTWARE LICENSING AGREEMENT

CONTRACT No.: 221952  
HHSA AGREEMENT No.:258-S1711

COPY

BETWEEN

COUNTY OF EL DORADO  
360 FAIR LANE  
PLACERVILLE, CA 95667

AND

IMAGETREND, INC.  
20855 KENSINGTON BLVD.

**IMAGETREND®**

LAKEVILLE, MN 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 County of El Dorado (hereinafter "CLIENT").

## **RECITALS**

**WHEREAS**, IMAGETREND owns the software system known as SOFTWARE; and

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

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

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

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

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

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

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

**"Documentation"** refers to technical documents, videos, and other training provided to CLIENT by IMAGETREND for purposes of using the Software. It further includes documents received for system administrators which detail the particular configuration of CLIENT's Software installation. Any document which refers to the usage or installation of the Software is considered Documentation.

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

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

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

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

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

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

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

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

**"Software"** means the computer program(s) in machine readable object code form as referenced and attached hereto as "Exhibit 'A' Pricing Agreement," including the executable processing programs comprising the various modules from the Software and the Licensed Information.

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

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

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

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

The term of this AGREEMENT shall be five year(s) from signature date.

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

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

In accordance with the terms and conditions hereof, IMAGETREND agrees to grant to CLIENT and CLIENT agrees to accept a non-transferable and non-exclusive perpetual use license of the Software. During the term of the AGREEMENT, the CLIENT shall have access to the Software, which will be installed on servers at the IMAGETREND hosting facility and subject to the Service Level Agreement referenced herein and attached as Exhibit B. CLIENT expressly acknowledges that all copies of the Software and/or Licensed Information in any form provided by IMAGETREND to CLIENT hereunder are the sole property of IMAGETREND and/or its suppliers, and that CLIENT shall not have any right, title, or interest to any such Software and/or Licensed Information or copies thereof except as provided in this AGREEMENT.

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

In accordance with the terms and conditions hereof, IMAGETREND agrees to grant the use of the ImageTrend Elite Data Marts only via ImageTrend Elite Reporting Tools as included and detailed in

Exhibit A. This AGREEMENT does not give the CLIENT the rights to access and query the ImageTrend Elite Data Marts directly using SQL query tools, reporting tools, ETL tools, or any other tools or mechanisms. Direct access to ImageTrend Elite Data Marts is available via separately-priced product and service offerings from IMAGETREND. This Section 3.B, is subject to the Non-Exclusive Use License as covered in Section 3.A and terms of this AGREEMENT.

C. PROTECTION OF SOFTWARE AND LICENSED INFORMATION.

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

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

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

D. DATA OWNERSHIP AND DATA PROTECTION.

All CLIENT data collected with IMAGETREND Software remains at all times the property of the CLIENT. IMAGETREND will not use or make available to any person or entity any personally identifiable information except as required to administer the CLIENT's account. During the term of this AGREEMENT and after termination or expiration of this AGREEMENT, IMAGETREND will not in any way transfer to any third party or use in direct or indirect competition with the other party any information or data posted by CLIENT's and others on IMAGETREND's website and acknowledges that all such information is confidential. CLIENT shall have access to creative tools within the Elite Software platform. Use of these features is conditioned upon assignment to IMAGETREND of all copyrights in any work created within and using the Elite software platform, the terms of use for such creative tool features will prompt all users upon first use to agree to terms of use; those terms are hereby incorporated as part of this AGREEMENT and valid whether accepted before or after execution of this AGREEMENT. As a Condition of this Agreement, ImageTrend agrees all confidential client information shall be subject to the full terms and conditions of the HIPAA Business Associate Agreement, attached hereto as Exhibit C, incorporated herein and made by reference a part hereof. Please contact IMAGETREND for a copy of these terms prior to final acceptance of this AGREEMENT, if necessary.

E. CLIENT DATA.

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

#### **SECTION 4. SOFTWARE ABSTRACT.**

- A. The IMAGETREND Elite contains and stores the data elements of an emergency medical database, including data schema and values that may originate from traditional computer aided dispatch (CAD) sources and data values that may be used in billing from pre-hospital patient care. The emergency medical database may contain certain vehicle transport information but does not contain data elements and/or values specific to the vehicle path tracking such as automatic vehicle location (AVL) or third party AVL integrations. The emergency medical database does support integrations to third party CAD and billing solutions. The emergency medical database does not support any AVL, CAD or billing functions executed directly from the database. CLIENT shall not use IMAGETREND Software to integrate patient information from a clinical encounter associated with a patient incident requiring emergency medical care by the emergency transport crew with flight information relating to an emergency transport crew dispatch to produce an encounter record indicative of the patient's clinical encounter. More specifically, CLIENT shall not infringe on patents US6117073, US8712793Bw, or any other patents using the software described herein.
- B. The IMAGETREND Elite contains and stores the data elements of an emergency medical database as defined, described and mandated by the National EMS Information System (NEMSIS). The dataset was adopted by IMAGETREND for State and local regulatory authorities as required by NEMSIS. The NEMSIS data schema and elements are the sole work of the NEMSIS organization in conjunction with the National Highway Traffic Safety Administration (NHTSA). The NEMSIS dataset contains data elements and data structures originating and potentially owned by a number of nonprofit third party organizations and government agencies such as the World Health Organization (ICD 9 and ICD 10), International Health Terminology Standards Development Organization (SNOMED), U.S. Department of the Interior and U.S. Geological Survey (GNIS), National Institute of Standards and Technology (FIPS), Health Level Seven International (HL7), Joint APCO/NENA Data Standardization Working Group (AACN). The NEMSIS dataset offers customer driven extensibility that allows the end user to extend and define the dataset at their own discretion.
- C. Further identification of Software described in this AGREEMENT is described as attached in Exhibit B, Service Level Agreement.

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

- A. **SUPPLY OF SOFTWARE AND LICENSED INFORMATION.**  
IMAGETREND shall provide CLIENT software and services as detailed in Exhibit A.
- B. **MODIFICATIONS, IMPROVEMENTS AND ENHANCEMENTS.**  
During the terms of this AGREEMENT and any extensions under Section 2, IMAGETREND will provide CLIENT with error corrections, bug fixes, patches or other updates to the Software in object code form, to the extent available in accordance with IMAGETREND's release schedule. If CLIENT desires to add new functions or make enhancements to the Software, CLIENT must, for additional consideration, negotiate with IMAGETREND to develop new functions or improvements to the existing Software. All such error corrections, bug fixes, patches, updates, or other improvements or modifications shall be the sole property of IMAGETREND.
- C. **INSTALLATION, INTRODUCTORY TRAINING AND DEBUGGING.**

1. IMAGETREND shall provide CLIENT with start-up services such as the installation and introductory training relating to the Software, and, if necessary, initial debugging services.
2. "Train-the-trainer" training for administrators as detailed in Exhibit A. Additionally, online training videos and user guides in electronic format will be made available.
3. Introductory training relating to the Software as detailed in Exhibit A. The parties may enter into a supplemental written AGREEMENT in the event CLIENT desires that IMAGETREND provide additional training.

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

- A. Application use support as detailed in Service Level Agreement, Exhibit B.
- B. Server hosting environment is monitored and supported 24/7. Emergency support information is available on the IMAGETREND Support site for emergency purposes. Non-emergency related contact may be charged to the CLIENT.
- C. Maintenance of IMAGETREND software, which includes scheduled updates and new releases, as well as defect correction as needed, is included. Specific out-of-scope system enhancement requests will be reviewed with the CLIENT and subject to approval if additional charges are necessary.

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

- A. Except as otherwise provided in this AGREEMENT, IMAGETREND shall offer the Products and the Services at the prices set forth on Exhibit A.
  - (i) IMAGETREND will perform price increases of the recurring fees. Recurring fees will increase no more than two-percent (2%) annually, beginning in year two of this AGREEMENT.
- B. The fees for this contract are as detailed in the attached Exhibit A, Pricing Agreement.
- C. At any time during this AGREEMENT, the CLIENT may contract with IMAGETREND for additional software and services not covered in this AGREEMENT with fees to be negotiated on an item-by-item basis. The CLIENT may contract Custom Development by IMAGETREND for additional fees as outlined and agreed to in a signed and accepted Statement of Work.

If there is a delay in acceptance on the remaining items previously approved by CLIENT and indicated by CLIENT as being ready for installation and implementation, for longer than 60 days, IMAGETREND has the option to invoice the remaining balance on any or all of the open items for Year 1 and begin the Recurring Fees schedule. Open items shall be defined as items CLIENT has designated to be ready for installation and implementation, and shall not be considered any items CLIENT has determined will not be implemented as a part of the items identified in Year 1, of the Pricing Agreement, attached hereto as Exhibit A.

- D. In addition to fees identified in the Pricing Agreement, attached as Exhibit A, and identified therein as being part of the costs for Year 1, CLIENT may elect to purchase additional services, which are not reflected in the prices associated with "Total Year 2", "Total Year 3", "Total Year 4", or "Total Year 5". This election may be made at any point within the term of this agreement. Specifically, the CLIENT may elect to purchase an additional Hospital Hub Setup and Access Fee, as identified on the Agreement. Should the CLIENT elect to purchase this additional service subsequent to Year 1, CLIENT would also elect to incur the reoccurring fees associated with adding the additional service.

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

- A. ACKNOWLEDGEMENT.

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

**B. MAINTENANCE OF CONFIDENTIAL INFORMATION.**

Each party agrees to keep confidential all confidential information disclosed to it by the other party in accordance herewith, and to protect the confidentiality thereof in the same manner it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of confidential information); provided, however, that the provisions of this Section 8 shall not apply to information which: (i) is in the public domain; (ii) has been acquired by CLIENT by normal means upon the disclosure of the information by IMAGETREND; (iii) is duly obtained by CLIENT directly or indirectly from a third party who has independently developed the information and is entitled to disclose the information to CLIENT, and such disclosure does not directly or indirectly violate the confidentiality obligation of such third party; or (iv) becomes known publicly, without fault on the part of CLIENT, subsequent to the receipt of the information by CLIENT. As a Condition of this Agreement, ImageTrend agrees all confidential client information shall be subject to the full terms and conditions of the HIPAA Business Associate Agreement, attached hereto as Exhibit C, incorporated herein and made reference a part hereof.

**C. SURVIVAL.**

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

**SECTION 9. WARRANTIES.**

**A. PERFORMANCE.**

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

**B. OWNERSHIP.**

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

**C. LIMITATIONS ON WARRANTY.**

All of IMAGETREND's obligations under this Section 9 shall be contingent on CLIENT's use of the Software in accordance with this AGREEMENT and in accordance with IMAGETREND's instructions as provided by IMAGETREND in the Licensed Information, and as such instructions may be amended, supplemented, or modified by IMAGETREND from time to time. IMAGETREND shall have no warranty obligations with respect to any failures of the Software

which are the result of accident, abuse, misapplication, extreme power surge or extreme electromagnetic field.

The express warranties provided herein are the only warranties made by IMAGETREND with respect to the Software and supersede all other express or implied warranties, including, but not limited to, any warranties of merchantability and warranties for any special purpose.

#### **SECTION 10. LIMITATION OF LIABILITY.**

ImageTrend is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. ImageTrend exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment. ImageTrend shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to ImageTrend or its employees.

Each party shall not be liable to the other party for consequential, indirect, incidental, special, punitive, or exemplary damages or losses claimed by the other party and arising out of or related to this agreement. Each party's cumulative liability for any damages incurred by the other party and arising out of or in any manner related to this AGREEMENT (including, but not limited to, claims between the parties for breach of contract, breach of warranty, negligence, strict liability, or tort), shall be limited to two-times (2x) the amount of the fees paid by CLIENT to IMAGETREND under this agreement.

#### **SECTION 11. INDEMNIFICATION.**

##### **A. INDEMNITY**

ImageTrend shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the ImageTrend's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the ImageTrend, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of ImageTrend to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778. Notwithstanding the above, claims for intellectual property indemnification shall only be made pursuant to Section 11(C) below

##### **B. ENTIRE LIABILITY**

SECTION 11 (A) ABOVE STATES THE PARTIES ENTIRE LIABILITY AND THE PARTIES SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS OF INDEMNIFICATION. SECTION 9 OF THIS AGREEMENT STATES THE FULL EXTENT OF IMAGETREND'S WARRANTY AND SECTION 11(A) PROVIDES NO ADDITIONAL WARRANTY OF ANY KIND. ANY OTHER WARRANTY, EXPRESS OR IMPLIED OUTSIDE OF THIS AGREEMENT, INCLUDING THOSE ARISING OUT OF THE UNIFORM COMMERCIAL CODE, ARE WAIVED.

- C. **IP Indemnification.** Subject to Section 11(B), IMAGETREND shall, at its own expense, indemnify and defend CLIENT against any claim by a third party that the IMAGETREND Software as used in compliance with this Agreement infringes a valid U.S. patent issued prior to the Effective Date, Berne Convention copyright or U.S. trade secret (a "Claim"), provided that CLIENT: (i) provides IMAGETREND with prompt written notice of the Claim; and (ii) permits IMAGETREND to exclusively defend, compromise, settle or appeal such Claim. CLIENT shall provide



IMAGETREND with full information, assistance and cooperation, at IMAGETREND's expense, to enable IMAGETREND to defend, compromise, settle and/or appeal such Claim and shall not settle or compromise any Claim without IMAGETREND's prior written consent. The obligations of this Section 11(C) apply to any and all settlements or compromises which may in any way estop or prejudice IMAGETREND's defense of the Claim, including all alternative dispute resolution forums, administrative forums and judicial forums. The previous sentence specifically contemplates, but is not limited to, post-grant proceedings (including inter partes review, covered business method review, post-grant review, and others) before the United State Patent and Trademark Office, Article 337 proceedings before the United States International Trade Commission, judicial proceedings before any court with jurisdiction, or otherwise. The provisions set forth in this Section 11(C) shall not prohibit the participation of CLIENT with IMAGETREND in the defense or appeal of any Claim should CLIENT choose to participate, at its own expense (such expense not being indemnified by IMAGETREND) and with attorneys of its own choice, provided that IMAGETREND shall have sole control and authority with respect to any such defense, compromise, settlement, appeal or similar action related to the Claim. IMAGETREND shall pay any final award of damages assessed against CLIENT resulting from a Claim defended by IMAGETREND pursuant to this Section 11(C), including any awarded costs or attorneys' fees, or any settlement amount agreed to by IMAGETREND.

D. **Exclusions.** IMAGETREND shall have no obligation to CLIENT under Section 11(C) if the alleged infringement or violation is based upon:

- i. Client's use of the IMAGETREND Software other than as set forth herein and in the then-current version of the Documentation;
- ii. Any modification, configuration, implementation, or alteration to or of the IMAGETREND Software performed by CLIENT
- iii. IMAGETREND's compliance with CLIENT's designs, specifications, modification instructions, configuration instructions, or implementation instructions if IMAGETREND is unable to follow such designs, specifications, modification instructions, configuration instructions, or implementation instructions without infringement or violation; or
- iv. Combination, operation or use with software, hardware, information, data, or other materials, not approved or supplied by IMAGETREND, if infringement (including, without limitation, contributory infringement) would have been avoided by use without such software, hardware, information, data, or other materials; or
- v. Client's failure to update or make use of updates, so that the most current version is in use by CLIENT; or
- vi. Use of the IMAGETREND Software after IMAGETREND's notice to cease use of the IMAGETREND Software due to a claim of infringement.

E. **Remedies.** Notwithstanding anything to the contrary in the foregoing, should CLIENT's right to continue to use the IMAGETREND Software pursuant hereto be subject to a claim that it infringes or misappropriates a valid patent or copyright or other intellectual property right, or if IMAGETREND reasonably believes such a claim may arise, IMAGETREND may fulfill its obligations under this Section 11 by, in IMAGETREND's sole discretion and at no cost to CLIENT:

- i. Procuring for CLIENT the right or license to continue to use the IMAGETREND Software;
- ii. Modifying the IMAGETREND Software to render it non-infringing but substantially functionally equivalent to the IMAGETREND Software prior to such modification; or
- iii. If the alternatives described in clauses (i) and (ii) of this Section 11(E) are not commercially practicable, IMAGETREND may terminate the License(s) to the IMAGETREND Software, in

which case IMAGETREND may refund to CLIENT any fees paid under this Agreement by CLIENT to IMAGETREND for unused use of or support for the allegedly infringing IMAGETREND Software. For the purposes of this Section 11(E)(iii), the fees with respect to unused use of allegedly infringing IMAGETREND Software that is licensed for a onetime or up-front License fee shall be the unamortized value of such one-time or up-front License fee actually paid by CLIENT to IMAGETREND under this Agreement for such allegedly infringing IMAGETREND Software, as depreciated on a three-year straight line schedule beginning on delivery of such allegedly infringing IMAGETREND Software to CLIENT. Upon such refund, CLIENT shall return such allegedly infringing IMAGETREND Software and CLIENT's right to use such IMAGETREND Software shall cease.

- F. **Effect.** THIS SECTION 11 STATES IMAGETREND'S AND ITS SUPPLIERS' ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR INFRINGEMENT AND/OR MISAPPROPRIATION, WHETHER SUCH ACTION, CLAIM OR PROCEEDING IS BASED ON BREACH OF WARRANTY OR ANY OTHER CAUSE OF ACTION. EXCEPT AS STATED ABOVE, IMAGETREND AND ITS SUPPLIERS DISCLAIM ALL INDEMNITIES, EXPRESS, IMPLIED OR STATUTORY FOR INTELLECTUAL PROPERTY INFRINGEMENT AND/OR MISAPPROPRIATION.

#### **SECTION 12. INSURANCE REQUIREMENTS.**

ImageTrend shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager and documentation evidencing that ImageTrend maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of ImageTrend as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- C. Automobile Liability Insurance of not less than \$500,000.00 is required in the event motor vehicles are used by the ImageTrend in the performance of the Agreement.
- D. In the event ImageTrend is a licensed professional or professional consultant, and is performing professional services under this Agreement, professional liability is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. ImageTrend shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to County of El Dorado Risk Management, or be provided through partial or total self-insurance likewise acceptable to County of El Dorado Risk Management.
- G. ImageTrend agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, ImageTrend agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of County of El Dorado Risk Management and ImageTrend agrees that no work or services shall be performed prior to the giving of such approval. In the event the ImageTrend fails to keep in effect at all times insurance

coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

- H. The certificate of insurance must include the following provisions stating that:
  - 1. The insurer will not cancel the insured's coverage without prior written notice to County, and;
  - 2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. The ImageTrend's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the ImageTrend's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or ImageTrend shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. ImageTrend's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event ImageTrend cannot provide an occurrence policy, ImageTrend shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for protection of the County.

### **SECTION 13. TERMINATION.**

#### **A. TERMINATION WITHOUT CAUSE.**

Following the expiration of the original term of this AGREEMENT, either party shall have the right to terminate this AGREEMENT, without cause, by giving not less than one hundred and eighty (180) days written notice of termination.

#### **B. CUSTOM DEVELOPMENT TERMINATION**

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

#### **C. TERMINATION FOR CAUSE.**

This AGREEMENT may be terminated by the non-defaulting party by giving not less than thirty (30) days written notice of termination if any of the following events of default occur: (i) if a party materially fails to perform or comply with this AGREEMENT or any provision hereof; (ii) if either party fails to strictly comply with the provisions of Section 8 , above, or makes an assignment in violation of Section 15, below; (iii) if a party becomes insolvent or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; (iv) if a petition under any foreign, state, or United States bankruptcy act, receivership statute, or the like, as they now exist, or as they may be amended from time to time, is filed by a party; or (v) if such a petition is filed by any third party, or an application for a receiver is made by anyone and such petition or application is not resolved favorably within ninety (90) days.

**SECTION 14. NONASSIGNABILITY.**

CLIENT shall not assign this AGREEMENT or its rights hereunder without the prior written consent of IMAGETREND. ImageTrend is engaged by County for its unique qualifications and skills as well as those of its personnel. ImageTrend shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

**SECTION 15. GOVERNING LAW.**

The parties agree that the law governing this AGREEMENT shall be that of the State of California without regard to its conflict of laws principles.

**SECTION 16. VENUE**

Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

**SECTION 17. COMPLIANCE WITH LAWS.**

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

**SECTION 18. WAIVER.**

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

**SECTION 19. NOTICES.**

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

**TO CLIENT:**

County of El Dorado  
Health and Human Services Agency  
3057 Briw Rd, Suite B  
Placerville, CA 95667

ATTENTION: Contracts Unit

And

County of El Dorado  
Emergency Medical Services Agency  
2900 Fair Lane, Placerville, CA 95667  
ATTENTION: EMS Agency Director

**TO IMAGETREND:**

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

ATTENTION: Mike McBrady

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

**SECTION 20. FORCE MAJEURE.**

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

**SECTION 21. INTERPRETATION.**

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

**SECTION 22. INTEREST OF THE PUBLIC OFFICIAL.**

No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by ImageTrend under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

**SECTION 23. INTEREST OF IMAGETREND.**

ImageTrend covenants that ImageTrend presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. ImageTrend further covenants that in the performance of this Agreement no person having any such interest shall be employed by ImageTrend.

**SECTION 24. CONFLICT OF INTEREST.**

The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. ImageTrend attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. County represents that it is unaware of any financial or economic interest of any public officer or employee of ImageTrend relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately

terminate this Agreement by giving written notice as detailed in the Article in the Agreement titled, "Default, Termination and Cancellation".

**SECTION 25. SIGNATOR'S WARRANTY AND ACCEPTANCE BY PERFORMANCE.**

The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

**SECTION 26. PRIOR AGREEMENTS AND AMENDMENTS.**

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

**SECTION 25. TAXES**

ImageTrend certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by ImageTrend to County. ImageTrend agrees that it shall not default on any obligations to County during the term of this Agreement.

**SECTION 26. FISCAL CONSIDERATIONS**

The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

**SECTION 27. AUDIT BY THE STATE OF CALIFORNIA:**

ImageTrend acknowledges that if total compensation under this agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code §8546.7. In order to facilitate these potential examinations and audits, ImageTrend shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the contract, all books, records and documentation necessary to demonstrate performance under the Agreement.

**SECTION 28. CHANGE OF ADDRESS:**

In the event of a change in address for ImageTrend's principal place of business, ImageTrend's Agent for Service of Process, or Notices to ImageTrend, ImageTrend shall notify County in writing pursuant to the provisions contained in this Agreement under the Section titled "Notices". Said notice shall become part of this Agreement upon acknowledgment in writing by the County Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

**SECTION 29. CALIFORNIA RESIDENCY:**

If ImageTrend is a California resident, Contractors must file a State of California Form 590, certifying its California residency or, in the case of a corporation, certifying that it has a permanent place of business in California. ImageTrend will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to the Contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

**SECTION 30. NONRESIDENT WITHHOLDING:**

If ImageTrend is not a California resident, ImageTrend shall provide documentation that the State of California has granted a withholding exemption or authorized reduced withholding prior to execution of this Agreement or County shall withhold seven (7%) percent of each payment made to ImageTrend during term of the Agreement as required by law. This requirement applies to any agreement/contract exceeding \$1,500.00. ImageTrend shall indemnify and hold the County harmless for any action taken by the California Franchise Tax Board.

**SECTION 31. TAXPAYER ID NUMBER:**

ImageTrend shall file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

**SECTION 34. ADMINISTRATOR:**

**Administrator:**

The County Officer or employee with responsibility for administering this Agreement is:

Rich Todd

EMS Agency Administrator – MHOAC, or Successor

El Dorado County Health and Human Services Agency

2900 Fair Lane Court

Or successor.

**SECTION 32. NO THIRD PARTY BENEFICIARIES:**

Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this agreement.

**SECTION 33. PARTIAL INVALIDITY:**

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

**SECTION 34. COUNTERPARTS:**

This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

**SECTION 35. ENTIRE AGREEMENT:**

This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

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

APPROVED AS:

"COUNTY OF EL DORADO"

By: 

Name: Shiva Frentzen

Title: Chair, Board of Supervisors

Dated: 9/13/14

"IMAGETREND"

By: 

Name: Michael J. McBrady

Title: President

Dated: 2-23-17

**ATTEST: James S. Mitrison**  
**Clerk of the Board of Supervisors**

By: 

**Kim Dawson, Sr. Deputy Clerk**



## **EXHIBITS**

**EXHIBIT A** – Pricing Agreement

**EXHIBIT B** – Service Level Agreement

**EXHIBIT C** – HIPAA Business Associate Agreement

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

## EXHIBIT A – PRICING AGREEMENT

IMAGETREND's license and annual support are based upon 25,000 annual incidents as provided by CLIENT. IMAGETREND reserves the right to audit the annual incident volume and the option to increase future support costs, with prior notification to the CLIENT, if the number of annual incidents increases substantially and has a resulting effect of increased support calls to IMAGETREND.

### Pricing Agreement

Description	Units	Price	Extended
ImageTrend Elite EMS w/ NFIRS Tab License	1	\$35,000.00	\$35,000.00
ImageTrend Elite EMS w/ NFIRS Tab Setup Fee and Project Management	1	\$7,500.00	\$7,500.00
ImageTrend Elite Field Site License	1	\$25,000.00	\$25,000.00
Hospital Hub Setup and Access Fee for Services	1	\$7,500.00	\$7,500.00
CAD Integration – EMS & Fire Vendor: Northrup Grunman and Siren	2	\$8,000.00	\$16,000.00
Visual Informatics – Analytics Setup Fee (includes 1 cube): EMS Cube <i>Includes: Analytics, Pie Charts, Charting, Widgets, Interactive Alerting Engine (ImageTrend Hosted Only)</i>	1	\$15,000.00	\$15,000.00
FTP Automated Export of the NEMSIS v3 XML and PDF File Setup Vendor: Intermedix	1	Included	Included
MARS (Mapping) Setup Fee	1	\$5,000.00	\$5,000.00
MyFax Integration	1	\$2,500.00	\$2,500.00
Training Sessions – Onsite (Full Day M-F)	3	\$1,000.00	\$3,000.00
Travel per Trainer for Onsite Training	1	\$1,500.00	\$1,500.00
<b>TOTAL One-Time Fees</b>			<b><u>\$118,000.00</u></b>

Recurring Fees	Units	Price	Extended
ImageTrend Elite EMS Annual Support	1	\$5,600.00	\$5,600.00
ImageTrend Elite EMS Annual Hosting	1	\$9,000.00	\$9,000.00
ImageTrend Elite Field Site License Annual Support	1	\$4,000.00	\$4,000.00
CAD Annual Support and Hosting	2	\$2,800.00	\$5,600.00
Hospital Hub Annual Support and Hosting <i>Number of Hospitals Included: 15</i>	1	\$1,875.00	\$1,875.00
Visual Informatics Annual Support	1	\$2,400.00	\$2,400.00
FTP Automated Export of the NEMSIS v3 XML and PDF File Annual Support & Hosting Vendor or Client Hosted FTP: Client Hosted FTP	1	Included	Included
ImageTrend Health Information Hub Annual Integration-as-a-service (IaaS)	1	\$7,500.00	\$7,500.00
Health Information Hub Bi-Directional Exchange per Hospital Annual IaaS	2	\$5,000.00	\$10,000.00
MARS (Mapping) Annual Transactional Fee	1	\$5,000.00	\$5,000.00
MyFax Integration Annual Support	1	\$400.00	\$400.00
<b>TOTAL Recurring Fees</b>			<b><u>\$51,375.00.00</u></b>

TOTAL Year 1 \$169,375.00

TOTAL Year 2 \$52,402.50

TOTAL Year 3 \$53,450.55

TOTAL Year 4 \$54,519.56

TOTAL Year 5 \$55,609.95

**TOTAL AMOUNT NOT TO EXCEED: \$385,357.56**

Optional*	Units	Price	Extended
DataMart License – ImageTrend Hosted Access (1 Data Source)	2	\$5,000.00	
DataMart – ImageTrend Hosted Access Annual Support (1 Data Source)	1	\$2,400.00	
DataMart – ImageTrend Hosted Access Annual Hosting (1 Data Source) <i>Note: includes Data Dictionary for DataMart, 3<sup>rd</sup> Party Access Included</i> <i>Frequency: Continuous</i> <i>Data Source: EMS</i>	1	\$15,000.00	
DataMart – Annual Support	1	\$2,400.00	
Target Solutions Integration (Each)	1	\$1,400.00	
Target Solutions Integration Annual Support and Hosting	1	\$2,000.00	
Target Solutions Integration (Each – Maximum Cost)	1	\$8,000.00	
Target Solutions Integration Annual Support and Hosting	1	\$2,000.00	
Upgrade to ImageTrend Elite Rescue License (Fire & EMS)	1	\$10,000.00	
Upgrade to ImageTrend Elite Rescue Additional Annual Support	1	\$1,600.00	
Upgrade to ImageTrend Elite Rescue Additional Annual Hosting	1	\$2,400.00	
Upgrade to ImageTrend Elite Rescue Additional Annual Setup Fee and Project Management	1	\$7,500.00	
ImageTrend Elite Mobile Fire Inspections Site License	1	\$12,500.00	
ImageTrend Elite Mobile Fire Inspections Site License Annual Support	1	\$2,000.00	
Onsite Training Sessions @ \$1,000/day		\$1,000.00	
Out of Scope billed at \$130/Hour		\$130.00	
Travel per Trainer (for Onsite Training at Client's Facility Training)*** @ \$1,500/trainer/trip		\$1,500.00	
Webinar Training Sessions (2 hour session M-F during ImageTrend's Standard Business Hours) \$250/session		\$250.00	
Additional Hospital Hub Setup and Access Fees	1	\$7,500.00	

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

**Payment Terms:**

- Payment Terms are net 30 days.
- Upon contract signature, 50% of Total Year 1 will be invoiced. The remaining 50% will be invoiced independently upon completion of each item.
- Project completion occurs upon receipt of the product, when CLIENT agrees the product has been successfully implemented and installed to CLIENT'S approval after a reasonable testing period of 30 days from delivery of each product deliverable; such approval shall not be

unreasonably withheld. If no approval is granted within 30 days of receipt of a project deliverable, the project deliverable will be deemed approved

- d. The recurring Annual Fees will be billed annually in advance.
- e. If there is a delay in acceptance on the remaining items previously approved by CLIENT and indicated by CLIENT as being ready for installation and implementation, for longer than 60 days, IMAGETREND has the option to invoice the remaining balance on any or all of the open items for Year 1 and begin the Recurring Fees schedule. Open items shall be defined as items CLIENT has designated to be ready for installation and implementation, and shall not be considered any items CLIENT has determined will not be implemented as a part of the items identified in Year 1.
- f. IMAGETREND will invoice sales tax to non-exempt CLIENTS where applicable

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

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

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

**Pricing escalation factors:**

- a. IMAGETREND will perform price increases of the recurring fees. Price increases will not exceed 2% annually, and shall not exceed the Total Amount as indicated herein for Year 2, Year 3, Year 4, and Year 5.
- b. All Annual SaaS Fees are based upon anticipated usage and are subject to an annual usage audit, which may affect future fees.
- c. All hosting fees are based upon anticipated usage and includes 30 GB of Storage total. These fees are subject to annual usage audits, which may affect future fees at an increase of \$15/10GB/month for Storage.

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

Health and Human Services Agency  
County of El Dorado  
Attn: Finance Unit  
3057 Briw Rd, Suite B  
Placeville, CA 95667  
Email: [Lori.Walker@edcgov.us](mailto:Lori.Walker@edcgov.us)

**ImageTrend Salesperson Contact:**

Todd York  
952-469-1589  
[tyork@imagetrend.com](mailto:tyork@imagetrend.com)  
[contracts@imagetrend.com](mailto:contracts@imagetrend.com)

## EXHIBIT B – SERVICE LEVEL AGREEMENT

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

This agreement exists for the purpose of creating an understanding between IMAGETREND and CLIENT who elect to host the application on IMAGETREND's servers. It is part of our guarantee for exceptional service levels for as long as the system annual support fee is contracted. The Licensed IMAGETREND Hosted Solution Service Level Agreement guarantees your web application's availability, reliability and performance. This Service Level Agreement (SLA) applies to any site or application hosted on our network as contracted.

#### 1. Hosting at the ImageTrend's Datacenter

IMAGETREND's hosting environment provides **99.9% availability** and is comprised of state-of-the-art Blade Servers and SAN storage that are configured with the no single point of failure through software and infrastructure virtualization, blade enclosure redundancies and backup storage policies. Our Compellent SAN has a fiber channel backend, currently hosts 8TB of storage, has dual storage controllers with redundant power supplies and redundant paths to disk, and hot swappable drives. We do offsite replication to disk on a second SAN. Scheduled maintenance and upgrades do not apply to the system availability calculation and all CLIENTs are properly notified of such scheduled occurrences to minimize accessibility interruptions.

##### **Hardware**

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

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

##### **Physical Facility**

The IMAGETREND hosting facilities are located in downtown Minneapolis and Chicago with every industry standard requirement for hosting not only being met, but exceeded. Requirements such as power supply and power conditioning, normal and peak bandwidth capacity, security and fail over locations are all part of an overall strategy to provide the most reliable hosting facility possible.

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

### ***Data Integrity***

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

- Daily Scheduled Database and Application Backups.
- Daily Scheduled backup Success/Failure notification to IMAGETREND staff

## **2. Application and Hosting Support**

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

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

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

IMAGETREND's Support Team is available Monday through Friday from 7:00 am to 6:00 pm CST via the Support Suite, email or telephone.

Support Suite: [www.imagetrend.com/support](http://www.imagetrend.com/support)

Email: [support@imagetrend.com](mailto:support@imagetrend.com)

Toll Free: 1-888-730-3255

Phone: 952-469-1589

### ***Online Support***

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

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

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

Severity Level	Examples of each Severity Level:	Notification Acknowledgement: IMAGETREND Return Call to Licensee after initial notification of an Error	Action Expectation: Anticipated Error resolution notification after IMAGETREND Return Call to Licensee of Notification Acknowledgement of an error.
High/Site Down	<ul style="list-style-type: none"> <li>- Complete shutdown or partial shutdown of one or more Software functions</li> <li>- Access to one or more Software functions not available</li> <li>- Major subset of Software application impacted</li> </ul>	Within one (1) hour of initial notification during business hours or via support.imagetrend.com	Six hours
Medium	<ul style="list-style-type: none"> <li>- Minor subsystem failure</li> <li>-Data entry or access impaired on a limited basis – usually can be delegated to local client contact as a first level or response for resolution – usually user error (i.e. training) or forgotten passwords</li> </ul>	Within four (4) hours of initial notification	24 Business hours
Low	<ul style="list-style-type: none"> <li>- System operational with minor issues; suggested enhancements as mutually agreed upon – typically covered in a future release as mutually agreed upon.</li> </ul>	Same day or next business day of initial notification	Future Release

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

Any service requests that are deemed to be product enhancements are detailed and presented to the development staff, where the assessment is made as to whether these should be added to the future product releases and with a priority rating. If an enhancement request is specific to one CLIENT and deemed to be outside of the original scope of the product, then a change order is written and presented to the CLIENT. These requests are subject to our standard rates and mutual agreement. CLIENTS review and approve the scope, specification and cost before work is started to ensure goals are properly communicated.

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

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

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

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

System/product maintenance and upgrades, if applicable, are included in the ongoing support and warranty as contracted. These ensure continued attention to product performance and general maintenance. Scheduled product upgrades include enhancements and minor and major product changes. Customers are notified in advance of scheduled maintenance. It is the CLIENT's responsibility to accept all offered updates and upgrades to the system. If the CLIENT does not accept these, CLIENT should be advised that IMAGETREND, at its discretion, may offer limited support for previous versions. All code releases also maintain the integrity of any CLIENT specific configurations (i.e. templates, addresses, staff information, active protocols, etc.) that have been implemented either by IMAGETREND's implementation staff or the CLIENT's administrative staff.

***Escalation***

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



## EXHIBIT C – HIPAA BUSINESS ASSOCIATE AGREEMENT

### BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") dated \_\_\_\_\_, 201\_\_ (the "Effective Date"), is entered into by and between The County of El Dorado (the "Covered Entity") and ImageTrend, Inc. a Minnesota corporation (the "Business Associate").

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

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

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

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

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

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

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

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

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

the same manner.

2. **Use of PHI.** Except as otherwise required by law, Business Associate shall use PHI in compliance with 45 C.F.R. § 164.504(e). Furthermore, Business Associate shall use PHI (i) solely for Covered Entity's benefit and only for the purpose of performing services for Covered Entity as such services are defined in Business Arrangements, and (ii) as necessary for the proper management and administration of the Business Associate or to carry out its legal responsibilities, provided that such uses are permitted under federal and state law. Covered Entity shall retain all rights in the PHI not granted herein. Use, creation and disclosure of de-identified health information by Business Associate are not permitted unless expressly authorized in writing by Covered Entity.
3. **Disclosure of PHI.** Subject to any limitations in this Agreement, Business Associate may disclose PHI to any third party persons or entities as necessary to perform its obligations under the Business Arrangement and as permitted or required by applicable federal or state law. Further, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that (i) such disclosures are required by law, or (ii) Business Associate: (a) obtains reasonable written assurances from any third party to whom the information is disclosed that it will be held confidential and further used and disclosed only as required by law or for the purpose for which it was disclosed to the third party; (b) requires the third party to agree to immediately notify Business Associate of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Confidentiality Requirements. Additionally, Business Associate shall ensure that all disclosures of PHI by Business Associate and the third party comply with the principle of "minimum necessary use and disclosure," i.e., only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed; provided further, Business Associate shall comply with Section 13405(b) of the HITECH Act, and any regulations or guidance issued by HHS concerning such provision, regarding the minimum necessary standard and the use and disclosure (if applicable) of Limited Data Sets. If Business Associate discloses PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, to agents, including a subcontractor (collectively, "Recipients"), Business Associate shall require Recipients to agree in writing to the same restrictions and conditions that apply to the Business Associate under this Agreement. Business Associate shall report to Covered Entity any suspected or actual breach of security, intrusion, or use or disclosure of PHI not permitted by this Agreement, of which it becomes aware and / or any actual or suspected use or disclosure in violation of any applicable federal or state laws or regulations. Such report to be made within twenty-four (24) hours of the Business Associate becoming aware of such breach, use or disclosure. Business Associate shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosures required by applicable federal and state laws and regulations. In addition to Business Associate's obligations under Section 9, Business Associate agrees to mitigate, to the extent practical and unless otherwise requested by Covered Entity in writing or as directed by or as a result of a request by Covered Entity to disclose to Recipients, any harmful effect that is known to Business Associate and is the result of a use or disclosure of PHI by Business Associate or Recipients in violation of this Agreement.
4. **Individual Rights Regarding Designated Record Sets.** If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate shall (i) provide access to, and permit inspection and copying of, PHI by Covered Entity or, as directed by Covered Entity, an individual who is the subject of the PHI under conditions and limitations required under 45 CFR § 164.524, as it may be amended from time to time, and (ii) amend PHI maintained by Business Associate as requested by Covered Entity. Business Associate shall respond to any request from Covered Entity for access by an individual within five (5) days of such request and shall make any amendment requested by Covered Entity within ten (10) days of such request. Any information requested under this Section 4 shall be provided in the form or format requested, if it is readily producible in such form or format. Business Associate may charge a reasonable fee based upon the Business Associate's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies). Covered Entity shall determine whether a denial is appropriate or an exception applies. Business Associate shall notify Covered Entity within

five (5) days of receipt of any request for access or amendment by an individual. Covered Entity shall determine whether to grant or deny any access or amendment requested by the individual. Business Associate shall have a process in place for requests for amendments and for appending such requests to the Designated Record Set, as requested by Covered Entity.

5. **Accounting of Disclosures.** Business Associate shall make available to Covered Entity in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual in accordance with 45 CFR §164.528, as amended by Section 13405(c) of the HITECH Act and any related regulations or guidance issued by HHS in accordance with such provision. Business Associate shall provide to Covered Entity such information necessary to provide an accounting within thirty (30) days of Covered Entity's request or such shorter time as may be required by state or federal law. Such accounting must be provided without cost to the individual or to Covered Entity if it is the first accounting requested by an individual within any twelve (12) month period. For subsequent accountings within a twelve (12) month period, Business Associate may charge a reasonable fee based upon the Business Associate's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies) so long as Business Associate informs the Covered Entity and the Covered Entity informs the individual in advance of the fee, and the individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination of this Agreement and shall continue as long as Business Associate maintains PHI.
6. **Withdrawal of Authorization.** If the use or disclosure of PHI in this Agreement is based upon an individual's specific authorization for the use of his or her PHI, and (i) the individual revokes such authorization in writing, (ii) the effective date of such authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid, Business Associate agrees, if it has notice of such revocation or invalidity, to cease the use and disclosure of any such individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under the Confidentiality Requirements expressly applies.
7. **Records and Audit.** Business Associate shall make available to the U.S. Department of Health and Human Services or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Covered Entity for the purpose of determining Covered Entity's compliance with the Confidentiality Requirements or any other health oversight agency, in a time and manner designated by the Secretary. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity immediately upon receipt by Business Associate of any and all requests by or on behalf of any and all federal, state and local government authorities served upon Business Associate for PHI.
8. **Implementation of Security Standards; Notice of Security Incidents.** Business Associate will use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement. Business Associate will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate acknowledges that the HITECH Act requires Business Associate to comply with 45 C.F.R. §§ 164.308, 164.310, 164.312, 164.314, and 164.316 as if Business Associate were a Covered Entity, and Business Associate agrees to comply with these provisions of the Security Standards and all additional security provisions of the HITECH Act. Furthermore, **to the extent feasible, Business Associate will use commercially reasonable efforts** to ensure that the technology safeguards used by Business Associate to secure PHI will render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI in accordance with HHS Guidance published at 74 Federal Register 19006 (April 17, 2009), or such later regulations or guidance promulgated by HHS or issued by the National Institute for Standards and Technology ("NIST") concerning the protection of identifiable data such as PHI. Business Associate acknowledges and agrees that the HIPAA Omnibus Rule finalized January 25, 2013 at 78 Fed. Reg. 5566 requires Business Associate to comply with new and modified obligations imposed by that rule under 45 C.F.R. §164.306, 45 C.F.R. § 164.308, 45 C.F.R. § 163.310, 45 C.F.R. § 164.312,

45 C.F.R. § 164.316, 45 C.F.R. § 164.502, 45 C.F.R. § 164.504. Lastly, Business Associate will promptly report to Covered Entity any successful Security Incident of which it becomes aware. At the request of Covered Entity, Business Associate shall identify: the date of the Security Incident, the scope of the Security Incident, the Business Associate's response to the Security Incident and the identification of the party responsible for causing the Security Incident, if known. Business Associate and Covered Entity shall take reasonable measures to ensure the availability of all affirmative defenses under the HITECH Act, HIPAA, and other state and federal laws and regulations governing PHI and EPHI.

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

- a. **HIPAA Data Breach Notification and Mitigation.** Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any "breach" of "unsecured PHI" as those terms are defined by 45 C.F.R. §164.402 (hereinafter a "HIPAA Breach"). The parties acknowledge and agree that 45 C.F.R. §164.404, as described below in this Section 9.1, governs the determination of the date of a HIPAA Breach. In the event of any conflict between this Section 9.1 and the Confidentiality Requirements, the more stringent requirements shall govern. Business Associate will, following the discovery of a HIPAA Breach, notify Covered Entity immediately and in no event later than three (3) business days after Business Associate discovers such HIPAA Breach, unless Business Associate is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations. For purposes of reporting a HIPAA Breach to Covered Entity, the discovery of a HIPAA Breach shall occur as of the first day on which such HIPAA Breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate. Business Associate will be considered to have had knowledge of a HIPAA Breach if the HIPAA Breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the HIPAA Breach) who is an employee, officer or other agent of the Business Associate. No later than seven (7) business days following a HIPAA Breach, Business Associate shall provide Covered Entity with sufficient information to permit Covered Entity to comply with the HIPAA Breach notification requirements set forth at 45 C.F.R. §164.400 *et seq.* Specifically, if the following information is known to (or can be reasonably obtained by) the Business Associate, Business Associate will provide Covered Entity with: (i) contact information for individuals who were or who may have been impacted by the HIPAA Breach (e.g., first and last name, mailing address, street address, phone number, email address); (ii) a brief description of the circumstances of the HIPAA Breach, including the date of the HIPAA Breach and date of discovery; (iii) a description of the types of unsecured PHI involved in the HIPAA Breach (e.g., names, social security number, date of birth, address(es), account numbers of any type, disability codes, diagnostic and/or billing codes and similar information); (iv) a brief description of what the Business Associate has done or is doing to investigate the HIPAA Breach, mitigate harm to the individual impacted by the HIPAA Breach, and protect against future HIPAA Breaches; and (v) appoint a liaison and provide contact information for same so that the Covered Entity may ask questions or learn additional information concerning the HIPAA Breach. Following a HIPAA Breach, Business Associate will have a continuing duty to inform Covered Entity of new information learned by Business Associate regarding the HIPAA Breach, including but not limited to the information described in items (i) through (v), above.
- b. **Data Breach Notification and Mitigation Under Other Laws.** In addition to the requirements of Section 9.1, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI, and referred to hereinafter as "Individually Identifiable Information") that, if misused, disclosed, lost or stolen, Covered Entity believes would trigger an obligation under one or more State data breach notification laws (each a "State Breach") to notify the individuals who are the subject of the information. Business Associate agrees that in the event any Individually Identifiable Information is lost, stolen, used or disclosed in violation of one or more State data breach notification laws, Business Associate shall promptly: (i)

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

- c. **Breach Indemnification.** Business Associate shall indemnify, defend and hold Covered Entity and its officers, directors, employees, agents, successors and assigns harmless, from and against all reasonable losses, claims, actions, demands, liabilities, damages, costs and expenses (including costs of judgments, settlements, court costs and reasonable attorneys' fees actually incurred) (collectively, "Information Disclosure Claims"), or any other liability arising from or related to: (i) any breach of Individually Identifiable Information (including PHI) by Business Associate in violation of the terms of this Agreement or applicable law, and (ii) whether in oral, paper or electronic media, any HIPAA Breach of unsecured PHI and/or State Breach of Individually Identifiable Information by Business Associate. If Business Associate assumes the defense of an Information Disclosure Claim, Covered Entity shall have the right, at its expense and without indemnification notwithstanding the previous sentence, to participate in the defense of such Information Disclosure Claim. Business Associate shall not take any final action with respect to any Information Disclosure Claim without the prior written consent of Covered Entity. Covered Entity likewise shall not take any final action with respect to any Information Disclosure Claim without the prior written consent of Business Associate. To the extent permitted by law and except when caused by an act of Covered Entity or resulting from a disclosure to a Recipient required or directed in writing by Covered Entity to receive the information, Business Associate shall be fully liable to Covered Entity for any acts, failures or omissions of Recipients in furnishing the services as if they were the Business Associate's own acts, failures or omissions.
- i. Covered Entity shall indemnify, defend and hold Business Associate and its officers, directors, employees, agents, successors and assigns harmless, from and against all reasonable losses, claims, actions, demands, liabilities, damages, costs and expenses (including costs of judgments, settlements, court costs and reasonable attorneys' fees actually incurred) (collectively, "Information Disclosure Claims") arising from or related to: (i) the use or disclosure of Individually Identifiable Information (including PHI) by Covered Entity, its subcontractors, agents, or employees in violation of the terms of this Agreement or applicable law, and (ii) whether in oral, paper or electronic media, any HIPAA Breach of unsecured PHI and/or State Breach of Individually Identifiable Information by Covered Entity, its subcontractors, agents, or employees.
- ii. Covered Entity and Business Associate shall seek to keep costs or expenses that the other may be liable for under this Section 9, including Information Disclosure Claims, to the minimum reasonably required to comply with the HITECH Act and HIPAA. Covered Entity and Business Associate shall timely raise all applicable affirmative defenses in the event a violation of this Agreement, or a use or disclosure of PHI or EPHI in violation of the terms of this Agreement or applicable law occurs.

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

- a. This Agreement shall commence on the Effective Date and shall remain in effect until terminated in accordance with the terms of this Section 10, provided, however, that termination shall not affect the respective obligations or rights of the parties arising under this Agreement prior to the effective date of termination, including, but not limited to, Data Breach Notification & Mitigation and Breach Indemnification, all of which shall continue in accordance

with their terms.

- b. Covered Entity shall have the right to terminate this Agreement for any reason upon thirty (30) days written notice to Business Associate.
  - c. Covered Entity, at its sole discretion, may immediately terminate this Agreement and shall have no further obligations to Business Associate if any of the following events shall have occurred and be continuing:
    - i. Business Associate fails to observe or perform any material covenant or obligation contained in this Agreement for ten (10) days after written notice thereof has been given to the Business Associate by Covered Entity; or
    - ii. A violation by the Business Associate of any provision of the Confidentiality Requirements or other applicable federal or state privacy law relating to the obligations of the Business Associate under this Agreement.
  - d. Termination of this Agreement for either of the two reasons set forth in Section 10.c above shall be cause for Covered Entity to immediately terminate for cause any Business Arrangement pursuant to which Business Associate is entitled to receive PHI from Covered Entity.
  - e. Upon the termination of all Business Arrangements, either Party may terminate this Agreement by providing written notice to the other Party.
  - f. Upon termination of this Agreement for any reason, Business Associate agrees, at the option of the Covered Entity, either to return to Covered Entity or to destroy all PHI received from Covered Entity or otherwise through the performance of services for Covered Entity, that is in the possession or control of Business Associate or its agents or subcontractors. In the case of PHI which is not feasible to "return or destroy," Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate further agrees to comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment of such PHI. If Covered Entity elects destruction of the PHI, Business Associate shall certify in writing to Covered Entity that all PHI has been destroyed and that no copies in any form have been retained by Business Association, its officers, agents, employees, subcontractors, or representatives.
11. **No Warranty.** PHI IS PROVIDED TO BUSINESS ASSOCIATE SOLELY ON AN "AS IS" BASIS. COVERED ENTITY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.
12. **Ineligible Persons.** Business Associate represents and warrants to Covered Entity that Business Associate (i) is not currently excluded, debarred, or otherwise ineligible to participate in any federal health care program as defined in 42 U.S.C. Section 1320a-7b(f) ("the Federal Healthcare Programs"); (ii) has not been convicted of a criminal offense related to the provision of health care items or services and not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs, and (iii) is not under investigation or otherwise aware of any circumstances which may result in Business Associate being excluded from participation in the Federal Healthcare Programs. This shall be an ongoing representation and warranty during the term of this Agreement, and Business Associate shall immediately notify Covered Entity of any change in the status of the representations and warranty set forth in this section. Any breach of this section shall give Covered Entity the right to terminate this Agreement immediately for cause.
13. **Miscellaneous.**
- a. **Notice.** All notices, requests, demands and other communications required or permitted to

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

If to Covered Entity:

Compliance Office  
County of El Dorado  
Health and Human Services Agency  
3057 Briw Rd, Suite B  
Placerville, CA 95667  
Attn: Contracts Unit

With a copy to:

County of El Dorado  
Emergency Medical Services Agency  
2900 Fair Lane, Placerville, CA 95667  
Attn: EMS Agency Director

If to Business Associate:

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

14. **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.
15. **Assignment.** Neither Party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.
16. **Severability.** Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.
17. **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangements or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangements are more strict with respect to PHI and comply with the Confidentiality Requirements, or the parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party; provided, however, that upon the enactment of any law, regulation, court decision or relevant government publication and/or interpretive guidance or policy that the Covered Entity believes in good faith will adversely impact the use or disclosure of PHI under this Agreement, Covered Entity may amend the Agreement to comply with such law, regulation, court decision or government publication,

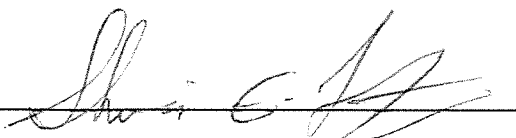
guidance or policy by delivering a written amendment to Business Associate which shall be effective thirty (30) days after receipt. No obligation on either Party to enter into any transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

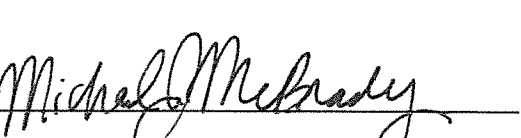
18. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, excluding its conflicts of laws provisions. Jurisdiction and venue for any dispute relating to this Agreement shall exclusively rest with the state courts in the county in which Covered Entity is located.
19. **Equitable Relief.** The parties understand and acknowledge that any disclosure or misappropriation of any PHI in violation of this Agreement will cause the other irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that the injured party shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as the injured party shall deem appropriate. Such right is to be in addition to the remedies otherwise available to the parties at law or in equity. Each party expressly waives the defense that a remedy in damages will be adequate.
20. **Nature of Agreement; Independent Contractor.** Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the parties or any of their affiliates, or (ii) a relationship of employer and employee between the parties. Business Associate is an independent contractor, and not an agent of Covered Entity. This Agreement does not express or imply any commitment to purchase or sell goods or services.
21. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this Agreement is sought. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in portable document format (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same force and effect as physical execution and delivery of the paper document bearing the original signature.

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

COUNTY OF EL DORADO:

BUSINESS ASSOCIATE:

By:   
Shiva Frentzen  
(Print or Type Name)

By:   
Michael J. McBrady  
(Print or Type Name)


Chair, Board of Supervisors  
(Title)

President  
(Title)

Date: 9/13/14

Date: 2-23-17

ATTEST: James S. Mitrison  
Clerk of the Board of Supervisors

By:   
Kim Dawson, Sr. Deputy Clerk



## EXHIBIT D - ePHI DATA EXPORT SIGN OFF

To be completed by SYSTEM ADMINISTRATOR:

### ePHI Data Export

Between ImageTrend, Inc. ("ImageTrend"), a Minnesota Corporation located at 20855 Kensington Blvd., Lakeville, MN 55044, and County of El Dorado ("the Data Owner") residing at 360 Fair Lane, Placerville, CA 92334, for transmitting ePHI data to Intermedix, Inc. ("Transferee") located at 424 Church St., Suite 2400, Nashville, TN 37219.

**Whereas;** ImageTrend is a provider of data management services and a current Business Associate to the Data Owner and;

**Whereas;** the Data Owner wishes ImageTrend to share certain ePHI data from the Data Owner's System in ImageTrend's capacity as a Business Associate with Transferee

#### 1. Data Export Purpose

- A. The purpose of this Data Export is to provide data necessary to Transferee to enable Transferee to provide billing services and other associated services to Data Owner.

#### 2. Data Export Set Up

ImageTrend shall transmit to Transferee the data identified by Data Owner in the attached Workbook ("Identified Data"). The export will be set up subsequent return of the completed Workbook by Data Owner to ImageTrend.

#### 3. Authorization

Data Owner hereby authorizes ImageTrend to transmit and disclose the Identified Data, and to disclose and transmit other data reasonably necessary to achieve the data export's purpose outlined in Section 1 above. This Agreement modifies any prior agreements of the parties only to the extent necessary to effect this agreement, and does not otherwise change the terms of any prior agreements between the parties.

#### 4. Right to Revoke or Terminate

Data Owner may terminate or revoke the right to transmit or disclose data granted to ImageTrend by this Agreement at any time by providing reasonable written notice to ImageTrend and providing a commercially reasonable period of time in which to effect the termination.

The parties have read, understand, and have authority to agree to the terms of this Agreement:

"DATA OWNER"

By: 

Name: Shiva Frentzen

Title: Chair, Board of Supervisors

Dated: 9/13/16

"IMAGETREND"

By: 

Name: Michael J. McBrady

Title: President

Dated: 3-6-17

ATTEST: James S. Mitrison  
Clerk of the Board of Supervisors

By: 

Kim Dawson, Sr. Deputy Clerk

# COUNTY OF EL DORADO

## HEALTH & HUMAN SERVICES

**Patricia Charles-Heathers, Ph.D.**  
Director

**Administration & Contracts**  
James Robbins  
Deputy Director

3057 Briw Road, Suite B  
Placerville, CA 95667  
530-642-7300 Phone / 530-626-7734 Fax



## BOARD OF SUPERVISORS

**JOHN HIDAHL**  
District I  
**SHIVA FRENTZEN**  
District II  
**BRIAN K. VEERKAMP**  
District III  
**MICHAEL RANALLI**  
District IV  
**SUE NOVASEL**  
District V

March 24, 2017

James Mitrisin  
Clerk of the Board of Supervisors  
County of El Dorado

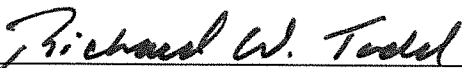
RE: County of El Dorado Health and Human Services Agency Agreement No. 258-S1711

The intent of this letter is to formalize the correction of a clerical error on a recently executed agreement between the County of El Dorado Health and Human Services Agency and ImageTrend Inc.

Agreement Number 258-S1711 was endorsed by Michael McBrady of ImageTrend on February 23, 2017, as well as by Shiva Frentzen, Chair of the County of El Dorado Board of Supervisors. Contained within the agreement were multiple exhibits, of which Exhibit "A" addressed the costs associated with the services provided in the agreement. These costs calculated both start-up costs, as well as recurring costs, and factored in a fixed negotiated yearly increase.

The clerical error identified subsequent to endorsements by both parties indicated an incorrect totals for the items of cost identified on Exhibit "A" due to simple miscalculation. The recalculated totals appear correctly on revised version of Exhibit "A", attached hereto for reference. These new totals remain under the \$400,000 total amount of funding approved by the Board of Supervisors via board item number 16-0873. All other provisions of the agreement remain as originally endorsed.

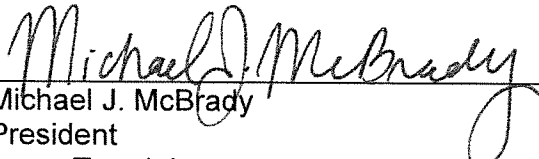
By signing this letter, all parties agree to the changes specified in the attached Exhibit "A" as being an accurate representation of the original intent of the agreement and a correction to the clerical error originally endorsed without any other alteration to the existing agreement.

  
\_\_\_\_\_  
Richard Todd,  
EMS Administrator  
County of El Dorado Health and Human Services Agency

3-30-2017  
Date

  
\_\_\_\_\_  
Shiva Frentzen,  
Chair  
County of El Dorado Board of Supervisors

4/4/17  
Date

  
\_\_\_\_\_  
Michael J. McBrady  
President  
ImageTrend, Inc.

3/24/17  
Date

**EXHIBIT A – PRICING AGREEMENT**

IMAGETREND's license and annual support are based upon 25,000 annual incidents as provided by CLIENT. IMAGETREND reserves the right to audit the annual incident volume and the option to increase future support costs, with prior notification to the CLIENT, if the number of annual incidents increases substantially and has a resulting effect of increased support calls to IMAGETREND.

**Pricing Agreement**

Description	Units	Price	Extended
ImageTrend Elite EMS w/ NFIRS Tab License	1	\$35,000.00	\$35,000.00
ImageTrend Elite EMS w/ NFIRS Tab Setup Fee and Project Management	1	\$7,500.00	\$7,500.00
ImageTrend Elite Field Site License	1	\$25,000.00	\$25,000.00
Hospital Hub Setup and Access Fee for Services	1	\$7,500.00	\$7,500.00
CAD Integration – EMS & Fire Vendor: Northrup Grunman and Siren	2	\$8,000.00	\$16,000.00
Visual Informatics – Analytics Setup Fee (includes 1 cube): EMS Cube <i>Includes: Analytics, Pie Charts, Charting, Widgets, Interactive Alerting Engine (ImageTrend Hosted Only)</i>	1	\$15,000.00	\$15,000.00
FTP Automated Export of the NEMSIS v3 XML and PDF File Setup Vendor: Intermedix	1	Included	Included
MARS (Mapping) Setup Fee	1	\$5,000.00	\$5,000.00
MyFax Integration	1	\$2,500.00	\$2,500.00
Training Sessions – Onsite (Full Day M-F)	3	\$1,000.00	\$3,000.00
Travel per Trainer for Onsite Training	1	\$1,500.00	\$1,500.00

**TOTAL One-Time Fees****\$118,000.00**

Recurring Fees	Units	Price	Extended
ImageTrend Elite EMS Annual Support	1	\$5,600.00	\$5,600.00
ImageTrend Elite EMS Annual Hosting	1	\$9,000.00	\$9,000.00
ImageTrend Elite Field Site License Annual Support	1	\$4,000.00	\$4,000.00
CAD Annual Support and Hosting	2	\$2,800.00	\$5,600.00
Hospital Hub Annual Support and Hosting <i>Number of Hospitals Included: 15</i>	1	\$1,875.00	\$1,875.00
Visual Informatics Annual Support	1	\$2,400.00	\$2,400.00
FTP Automated Export of the NEMSIS v3 XML and PDF File Annual Support & Hosting Vendor or Client Hosted FTP: Client Hosted FTP	1	Included	Included
ImageTrend Health Information Hub Annual Integration-as-a-service (IaaS)	1	\$7,500.00	\$7,500.00
Health Information Hub Bi-Directional Exchange per Hospital Annual IaaS	2	\$5,000.00	\$10,000.00
MARS (Mapping) Annual Transactional Fee	1	\$5,000.00	\$5,000.00
MyFax Integration Annual Support	1	\$400.00	\$400.00

**TOTAL Recurring Fees****\$46,375.00.00****TOTAL Year 1****\$164,375.00****TOTAL Year 2****\$47,303.00**

ORIGINAL

<b>TOTAL Year 3</b>	<b><u>\$48,429.00</u></b>
<b>TOTAL Year 4</b>	<b><u>\$49,398.00</u></b>
<b>TOTAL Year 5</b>	<b><u>\$50,385.00</u></b>

Optional*	Units	Price	Extended
DataMart License – ImageTrend Hosted Access (1 Data Source)	2	\$5,000.00	
DataMart – ImageTrend Hosted Access Annual Support (1 Data Source)	1	\$2,400.00	
DataMart – ImageTrend Hosted Access Annual Hosting (1 Data Source) <i>Note: includes Data Dictionary for DataMart, 3<sup>rd</sup> Party Access Included</i> <i>Frequency: Continuous</i> <i>Data Source: EMS</i>	1	\$15,000.00	
DataMart – Annual Support	1	\$2,400.00	
Target Solutions Integration (Each)	1	\$1,400.00	
Target Solutions Integration Annual Support and Hosting	1	\$2,000.00	
Target Solutions Integration (Each – Maximum Cost)	1	\$8,000.00	
Target Solutions Integration Annual Support and Hosting	1	\$2,000.00	
Upgrade to ImageTrend Elite Rescue License (Fire & EMS)	1	\$10,000.00	
Upgrade to ImageTrend Elite Rescue Additional Annual Support	1	\$1,600.00	
Upgrade to ImageTrend Elite Rescue Additional Annual Hosting	1	\$2,400.00	
Upgrade to ImageTrend Elite Rescue Additional Annual Setup Fee and Project Management	1	\$7,500.00	
ImageTrend Elite Mobile Fire Inspections Site License	1	\$12,500.00	
ImageTrend Elite Mobile Fire Inspections Site License Annual Support	1	\$2,000.00	
Onsite Training Sessions @ \$1,000/day		\$1,000.00	
Out of Scope billed at \$130/Hour		\$130.00	
Travel per Trainer (for Onsite Training at Client's Facility Training)*** @ \$1,500/trainer/trip		\$1,500.00	
Webinar Training Sessions (2 hour session M-F during ImageTrend's Standard Business Hours) \$250/session		\$250.00	
Additional Hospital Hub Setup and Access Fees	1	\$7,500.00	

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

**Payment Terms:**

- Payment Terms are net 30 days.
- Upon contract signature, 50% of Total Year 1 will be invoiced. The remaining 50% will be invoiced independently upon completion of each item.
- Project completion occurs upon receipt of the product, when CLIENT agrees the product has been successfully implemented and installed to CLIENT'S approval after a reasonable testing period of 30 days from delivery of each product deliverable; such approval shall not be unreasonably withheld. If no approval is granted within 30 days of receipt of a project deliverable, the project deliverable will be deemed approved
- The recurring Annual Fees will be billed annually in advance.

- e. If there is a delay in acceptance on the remaining items previously approved by CLIENT and indicated by CLIENT as being ready for installation and implementation, for longer than 60 days, IMAGETREND has the option to invoice the remaining balance on any or all of the open items for Year 1 and begin the Recurring Fees schedule. Open items shall be defined as items CLIENT has designated to be ready for installation and implementation, and shall not be considered any items CLIENT has determined will not be implemented as a part of the items identified in Year 1.
- f. IMAGETREND will invoice sales tax to non-exempt CLIENTS where applicable  
*Note: If Client would like to schedule Onsite Training on the weekend, additional fees may apply.*  
*Note: ImageTrend is not responsible for any CAD Vendor requirements and any associated fees*  
*Note: CAD data will only be available for 60 days in the dispatch database; which may impact CAD Recon Reports*

**Pricing escalation factors:**

- a. IMAGETREND will perform price increases of the recurring fees. Price increases will not exceed 2% annually, and shall not exceed the Total Amount as indicated herein for Year 2, Year 3, Year 4, and Year 5.
- b. All Annual SaaS Fees are based upon anticipated usage and are subject to an annual usage audit, which may affect future fees.
- c. All hosting fees are based upon anticipated usage and includes 30 GB of Storage total. These fees are subject to annual usage audits, which may affect future fees at an increase of \$15/10GB/month for Storage.

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

Health and Human Services Agency  
County of El Dorado  
Attn: Finance Unit  
3057 Briw Rd, Suite B  
Placeville, CA 95667  
Email: [Lori.Walker@edcgov.us](mailto:Lori.Walker@edcgov.us)

**ImageTrend Salesperson Contact:**

Todd York  
952-469-1589  
[tyork@imagnetrend.com](mailto:tyork@imagnetrend.com)  
[contracts@imagnetrend.com](mailto:contracts@imagnetrend.com)

## EXHIBIT A – PRICING AGREEMENT

IMAGETREND's license and annual support are based upon 25,000 annual incidents as provided by CLIENT. IMAGETREND reserves the right to audit the annual incident volume and the option to increase future support costs, with prior notification to the CLIENT, if the number of annual incidents increases substantially and has a resulting effect of increased support calls to IMAGETREND.

### Pricing Agreement

Description	Units	Price	Extended
ImageTrend Elite EMS w/ NFIRS Tab License	1	\$35,000.00	\$35,000.00
ImageTrend Elite EMS w/ NFIRS Tab Setup Fee and Project Management	1	\$7,500.00	\$7,500.00
ImageTrend Elite Field Site License	1	\$25,000.00	\$25,000.00
Hospital Hub Setup and Access Fee for Services	1	\$7,500.00	\$7,500.00
CAD Integration – EMS & Fire Vendor: Northrup Grunman and Siren	2	\$8,000.00	\$16,000.00
Visual Informatics – Analytics Setup Fee (includes 1 cube): EMS Cube <i>Includes: Analytics, Pie Charts, Charting, Widgets, Interactive Alerting Engine (ImageTrend Hosted Only)</i>	1	\$15,000.00	\$15,000.00
FTP Automated Export of the NEMSIS v3 XML and PDF File Setup Vendor: Intermedix	1	Included	Included
MARS (Mapping) Setup Fee	1	\$5,000.00	\$5,000.00
MyFax Integration	1	\$2,500.00	\$2,500.00
Training Sessions – Onsite (Full Day M-F)	3	\$1,000.00	\$3,000.00
Travel per Trainer for Onsite Training	1	\$1,500.00	\$1,500.00
<b>TOTAL One-Time Fees</b>			<b><u>\$118,000.00</u></b>

Recurring Fees	Units	Price	Extended
ImageTrend Elite EMS Annual Support	1	\$5,600.00	\$5,600.00
ImageTrend Elite EMS Annual Hosting	1	\$9,000.00	\$9,000.00
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MARS (Mapping) Annual Transactional Fee	1	\$5,000.00	\$5,000.00
MyFax Integration Annual Support	1	\$400.00	\$400.00
<b>TOTAL Recurring Fees</b>			<b><u>\$51,375.00.00</u></b>

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TOTAL Year 1	<u>\$169,375.00</u>
TOTAL Year 2	<u>\$52,402.50</u>
TOTAL Year 3	<u>\$53,450.55</u>
TOTAL Year 4	<u>\$54,519.56</u>
TOTAL Year 5	<u>\$55,609.95</u>
<b>TOTAL AMOUNT NOT TO EXCEED:</b>	<b>\$385,357.56</b>

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- unreasonably withheld. If no approval is granted within 30 days of receipt of a project deliverable, the project deliverable will be deemed approved
- d. The recurring Annual Fees will be billed annually in advance.
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### **Statements/Invoices should be mailed to:**

Health and Human Services Agency  
County of El Dorado  
Attn: Finance Unit  
3057 Briw Rd, Suite B  
Placeville, CA 95667  
Email: [Lori.Walker@edcgov.us](mailto:Lori.Walker@edcgov.us)

### **ImageTrend Salesperson Contact:**

Todd York  
952-469-1589  
[tyork@imagnetrend.com](mailto:tyork@imagnetrend.com)  
[contracts@imagnetrend.com](mailto:contracts@imagnetrend.com)