



## Master Subscription Agreement

This Master Subscription Agreement (the “MSA”) is between the Customer listed in the signature block below (“Customer”) and ImageTrend, LLC (“ImageTrend”), a Minnesota entity. (each, a “Party” and together, the “Parties.”)

The purpose of this Agreement is to establish the terms and conditions under which Customer may purchase ImageTrend’s Services and Professional Services as described in an Order Form, Statement of Work or other document signed or agreed to by the Parties.

In the event of any inconsistency or conflict between the terms of the MSA and the terms of any Order Form or Statement of Work, the terms of the Order Form or Statement of Work shall control.

### SECTION 1. ACCESS TO THE SERVICES

**1.1 Service.** ImageTrend will make the Services and Customer Data available pursuant to this Agreement and the applicable Order Form(s) in accordance with Customer’s Service Plan. ImageTrend will use commercially reasonable efforts to make the Services available pursuant to the Service Level Agreement which is located at <https://www.imagetrend.com/legal/sla>.

**1.2 Support.** ImageTrend will, at no additional charge, provide Customer standard customer support for the Services as detailed on the Site at <https://www.imagetrend.com/support/>.

**1.3 Implementation Services.** ImageTrend may provide Implementation Services subject to the terms and conditions stated in a Project Plan. Any education or training hours expire one year from the date of execution of such Order Form.

**1.4 Professional Services.** ImageTrend may provide Professional Services, including education or training, subject to the terms and conditions stated in a Project Plan or Statement of Work. Any education or training hours expire one year from the date of execution of such Statement of Work.

**1.5 Updates.** Customer acknowledges that ImageTrend may update the features and functionality of the Services during the Subscription Term. Customer will be notified prior to upgrade or maintenance releases. ImageTrend will not materially decrease the overall functionality of the Services purchased by Customer during the Subscription Term. ImageTrend shall provide Customer with thirty (30) days’ advance notice of any deprecation of any material feature or functionality.

### SECTION 2. USE OF THE SERVICES

**2.1 Compliance.** Customer is responsible for compliance with the provisions of this Agreement for any and all activities that occur under an Account. Without limiting the foregoing, Customer will ensure that its use of the Services is compliant with all applicable laws and regulations as well as any and all privacy notices, agreements or other obligations Customer may maintain or enter into.

**2.2 System Requirements.** Customer is responsible for procuring and maintaining the network connections that connect Customer's network to the Services including, but not limited to, browser software that supports protocols used by ImageTrend, including the Transport Layer Security (TLS) protocol or other protocols accepted by ImageTrend. ImageTrend assumes no responsibility for the reliability or performance of any connections as described in this Section.

**2.3 No Competitive Access.** Customer may not access the Services for competitive purposes or if Customer is a competitor of ImageTrend, LLC.

**2.4 Product Specific Terms.** The provision and use of certain Services are subject to ImageTrend's Product Specific Terms located at <https://www.imagetrend.com/legal/productspecifictterms>.

## **SECTION 3. TERM, CANCELLATION AND TERMINATION**

**3.1 Term.** The term of this Master Subscription Agreement begins on the date this MSA is fully executed (the "Effective Date") and will remain in effect for a period of three years or until this MSA is terminated in accordance with the terms hereof, whichever occurs first. Unless a subscription to a Service is terminated in accordance with this MSA or the applicable Order Form, or unless otherwise stated in the applicable Order Form, Customer's subscription to a Service will renew upon written approval for a one-year Subscription Term at the end of each prior Subscription Term for no more than two successive years following the initial term. The Director of the Department of Public Health or his or her designee is authorized to sign the written approval on behalf of the Customer.

**3.2 Cancellation.** Either Party may elect to terminate an Account and subscription to a Service at the end of the then-current Subscription Term by providing notice to [revenueoperations@ImageTrend.com](mailto:revenueoperations@ImageTrend.com) no less than sixty (60) days prior to the end of such Subscription Term.

**3.3 Termination for Cause.** A Party may terminate this Agreement for cause (a) upon written notice to the other Party of a material breach by the other Party if such breach remains materially uncured after thirty (30) days from the date of receipt of such notice; or (b) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.

ImageTrend will refund any prepaid fees covering the remainder of the Subscription Term as of the effective date of termination if this Agreement is terminated by Customer in accordance with this Section 3.3 for ImageTrend's uncured material breach.

Customer must pay any unpaid fees covering the remainder of the Subscription Term pursuant to all applicable Service Order if ImageTrend terminates this Agreement for Customer's material breach in accordance with this Section. In no event will ImageTrend's termination for cause relieve Customer of its obligation to pay any fees payable to ImageTrend for the period prior to termination.

**3.4 Non-appropriation.** In the event Customer does not receive sufficient funds from the legislature that appropriates its budget, Customer will provide ImageTrend with written notice of such non-appropriation. In such event, the Agreement and any applicable Order Forms and Statements of Work will be terminated at the end of the then-existing Term. ImageTrend will be entitled to payment for Services and any Implementation Services or Professional Services provided through the date of notification or a date determined by such legislature, whichever is later.

**3.5 Export of Customer Data upon termination or expiration.** Upon Customer's written request, ninety (90) days after the effective date of termination or expiration, ImageTrend will make Customer Data available to Customer. Thereafter, ImageTrend will delete Customer Data in accordance with NIST 800-88 standards, unless prohibited by law or legal order. For clarity, Customer Data that has been de-identified pursuant to section 6.5 or Aggregate Data Insights derived from Aggregate Data pursuant to section 6.6 shall not be subject to such deletion.

## **SECTION 4. USAGE AUDIT AND PLAN MODIFICATIONS**

**4.1 Usage Audit.** Once per year, ImageTrend will conduct an audit of Customer's use of the Services. In the event such audit shows increased usage beyond what is listed in the Order Form, ImageTrend will provide 30 days' notice of an increase in fees related to such increased usage.

**4.2 Payment Portals.** If Customer mandates that ImageTrend use a vendor payment portal or compliance portal that charges ImageTrend a subscription fee or a percentage of any uploaded invoice as a required cost of doing business, Customer will be invoiced by ImageTrend for, and Customer is obligated to pay, the cost of this fee.

**4.3 Taxes.** Unless otherwise stated, ImageTrend's Subscription Charges do not include any Taxes. Customer is responsible for paying Taxes assessed in connection with the subscription to the Services except those assessable against the ImageTrend Group measured by its net income. ImageTrend will invoice the Customer for such Taxes if ImageTrend believes it has a legal obligation to do so and Customer agrees to pay such Taxes if so invoiced. ImageTrend agrees to exempt Customer from any taxes for which Customer provides to ImageTrend a tax exemption certificate prior to the issuance of an invoice; provided, however, that no such exemption shall be extended to Customer following written notice to ImageTrend from a taxing authority of appropriate jurisdiction that Customer does not qualify for the claimed exemption.

## **SECTION 5. CONFIDENTIAL INFORMATION**

Each Party will protect the other's Confidential Information from unauthorized use, access or disclosure in the same manner as each Party protects its own Confidential Information, but with no less than reasonable care. Except as otherwise expressly permitted pursuant to this Agreement, each Party may use the other Party's Confidential Information solely to exercise its respective rights and perform its respective obligations under this Agreement and shall disclose such Confidential Information (a) solely to the employees and/or non-employee service providers and contractors who have a need to know such Confidential Information and who are bound by terms of confidentiality intended to prevent the misuse of such Confidential Information; (b) as necessary to comply with an order or subpoena of any administrative agency or court of competent jurisdiction; or (c) as reasonably necessary to comply with any applicable law or regulation. The provisions of this Section 5 shall control over any non-disclosure agreement by and between the Parties and any such non-disclosure agreement shall have no further force or effect with respect to the exchange of Confidential Information after the execution of this Agreement. This section shall not apply to any information which (a) was publicly known prior to the time of disclosure by the disclosing Party, or (b) becomes publicly known after such disclosure through no action or inaction of the receiving Party in violation of this Agreement. Given the unique nature of Confidential Information, the Parties agree that any violation or threatened violation by a Party to this Agreement with respect to Confidential Information may cause irreparable injury to the other Party. Therefore, the Parties agree such violation or



threatened violation shall entitle the other Party to seek injunctive or other equitable relief in addition to all legal remedies.

## SECTION 6. CUSTOMER DATA SECURITY, USE AND REQUIREMENTS

**6.1 Safeguards.** ImageTrend will maintain commercially reasonably administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. Those safeguards will include, but will not be limited to, measures designed to prevent unauthorized access to or disclosure of Customer Data (other than by Customer). ImageTrend's compliance with such safeguards shall be deemed compliance with ImageTrend's obligations to protect Customer Data as set forth in the Agreement.

**6.2 Customer Data.** ImageTrend will, and Customer hereby instructs ImageTrend to, access Customer Data to provide, secure and improve the Services. Customer is solely responsible for the accuracy, content, and legality of all Customer Data.

**6.3 Business Associate Agreement.** To the extent Customer is considered a "covered entity" under 45 CFR 160.103 of the Health Insurance Portability and Accountability Act of 1996, and its implementing regulations ("HIPAA"), the Parties shall execute a Business Associate Agreement, which shall be attached hereto as Exhibit A and incorporated herein by reference into this Agreement once signed by the Parties.

### 6.4 Data Export Authorization

Customer hereby authorizes ImageTrend to transmit Customer Data to an end point as is required by the Service in order for it to function as intended.

**6.5 De-Identification.** ImageTrend may use Customer Data to create de-identified data (a "De-identified Data Set"). Such De-identified Data Set shall no longer constitute, as applicable, identifiable Customer Data or Protected Health Information, as defined under HIPAA at 45 CFR 160.103, and ImageTrend may, in its discretion, transform, analyze, distribute and redistribute, create derivative works of, license, make available to third party researchers, or otherwise use such De-identified Data Set except as limited by applicable law and regulation. Notwithstanding any of the foregoing, ImageTrend shall create the De-identified Data Set in accordance with the then current HIPAA standards for de-identification set forth at 45 CFR § 164.514(b).

**6.6 Data Aggregation.** Customer hereby grants ImageTrend a non-exclusive license during the term of this Agreement to use, reproduce, display, make derivative or collective works of and otherwise exploit Customer Data, including the right to compile Customer Data collected and/or combine it with data collected from other data sources to create Aggregate Data and to use such Aggregate Data to create Aggregate Data Insights;

**6.7 Data Ownership.** Customer hereby irrevocably assigns, transfers, and conveys to ImageTrend all of the Customer's right, title, and interest in and to a De-identified Data Set and Aggregate Data Insights, including the right to sue, counterclaim, and recover for all past, present, and future infringement, misappropriation, or dilution thereof, and all rights corresponding thereto throughout the world (the "Assignment"). To the extent Customer cannot make the Assignment as a matter of applicable law, Customer hereby irrevocably grants to ImageTrend, without further consideration, an exclusive, perpetual, worldwide, transferable, sublicensable (through multiple tiers), royalty-free, fully paid-up license under any



and all such rights to exercise any and all present or future rights in the De-identified Data Set and the Aggregate Data Insights.

## **SECTION 7. TEMPORARY SUSPENSION**

In the event ImageTrend detects or has reasonable suspicion of any Malicious Software connected to Customer's Account or use of a Service by Customer, ImageTrend reserves the right to restrict functionalities or suspend the Services (or any part thereof), Customer's Account or Customer's rights to access and use the Services and remove, disable or quarantine any Customer Data or other content. Unless legally prohibited from doing so or where ImageTrend is legally required to take immediate action, ImageTrend will use commercially reasonable efforts to notify Customer as soon as practicable when taking any of the foregoing actions. ImageTrend will use commercially reasonable efforts to (a) mitigate any interruption to the Service, and (b) restore the Services as soon as practicable. ImageTrend will not be liable to Customer or any other third party for any modification, suspension or discontinuation of Customer's rights to access and use the Services under this Section 7. ImageTrend may refer any suspected fraudulent, abusive, or illegal activity by Customer to law enforcement authorities at ImageTrend's sole discretion.

## **SECTION 8. NON-IMAGETREND SERVICES**

If Customer decides to enable, access or use Non-ImageTrend Services, Customer's access and use of such Non-ImageTrend Services shall be governed solely by the terms and conditions of such Non-ImageTrend Services. ImageTrend does not endorse, is not responsible or liable for, and makes no representations as to any aspect of such Non-ImageTrend Services, including, without limitation, their content or the manner in which they handle, protect, manage or process data (including Customer Data), or any interaction between Customer and the provider of such Non-ImageTrend Services. ImageTrend cannot guarantee the continued availability of such Non-ImageTrend Service features. Customer irrevocably waives any claim against ImageTrend with respect to such Non-ImageTrend Services. ImageTrend is not liable for any damage or loss caused or alleged to be caused by or in connection with Customer's enablement, access or use of any such Non-ImageTrend Services, or Customer's reliance on the privacy practices, data security processes or other policies of such Non-ImageTrend Services.

## **SECTION 9. INTELLECTUAL PROPERTY RIGHTS**

**9.1 Intellectual Property Rights.** Each Party shall retain all rights, title and interest in any of its respective Intellectual Property Rights. The rights granted to Customer to use the Service(s) under this Agreement do not convey any additional rights in the Service(s) or in any Intellectual Property Rights of ImageTrend associated therewith. Subject only to limited rights to access and use the Service(s) as expressly stated herein, all rights, title and interest in and to the Services and all hardware, Software and other components of or used to provide the Services and ImageTrend's machine learning algorithms, including all related Intellectual Property Rights, will remain with ImageTrend and belong exclusively to ImageTrend.

**9.2 Feedback.** ImageTrend shall have a fully paid-up, royalty-free, worldwide, transferable, sub-licensable (through multiple layers), assignable, irrevocable and perpetual license to implement, use, modify, and incorporate into the Services or otherwise use any suggestions, enhancement requests, recommendations or other feedback regarding the Services that ImageTrend receives from Customer or other third parties acting on Customer's behalf. ImageTrend also reserves the right to seek intellectual property protection for any features, functionality or components that may be based on or that were initiated by suggestions,

enhancement requests, recommendations or other feedback regarding the Services that ImageTrend receives from Customer or other third parties acting on Customer's behalf.

**9.3 Use of ImageTrend Marks.** Customer may only use the ImageTrend Marks in a manner permitted by ImageTrend, provided Customer does not attempt, now or in the future, to claim any rights in the ImageTrend Marks, dilute or degrade the distinctiveness of the ImageTrend Marks, or use the ImageTrend Marks to disparage or misrepresent ImageTrend or ImageTrend Services. ImageTrend may use Customer Marks with written agreement of Customer.

**9.4 Ownership of Customer Data.** Customer shall retain ownership rights, including all Intellectual Property Rights, to all Customer Data.

## **SECTION 10. REPRESENTATIONS, WARRANTIES AND DISCLAIMERS**

**10.1 Warranties.** Each Party represents and warrants to the other that (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such Party in accordance with its terms; (b) no authorization or approval from any third party is required in connection with such Party's execution, delivery or performance of this Agreement; and (c) the execution, delivery and performance of the Agreement does not and will not violate the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.

**10.2 ImageTrend Warranties.** ImageTrend warrants that during an applicable Subscription Term (a) ImageTrend does not have any express or implied obligation to a third party which in any way conflicts with any of ImageTrend's obligations under this Agreement; (b) the Services will perform materially in accordance with the applicable documentation; and (c) all implementation services and will be provided in a professional and workmanlike manner in accordance with applicable industry standards. For any breach of a warranty in this section, Customer's exclusive remedies are those described in Section 3.3 herein. The warranties herein do not apply to any misuse or unauthorized modification of the Services made by Customer.

To the extent applicable, ImageTrend represents and warrants to Customer that ImageTrend (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 ImageTrend being excluded from participation in the Federal Healthcare Programs. This shall be an ongoing representation and warranty during the term of this Agreement, and ImageTrend shall immediately notify Customer of any change in the status of the representations and warranty set forth in this section.

**10.3 Disclaimers.** EXCEPT AS SPECIFICALLY SET FORTH IN SECTION 10, THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND TO THE FULLEST EXTENT PERMITTED BY LAW, AND IMAGETREND EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CUSTOMER ACKNOWLEDGES THAT IMAGETREND DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED,



TIMELY, SECURE, ERROR-FREE OR FREE FROM VIRUSES OR OTHER MALICIOUS SOFTWARE, AND NO INFORMATION OR ADVICE OBTAINED BY CUSTOMER FROM IMAGETREND OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

## SECTION 11. INDEMNIFICATION

**11.1 Indemnification by ImageTrend.** ImageTrend will indemnify and defend the Customer from and against any claim brought by a third party against Customer alleging that Customer's use of a Service as permitted hereunder (1) infringes or misappropriates a third party's valid patent, copyright, trademark or trade secret (an "IP Claim"); (2) is grossly negligent or constitutes willful misconduct; (3) resulted in fraud; (4) resulted in personal injury or death (any of (1) through (4) are a "Claim"). ImageTrend shall, at ImageTrend's expense, defend such Claim and pay damages finally awarded against Customer in connection therewith, including reasonable fees and expenses of attorneys engaged by ImageTrend for such defense, provided that (a) Customer promptly notifies ImageTrend of the threat or notice of such Claim; (b) ImageTrend will have sole, exclusive control and authority to select defense attorneys, defend and/or settle any such Claim (however, ImageTrend shall not settle or compromise any claim that results in liability or admission of any liability by Customer without Customer's prior written consent); and (c) Customer fully cooperates with ImageTrend in connection therewith. If use of a Service by Customer has become, or, in ImageTrend's opinion, is likely to become, the subject of any IP Claim, ImageTrend may, at ImageTrend's option and expense (i) procure for Customer the right to continue using the Service(s) as set forth hereunder; (ii) replace or modify a Service to make it non-infringing; or (iii) if options (i) or (ii) are not commercially reasonable or practicable as determined by ImageTrend, terminate Customer's subscription to the Service(s) and repay Customer, on a pro-rata basis, any Subscription Charges paid to ImageTrend for the unused portion of Customer's Subscription Term for such Service(s). ImageTrend will have no liability or obligation under this Section 11.1 with respect to any IP Claim if such claim is caused in whole or in part by (x) compliance with designs, data, instructions or specifications provided by Customer; (y) modification of the Service(s) by anyone other than ImageTrend or ImageTrend Personnel; or (z) the combination, operation or use of the Service(s) with other hardware or software where a Service would not by itself be infringing. The provisions of this Section 11.1 state the sole, exclusive and entire liability of ImageTrend to Customer and Customer's sole remedy with respect to a Claim brought by reason of access to or use of a Service by Customer.

**11.2 Indemnification by Customer.** Customer will indemnify, defend and hold ImageTrend harmless against any claim brought by a third party against ImageTrend (a) arising from or related to Customer's use of a Service in breach of this Agreement (and not arising solely from the Service itself); or (b) alleging that Customer Marks or content selected by Customer in the design and implementation of the Services, including but not limited to the URL, graphics, illustrations, logos, and marks, or Customer Data infringes or misappropriates a third party's valid patent, copyright, trademark or trade secret; provided that (i) ImageTrend promptly notifies Customer of the threat or notice of such claim; (ii) Customer will have the sole and exclusive control and authority to select defense attorneys, and to defend and/or settle any such claim (however, Customer shall not settle or compromise any claim that results in liability or admission of any liability by ImageTrend without ImageTrend's prior written consent); and (iii) ImageTrend fully cooperates with Customer in connection therewith.

## SECTION 12. LIMITATION OF LIABILITY



**12.1 EXCLUSION OF DAMAGES.** UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (WHETHER IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) SHALL EITHER PARTY TO THIS AGREEMENT, OR THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SERVICE PROVIDERS, SUPPLIERS OR LICENSORS, BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR ANY LOST PROFITS, LOST SALES OR BUSINESS, LOST DATA (WHERE SUCH DATA IS LOST IN THE COURSE OF TRANSMISSION VIA CUSTOMER'S SYSTEMS OR OVER THE INTERNET THROUGH NO FAULT OF IMAGETREND), BUSINESS INTERRUPTION, LOSS OF GOODWILL, COSTS OF COVER OR REPLACEMENT, OR FOR ANY OTHER TYPE OF INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGES, OR FOR ANY OTHER INDIRECT LOSS OR DAMAGES INCURRED BY THE OTHER PARTY OR ITS AFFILIATES IN CONNECTION WITH THIS AGREEMENT, THE SERVICES OR PROFESSIONAL SERVICES, REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN SUCH DAMAGES.

**12.2 LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IMAGETREND'S AGGREGATE LIABILITY TO THE CUSTOMER ARISING OUT OF THIS AGREEMENT, THE SERVICES OR PROFESSIONAL SERVICES, SHALL IN NO EVENT EXCEED THE SUBSCRIPTION CHARGES AND/OR PROFESSIONAL SERVICES FEES PAID BY THE CUSTOMER DURING THE TWELVE (12) MONTHS PRIOR TO THE FIRST EVENT OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE ESSENTIAL PURPOSE OF THIS SECTION 12.2 IS TO ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE SUBSCRIPTION CHARGES AND PROFESSIONAL SERVICES FEES, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF IMAGETREND WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. IMAGETREND HAS RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO PROVIDE CUSTOMER WITH THE RIGHTS TO ACCESS AND USE THE SERVICES AND/OR THE PROFESSIONAL SERVICES PROVIDED FOR IN THIS AGREEMENT. THE LIMITATIONS SET FORTH IN SECTION 12.2 SHALL NOT APPLY TO CLAIMS OR DAMAGES RESULTING FROM IMAGETREND'S INDEMNITY OBLIGATIONS IN SECTION 11.1 OF THIS AGREEMENT.

**12.3 LIMITATION OF LIABILITY IN THE AGGREGATE.** THE LIMITATION OF LIABILITY PROVIDED FOR HEREIN APPLIES IN AGGREGATE TO ANY AND ALL CLAIMS BY CUSTOMER AND ITS AFFILIATES, AND SHALL NOT BE CUMULATIVE.

**12.4 Enforceable against ImageTrend.** Any claims or damages that Customer may have against ImageTrend shall only be enforceable against ImageTrend and not any other entity, nor any officers, directors, representatives or agents of ImageTrend.

## **SECTION 13. ASSIGNMENT, ENTIRE AGREEMENT AND AMENDMENT**

**13.1 Assignment.** Except as permitted herein, neither party may, directly or indirectly, by operation of law or otherwise, assign all or any part of this Agreement or rights under this Agreement, or delegate performance of its duties under this Agreement, without written prior consent of the other party, which consent will not be unreasonably withheld. Notwithstanding the foregoing, (a) subject to Section 2.6 herein,

Customer may, without ImageTrend's consent, assign this Agreement in connection with any merger or change of control of Customer or the sale of all or substantially all of Customer's assets provided that any such successor agrees to fulfill its obligations pursuant to this Agreement; and (b) ImageTrend may, without Customer's consent, assign this Agreement in connection with any merger or change of control of ImageTrend or the sale of all or substantially all of ImageTrend's assets provided that any such successor agrees to fulfill its obligations pursuant to this Agreement. Subject to the foregoing restrictions, this Agreement will be fully binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

**13.2 Entire Agreement.** This Agreement constitutes the entire agreement and supersedes any and all prior agreements between Customer and ImageTrend, with regard to the subject matter hereof. This Agreement shall apply in lieu of the terms or conditions in any purchase order, request for information, request for proposal, or other order documentation Customer provide(s) and all such terms or conditions in such purchase order, request for information, request for proposal, or other order documentation are null and void. Except as expressly stated herein, there are no other agreements, representations, warranties or commitments which may be relied upon by either Party with respect to the subject matter hereof. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind between the Parties, except as may otherwise be expressly provided herein. The headings used herein are for convenience only and shall not affect the interpretation of the terms of this Agreement.

**13.3 Waiver.** Either Party's failure to enforce at any time any provision of this Agreement does not constitute a waiver of that provision or of any other provision of this Agreement.

## **SECTION 14. SEVERABILITY**

If any term in this Agreement is determined to be invalid or unenforceable by a competent court or governing body, such term shall be replaced with another term consistent with the purpose and intent of this Agreement, and the remaining provisions of this Agreement shall remain in effect.

## **SECTION 15. RELATIONSHIP OF THE PARTIES**

The Parties are independent contractors, and this Agreement does not create a partnership, franchise, joint venture, general agency, fiduciary or employment relationship between the Parties. Customer is solely responsible for determining whether the Services meet Customer's technical, business, or regulatory requirements.

## **SECTION 16. NOTICE**

**16.1 Notices to Customer.** All notices provided by ImageTrend to Customer under this Agreement may be delivered in writing by (a) nationally recognized delivery service ("Courier") or U.S. mail to the contact mailing address provided by Customer on any Order Form; or (b) electronic mail to the electronic mail address provided for the Account owner.

**16.2 Notices to ImageTrend.** All notices provided by Customer to ImageTrend under this Agreement must be delivered in writing by (a) Courier or U.S. mail to 1305 Corporate Center Drive, Suite 500, Eagan, MN 55121 Attn: Legal Department; or (b) electronic mail to [contracts@ImageTrend.com](mailto:contracts@ImageTrend.com).

**16.3 Timing of Notices.** All notices provided by either Party to the other shall be deemed to have been given immediately upon delivery by electronic mail; or upon the earlier of proof of receipt or two (2) business days after being deposited in the mail or with a Courier as permitted above.

## **SECTION 17. GOVERNING LAW**

This Agreement shall be governed by the laws of the State of Minnesota, without reference to conflict of laws principles. Any disputes under this Agreement shall be resolved in a court of general jurisdiction in Hennepin County, Minnesota. Customer hereby expressly agrees to submit to the exclusive personal jurisdiction of this jurisdiction for the purpose of resolving any dispute relating to this Agreement or relating to access to or use of the Services by Customer.

## **SECTION 18. ETHICAL CONDUCT AND COMPLIANCE**

Neither Party, nor any of its employees or agents, has offered, received or been offered, directly or indirectly, any illegal or improper bribe or kickback (whether in the form of a payment, gift, undue advantage, or thing of value), or will offer or accept the same in connection with this Agreement.

## **SECTION 19. SURVIVAL**

Sections 2.1, 3.5, 5, 6.5-6.7, 10–17 and 20 shall survive termination of this Agreement with respect to use of the Services by Customer. Termination of this Agreement shall not limit a Party's liability for obligations accrued as of or prior to termination or for any breach of this Agreement.

## **SECTION 20. INSURANCE**

ImageTrend shall comply with all the insurance requirements in Exhibit B to this Agreement.

## **SECTION 21. STATE AUDIT REQUIREMENTS**

If the compensation to be paid by the Customer under this Agreement exceeds \$10,000, ImageTrend is subject to the examination and audit of the California State Auditor, as provided in Government Code section 8546.7, for a period of three years after final payment under this Agreement. This section survives the termination of this Agreement. Additional Federal audit requirements may apply if any portion of the compensation to be paid by the Customer under this Agreement is also provided by Federal funding.

## **SECTION 22. DEFINITIONS**

When used in this Agreement with initial letters capitalized, these terms have the following meaning:

**“Account”** means any accounts or instances created by, or on behalf of, Customer within the Services.

**“Aggregate Data”** means the compilation of Customer Data collected over time and/or the combination of Customer Data with data collected from other data sources, and the derived data resulting from the analysis and processing of such compiled and combined data to create Aggregate Data Insights.

**“Aggregate Data Insights”** means the conclusions, patterns, trends, metrics, statistical models, predictions, or other analytical outcomes derived from the processing, examination, or interpretation of Aggregate Data.



**“Agreement”** means the Master Subscription Agreement together with any and all Product Specific Terms, Order Form and other mutually executed documents. The Master Subscription Agreement may also be referred to as “MSA.”

**“Confidential Information”** means all information disclosed by one Party to the other Party which is in tangible form and designated as confidential or is information, regardless of form, which a reasonable person would understand to be confidential given the nature of the information and circumstances of disclosure, including but not limited to the pricing terms, product plans and designs, business processes, security notifications, database structures, database schemas and customer communications. Notwithstanding the foregoing, Confidential Information shall not include information that (a) was already known to the receiving Party at the time of disclosure by the disclosing Party; (b) was or is obtained by the receiving Party from a third party not known by the receiving Party to be under an obligation of confidentiality with respect to such information; (c) is or becomes generally available to the public other than by violation of this Agreement or another valid agreement between the Parties; or (d) was or is independently developed by the receiving Party without the use of the disclosing Party’s Confidential Information.

**“Customer Data”** means all electronic data, text, messages, communications or other materials submitted to and stored within a Service by Customer in connection with Customer’s use of such Service. “Customer” Data” does not include Protected Health Information that has been de-identified pursuant to section 6.5 of this Agreement and Aggregate Data Insights derived from Aggregate Data pursuant section 6.6.

**“Force Majeure Event”** means any circumstances beyond ImageTrend’s reasonable control, including, but not limited to, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving ImageTrend employees), Internet service provider failure or delay, Non-ImageTrend Services, or acts undertaken by third parties, including without limitation, denial of service attack.

**“ImageTrend Marks”** means any trademarks, service marks, service or trade names, taglines, logos or other designations of ImageTrend, whether registered or unregistered.

**“Intellectual Property Rights”** means any and all of a Party’s patents, inventions, copyrights, trademarks, domain names, trade secrets, know-how and any other intellectual property and/or proprietary rights.

**“Malicious Software”** means any viruses, malware, Trojan horses, time bombs, or any other similar harmful software.

**“Non-ImageTrend Services”** means third party products, applications, services, software, networks, systems, directories, websites, databases and information which a Service links to, or which Customer may connect to or enable in conjunction with a Service, including, without limitation, Non-ImageTrend Services which may be integrated directly into an Account by Customer or at Customer’s direction.

**“Order Form”** means ImageTrend’s generated order form(s) executed by Customer with respect to Customer’s subscription to a Service.

**“Personnel”** means employees and/or non-employee contractors of ImageTrend engaged by ImageTrend in connection with performance hereunder.



**“Planned Downtime”** means planned downtime for upgrades and maintenance to the Services scheduled in advance of such upgrades and maintenance.

**“Product Specific Terms”** means ImageTrend’s Product Specific Terms located at <https://www.imagetrend.com/legal/productspecificterms>.

**“Professional Services”** means professional services (including any training, success and implementation services) provided by ImageTrend Personnel as indicated on an Order Form or other written document such as an SOW.

**“Service(s)”** means the products and services that are used or ordered by Customer via an Order Form referencing this Agreement, and made available by ImageTrend, via the applicable Customer login. “Services” exclude (a) Non-ImageTrend Services as that term is defined in this Agreement; and (b) any Additional Features or Associated Services that are not provided under this Agreement or Customer’s Service Plan. From time to time, the names and descriptions of the Services or any individual Service may be changed. To the extent Customer is given access to such Service as so described by virtue of a prior Service Order or other prior acceptance of this Agreement, this Agreement shall be deemed to apply to such Service as newly named or described.

**“Site”** means a website operated by ImageTrend, including <https://www.ImageTrend.com>, as well as all other websites that ImageTrend operates (but does not include the Services).

**“Subscription Charges”** means all charges associated with Customer’s access to and use of an Account.

**“Subscription Term”** means the period during which Customer has agreed to subscribe to a Service.

**“Taxes”** means taxes, levies, duties or similar governmental assessments, including value-added, sales, use or withholding taxes assessable by any local, state, provincial or foreign jurisdiction.

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

**Customer – County of Fresno**

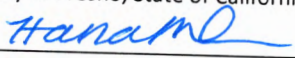
  
Signature

Print Name: Ernest Buddy Mendes

Title: Chairman of the Board of Supervisors  
of the County of Fresno

Date: 9-23-2025

ATTEST:  
BERNICE E. SEIDEL  
Clerk of the Board of Supervisors  
County of Fresno, State of California

By  Deputy

**ImageTrend, LLC**

  
Jon Sachs (Sep 4, 2025 12:09:33 MDT)  
Signature

Print Name: Jon Sachs

Title: CFO

Date: 09/04/2025

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## IMAGETREND LICENSE MANAGEMENT STATEMENT OF WORK

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ImageTrend License Management™ is a complete web-based, end-to-end license and certification management solution that serves the needs of the emergency medical services community, scaling to statewide and regional capacities. Often sold with License Management is our NREMT Integration, our Collaborative Fusion integration and our Payment Gateway Integration.

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### IMAGETREND RESPONSIBILITIES

- Create License Management site.
- Facilitate site setup.
- Complete setup of NREMT, Collaborative Fusion and Payment Gateway integrations.
- Provide client with education materials on using and managing their License Management site.
- Continue supporting the client with their License Management site and integrations.

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### CLIENT RESPONSIBILITIES

- Administer and manage License Management site, including end-user access and training.
- Provide required details for purchased integrations.

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### PREREQUISITES

- Client has a NEMSIS v2 Service, EMS, or State Bridge with live incidents stored within the system.
- Client has an executed contract for License Management.

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### IMAGETREND DELIVERABLES

- ImageTrend will facilitate the complete and successful transfer of all legacy data from the client's old site to their new License Management site.
- ImageTrend will provide the client with login credentials for License Management administrators.



## Exhibit B

### Insurance Requirements

#### 1. Required Policies

Without limiting the Customer's right to obtain indemnification from ImageTrend or any third parties, ImageTrend, at its sole expense, shall maintain in full force and effect the following insurance policies throughout the term of this Agreement.

- (A) **Commercial General Liability.** Commercial general liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000). This policy must be issued on a per occurrence basis. Coverage must include products, completed operations, property damage, bodily injury, personal injury, and advertising injury. ImageTrend shall obtain an endorsement to this policy naming the Customer of Fresno, its officers, agents, employees, and volunteers, individually and collectively, as additional insureds, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insureds will apply as primary insurance and any other insurance, or self-insurance, maintained by the Customer is excess only and not contributing with insurance provided under ImageTrend's policy.
- (B) **Automobile Liability.** Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for property damages. Coverage must include any auto used in connection with this Agreement.
- (C) **Workers Compensation.** Workers compensation insurance as required by the laws of the State of California with statutory limits.
- (D) **Employer's Liability.** Employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for disease.
- (E) **Technology Professional Liability (Errors and Omissions).** Technology professional liability (errors and omissions) insurance with limits of not less than Two Million Dollars (\$2,000,000) per claim and in the aggregate. Coverage must encompass all of ImageTrend's obligations under this Agreement, including but not limited to claims involving Cyber Risks.
- (F) **Cyber Liability.** Cyber liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per claim. Coverage must include claims involving Cyber Risks. The cyber liability policy must be endorsed to cover the full replacement value of damage to, alteration of, loss of, or destruction of intangible property (including but not limited to information or data) that is in the care, custody, or control of ImageTrend.

**Definition of Cyber Risks.** "Cyber Risks" include but are not limited to (i) Security Breach, which may include Disclosure of Personal Information to an Unauthorized Third Party; (ii) data breach; (iii) breach of any of ImageTrend's obligations under this Agreement; (iv) system failure; (v) data recovery; (vi) failure to timely disclose data breach or Security Breach; (vii) failure to comply with privacy policy; (viii) payment card liabilities and costs; (ix) infringement of intellectual property, including but not limited to infringement of copyright, trademark, and trade dress; (x) invasion of privacy, including release of private information; (xi) information theft; (xii) damage to or destruction or alteration of electronic information; (xiii) cyber extortion; (xiv) extortion related to ImageTrend's obligations under this Agreement regarding electronic information, including Personal Information; (xv) fraudulent instruction; (xvi) funds transfer fraud; (xvii) telephone fraud; (xviii) network security; (xix) data breach response costs, including

## Exhibit B

Security Breach response costs; (xx) regulatory fines and penalties related to ImageTrend's obligations under this Agreement regarding electronic information, including Personal Information; and (xxi) credit monitoring expenses.

If ImageTrend is a governmental entity, it may satisfy the policy requirements above through a program of self-insurance, including an insurance pooling arrangement or joint exercise of powers agreement.

### 2. Additional Requirements

(A) **Verification of Coverage.** Within 30 days after ImageTrend signs this Agreement, and at any time during the term of this Agreement as requested by the Customer's Risk Manager or the Customer Administrative Office, ImageTrend shall deliver, or cause its broker or producer to deliver, to the County of Fresno, Department of Public Health, P.O. Box 11867, Fresno, CA 93775, Attention: Contracts Section – 6th Floor, or email, [DPHContracts@fresnocountyca.gov](mailto:DPHContracts@fresnocountyca.gov), certificates of insurance and endorsements for all of the coverages required under this Agreement.

- (i) Each insurance certificate must state that: (1) the insurance coverage has been obtained and is in full force; (2) the Customer, its officers, agents, employees, and volunteers are not responsible for any premiums on the policy; and (3) ImageTrend has waived its right to recover from the Customer, its officers, agents, employees, and volunteers any amounts paid under any insurance policy required by this Agreement and that waiver does not invalidate the insurance policy.
- (ii) The commercial general liability insurance certificate must also state, and include an endorsement, that the Customer of Fresno, its officers, agents, employees, and volunteers, individually and collectively, are additional insureds insofar as the operations under this Agreement are concerned. The commercial general liability insurance certificate must also state that the coverage shall apply as primary insurance and any other insurance, or self-insurance, maintained by the Customer shall be excess only and not contributing with insurance provided under ImageTrend's policy.
- (iii) The automobile liability insurance certificate must state that the policy covers any auto used in connection with this Agreement.
- (iv) The technology professional liability insurance certificate must also state that coverage encompasses all of ImageTrend's obligations under this Agreement, including but not limited to claims involving Cyber Risks, as that term is defined in this Agreement.
- (v) The cyber liability insurance certificate must also state that it is endorsed, and include an endorsement, to cover the full replacement value of damage to, alteration of, loss of, or destruction of intangible property (including but not limited to information or data) that is in the care, custody, or control of ImageTrend.

(B) **Acceptability of Insurers.** All insurance policies required under this Agreement must be issued by admitted insurers licensed to do business in the State of California and possessing at all times during the term of this Agreement an A.M. Best, Inc. rating of no less than A: VII.

(C) **Notice of Cancellation or Change.** For each insurance policy required under this Agreement, ImageTrend shall provide to the Customer, or ensure that the policy requires the insurer to provide to the Customer, written notice of any cancellation or change in the policy as required in this paragraph. For cancellation of the policy for nonpayment of premium, ImageTrend shall, or

## Exhibit B

shall cause the insurer to, provide written notice to the Customer not less than 10 days in advance of cancellation. For cancellation of the policy for any other reason, and for any other change to the policy, ImageTrend shall, or shall cause the insurer to, provide written notice to the Customer not less than 30 days in advance of cancellation or change. The Customer in its sole discretion may determine that the failure of ImageTrend or its insurer to timely provide a written notice required by this paragraph is a breach of this Agreement.

- (D) **Waiver of Subrogation.** ImageTrend waives any right to recover from the Customer, its officers, agents, employees, and volunteers any amounts paid under the policy of worker's compensation insurance required by this Agreement. ImageTrend is solely responsible to obtain any policy endorsement that may be necessary to accomplish that waiver, but ImageTrend's waiver of subrogation under this paragraph is effective whether or not ImageTrend obtains such an endorsement.
- (E) **Customer's Remedy for ImageTrend's Failure to Maintain.** If ImageTrend fails to keep in effect at all times any insurance coverage required under this Agreement, the Customer may, in addition to any other remedies it may have, suspend or terminate this Agreement upon the occurrence of that failure, or purchase such insurance coverage, and charge the cost of that coverage to ImageTrend. The Customer may offset such charges against any amounts owed by the Customer to ImageTrend under this Agreement.
- (F) **Subcontractors.** ImageTrend shall require and verify that all Subcontractors used by ImageTrend to provide services under this Agreement maintain insurance meeting all insurance requirements provided in this Agreement. This paragraph does not authorize ImageTrend to provide services under this Agreement using Subcontractors.



ORDER FORM

Prepared For:	Bill To:
County of Fresno (CA)	County of Fresno (CA) 2281 Tulare Street Room 304, Fresno, California, United States, 93721

Salesperson	Quote Number	Order Form Date
Mike Tamasi Senior Enterprise Account Executive	Q-11041v4	Aug 4, 2025
Contract Effective Date	Subscription Term (Months)	
Date of the last signature on this Order Form	60	

One Time

Description	Qty	Fee Type	Unit Price	Total
License Management Setup	1	One Time	\$16,000.00	\$16,000.00
Onsite Training	1	One Time	\$1,800.00	\$1,800.00
Travel	1	One Time	\$1,750.00	\$1,750.00
Webinar Training 2hr Session	1	One Time	\$450.00	\$450.00
Payment Gateway Setup	1	One Time	\$0.00	0
Total Net Price				\$20,000.00

Recurring

Description	Qty	Fee Type	Unit Price	Total
License Management SaaS	1	Recurring	\$68,000.00	\$68,000.00
Investigations	1	Recurring	\$0.00	0
Payment Gateway	1	Recurring	\$5,000.00	\$5,000.00
Total Net Price				\$73,000.00

Total Year 1:	\$93,000.00
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<b>Total Recurring:</b>	\$73,000.00
<b>Total One time:</b>	\$20,000.00
<b>Total Contract Value:</b>	<b>\$423,371.08</b>

### Year Over Year Pricing

Description	YR 1 Cost	YR 1 Uplift	YR 2 Cost	YR 2 Uplift	YR 3 Cost	YR 3 Uplift	YR 4 Cost	YR 4 Uplift	YR 5 Cost	YR 5 Uplift
License Management SaaS	\$68,000.00	5%	\$71,400.00	5%	\$74,970.00	5%	\$78,718.50	5%	\$82,654.43	5%
Investigations	0	5%	0	5%	0	5%	0	5%	0	5%
Payment Gateway	\$5,000.00	5%	\$5,250.00	5%	\$5,512.50	5%	\$5,788.12	5%	\$6,077.53	5%
			\$76,650.00		\$80,482.50		\$84,506.62		\$88,731.96	

### Incident Volume

Category	Incidents
License Management	280

This Order Form is subject to the terms of the Master Subscription Agreement located at <http://www.imagetrend.com/legal/msa> unless there is a separate agreement between County of Fresno (CA) and ImageTrend.

This proposal is valid for 90 days from the date listed above.

#### Additional Terms:

- One-Time Fees will be due upon contract signature.
- Recurring fees will be invoiced annually in advance, beginning on the Effective Date, unless Customer provides notice of cancellation in accordance with the MSA, no less than sixty (60) days prior to the end of a Subscription Term.
- Customer's subscription to a Service will automatically renew for a one-year Subscription Term at the end of each prior Subscription Term.
- Payments are due 30 days after receipt of an invoice.

- Recurring fees are subject to price increases each year following the first year of the Subscription Term, and will not exceed 5% of the then-current price in any given year.
- Any terms not defined herein shall have the same meaning as defined in the Master Subscription Agreement.
- The Subscription Term for any Services added by Customer after the beginning of the then-current Subscription Term will be coterminous with the then-current Subscription Term for existing Services.

**BILLING CONTACT INFORMATION**

**Full Name:** DPH Accounts Payable

**Phone:** (559) 600-3387

**Email:** DPHBOAP@fresnocountyca.gov

**Address:** PO Box 11867

Fresno, CA 93775-1867

**ImageTrend**

**Name** Jon Sachs

**Title** Chief Financial Officer

**Signature**

*Jon Sachs*

Jon Sachs (Sep 4, 2025 12:09:33 MDT)

**Date** 09/04/2025

**County of Fresno (CA)**

**Name** Ernest Buddy Mendes

**Title** Chairman of the Board of Supervisors

**Signature**

*Ernest Buddy Mendes*

**Date**

*9-23-2025*

ATTEST:

BERNICE E. SEIDEL

Clerk of the Board of Supervisors

County of Fresno, State of California

By

*Hanana*

Deputy



## **Agreement between the County of Fresno and ImageTrend**

**Name/No.:** Master Subscription Agreement with ImageTrend, LLC for License Management System

Fund/Subclass:	0001/10000
Organization #:	56201696
Account #:	7309