

SOFTWARE LICENSING AGREEMENT

CONTRACT No.: 1915

BETWEEN

**CITY OF NAPLES FIRE-RESCUE DEPARTMENT
335 RIVERSIDE CIRCLE
NAPLES, FL 34102**

AND

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

 **IMAGETREND** INC.

THIS AGREEMENT is made and entered into on the date last written below, by and between the ImageTrend, Inc., a Minnesota corporation (hereinafter "IMAGETREND"), and the City of Naples, for the City of Naples Fire-Rescue Department (hereinafter "CLIENT").

R E C I T A L S

WHEREAS, IMAGETREND owns the software system known 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 the employees of CLIENT and other contractors who work for CLIENT within the geographical boundaries of CLIENT.

"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. It does not include information that is non-confidential or non-exempt under the Florida Public Records laws.

"Designated Equipment" means server products used for hosting the software by ImageTrend.

"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.

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

"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.

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

"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.

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

SECTION 2. TERM OF AGREEMENT.

The term of this AGREEMENT shall be one (1) year(s) from signature date, subject to Section 12 of this AGREEMENT. This AGREEMENT shall be subject to automatic renewal unless terminated by either party as provided in Section 12, below.

SECTION 3. GRANT OF LICENSE.

A. NON-EXCLUSIVE 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 upon receipt of payment for the final year. 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 Web Hosting Service Level Agreement 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. PROTECTION OF SOFTWARE AND LICENSED INFORMATION.

CLIENT agrees to respect and not 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 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 modify, reverse engineer, disassemble, or decompile the Software, or any portion thereof, and shall not use the software or portion thereof for purposes other than as intended and provided for in this Agreement.

SECTION 4. 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 5. MAINTAINENCE and SUPPORT.

- A. Application use support as detailed in Service Level Agreement Exhibit
- B. Server hosting environment is monitored and supported 24/7 by the ImageTrend X-Team. Contact 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 6. FEES.

- A. The fees for this contract are as detailed in the attached Exhibit A.
- B. At anytime 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. To the extent that CLIENT pays IMAGETREND to uniquely customize the software, each CLIENT shall have the non-exclusive license to utilize such software without additional cost or expense, however to the extent that such software is then distributed and therefore becomes a product requiring ongoing support, as such it shall be subject to support fee increases. Any product enhancements offered by IMAGETREND will be offered to all CLIENTS as such and may be subject to licensure and support.

SECTION 7. 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.

B. MAINTENANCE OF CONFIDENTIAL INFORMATION.

Each party agrees to keep confidential all confidential information disclosed to it by the other party in accordance herewith, and to protect the confidentiality thereof in the same manner it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of confidential information); provided, however, that the provisions of this Section 8 shall not apply to information which: (i) is in the public domain; (ii) has been acquired by CLIENT by normal means upon the disclosure of the information by IMAGETREND; (iii) is duly obtained by CLIENT directly or indirectly from a third party who has independently developed the information and is entitled to disclose the information to CLIENT, and such disclosure does not directly or indirectly violate the confidentiality obligation

of such third party; or (iv) becomes known publicly, without fault on the part of CLIENT, subsequent to the receipt of the information by CLIENT.

C. SURVIVAL.

This Section 7 shall survive the termination of this AGREEMENT or of any license granted under this AGREEMENT.

SECTION 8. 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 8 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 9. LIMITATION OF LIABILITY.

Unless otherwise provided in this Section 9, CLIENT's exclusive remedy for any damages or losses arising out of IMAGETREND's breach of warranties shall be, at IMAGETREND's option, either (i) immediate release from the agreement; or (ii) repair of the Software.

SECTION 10. INDEMNIFICATION.

A. INDEMNITY.

IMAGETREND (which includes its agents, employees and subcontractors, if any) agrees to indemnify, defend, and hold harmless CLIENT, as well as any agents thereof from all claims, lawsuits, damages, judgments, loss, liability, or expenses, including attorneys' fees, arising out of: (i) any personal injuries, property damage or death that IMAGETREND may sustain while using CLIENT's, as well as any agents thereof, controlled property or equipment in the performance of this AGREEMENT; (ii) any personal injury or death which results or increases by any action taken to medically treat IMAGETREND; (iii) any claim or action brought against CLIENT, as well as any agents thereof arising out of the negligence or any acts or omissions of IMAGETREND in the performance of this Agreement.

Except for the foregoing claims, CLIENT, as well as any agents thereof agrees to indemnify, defend, and hold harmless IMAGETREND from all claims, lawsuits, damages, judgments, loss, liability, or expenses, including attorneys' fees, arising out of: (i) CLIENT, as well as any agents thereof unauthorized usage, distribution, modification or enhancement of the Software; and (ii) any claim or action brought against IMAGETREND arising out of the negligence or any acts or omissions of CLIENT, as well as any agents thereof in the performance of this Agreement.

B. MUTUAL OBLIGATION TO INDEMNIFY OR DEFEND.

Each party shall, upon the other party's request, shall indemnify, defend with counsel approved by the requesting party (which approval shall not be unreasonably withheld), at such non-requesting party's sole cost and expense, any action, claim, suit, cause of action or portion thereof which asserts or alleges liabilities covered in this Section 10, or which is caused by the negligence or any acts or omissions of the other party, whether or not such action, claim, suit, cause of action or portion thereof is well founded.

SECTION 11. INSURANCE REQUIREMENTS.

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

SECTION 12 TERMINATION.

A. TERMINATION WITHOUT CAUSE.

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

B. 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 7, above, or makes an assignment in violation of Section 13, 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 13 NONASSIGNABILITY.

CLIENT shall not assign this AGREEMENT or its rights hereunder without the prior written consent of IMAGETREND.

SECTION 14 GOVERNING LAW.

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

SECTION 15 COMPLIANCE WITH LAWS.

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

SECTION 16. 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 17 NOTICES.

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

TO CLIENT: City of Naples, Fire-Rescue Department
335 Riverside Circle
Naples, FL 34102

ATTENTION: Stephen McInerney

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 18.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 19. ARBITRATION.

Any dispute between IMAGETREND and CLIENT under this Agreement shall be resolved by arbitration by an arbitrator selected under the rules of the American Arbitration Association (STATE) and the arbitration shall be conducted in that same location under the rules of said Association. If an arbitrator cannot be agreed upon by the parties, IMAGETREND and CLIENT shall each choose an arbitrator, and those two chosen arbitrators shall choose a third arbitrator, who shall preside over any dispute. IMAGETREND and CLIENT shall each be entitled to present evidence and argument to the arbitrator. The arbitrator shall have the right only to interpret and apply the provisions of this Agreement and may not change any of its provisions. The arbitrator shall permit reasonable pre-hearing discovery of facts, to the extent necessary to establish a claim or a defense to a claim, subject to supervision by the arbitrator. The determination of the arbitrator shall be conclusive, final and binding upon the parties and judgment upon the same may be entered in any Florida court having jurisdiction thereof. The arbitrator shall give written notice to the parties stating his determination, and shall furnish to each party a signed copy of such determination. IMAGETREND and CLIENT shall equally share the cost of the arbitrator(s) fees. The arbitrator may award reasonable costs and expenses, including reasonable attorney fees, to the prevailing party.

SECTION 20. 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 21. SIGNATOR'S WARRANTY.

Each party warrants to each other party that he or she is fully authorized and competent to enter into this AGREEMENT, in the capacity indicated by his or her signature and agrees to be bound by this AGREEMENT.

SECTION 22. 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.

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

APPROVED AS:

CITY OF NAPLES, FLORIDA, "CLIENT"

By: *Roy Runk, Acting City Manager*
FOR:

Name: A. William Moss

Title: City Manager

Dated: Sept. 23, 2013

"IMAGETREND"

By: *Michael J. McBrady*

Name: Michael J. McBrady

Title: President

Dated: Aug. 28, 2013

Approved as to form & correctness

Robert D. Pritt
Robert D. Pritt, City Attorney

Attest:
Patricia L. Rambosk
Patricia L. Rambosk, City Clerk
Date: 9/23/13

EXHIBITS

EXHIBIT A – Pricing Agreement

EXHIBIT B – Service Level Agreement

EXHIBIT C – HIPAA Business Associate Agreement

EXHIBIT D – Insurance Certificate

EXHIBIT E – Request for Acceptance Form

EXHIBIT A – PRICING AGREEMENT

ImageTrend's license and annual support are based upon 4800 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
Rescue Bridge License (Fire & EMS) - Annual Lease to Own Payment (5 Year Commitment) – Year 1 <i>EMS Modules Included:</i> <ul style="list-style-type: none"> • Certification Dashboard • Documents • QA/QI • Report Writer 2.0 (Transactional) • Run History • Staff • Training <i>Fire Modules Included:</i> <ul style="list-style-type: none"> • NFIRS 5.0 Reporting • Activities • Checklist • Fire Shifts • Hydrants • Inspections • Inventory • Locations • Occupants <i>Ongoing Fees</i> <ul style="list-style-type: none"> • Rescue Bridge Annual Support • Rescue Bridge Annual Hosting <i>Setup Fees</i> <ul style="list-style-type: none"> • Rescue Bridge Setup Fee and Project Management 	1	\$10,500.00	\$10,500.00
Field Bridge Site License <ul style="list-style-type: none"> • Field Bridge Site License Annual Support 	1	Included	
CAD Integration (TriTech / VisionAir) <ul style="list-style-type: none"> • CAD Annual Support • CAD Annual Hosting 	1	Included	
Two (2) Webinar Training Sessions (2 hour session M-F during ImageTrend's Standard Business Hours), 4 Hours Total during first year of Implementation	2	Included	

TOTAL Year 1

\$10,500.00

Recurring Fees Year 2 and thereafter	Units	Price	Extended
Rescue Bridge License (Fire & EMS) - <u>Annual</u> Lease to Own Payment Year 2	1	\$10,500.00	\$10,500.00
Rescue Bridge License (Fire & EMS) - <u>Annual</u> Lease to Own Payment Year 3	1	\$10,500.00	\$10,500.00
Rescue Bridge License (Fire & EMS) - <u>Annual</u> Lease to Own Payment Year 4	1	\$10,500.00	\$10,500.00
Rescue Bridge License (Fire & EMS) - <u>Annual</u> Lease to Own Payment Year 5	1	\$10,500.00	\$10,500.00
Rescue Bridge Annual Support and Hosting Year 6 and thereafter*	1	\$8,440.00	\$8,440.00

Optional^	Units	Price	Extended
Out of Scope billed at \$125/Hour		\$ 125.00	
Additional Onsite Training Sessions		\$ 1,000.00	
Travel per Trainer (for Onsite at Client's Facility Training)***		\$ 1,500.00	

^The Client may elect to purchase additional services as set forth in the options identified above at the scheduled price amounts at any time during the initial term of the project. The Client shall exercise said options by written notice to ImageTrend.

Payment Terms:

- a. Upon acceptance of proposal, 100% of Total Year 1 will be invoiced with payment terms of Net 30 days.
- b. The recurring Annual Fees will be billed annually in advance on Contract Signature.

Pricing escalation factors:

- c. ImageTrend's license, support and hosting are based on 4800 annual incidents as provided by Client. ImageTrend reserves the right to audit the annual incident volume and the option to increase future support and hosting costs, with advanced notification to the Client, if the number of annual incidents increases substantially and has a resulting effect of increased support calls and hosting requirements to ImageTrend.
- d. All hosting fees are based upon anticipated usage and include an average of 3 Mb Bandwidth and 30 GB of Storage. These fees are subject to annual usage audits, which may affect future fees at an increase of \$15/Mb/month for Bandwidth and \$15/10GB/month for Storage.
- e. IMAGETREND reserves the right to reevaluate and potentially increase the ongoing support services rates for the subsequent years beginning year six (6). The increase shall not, however, exceed inflation. Inflation shall be defined by the Consumer Price Index (CPI-U) from the Department of Labor's Bureau of Labor Statistics for the Minneapolis-St. Paul, MN-WI urban areas for the published 12 months prior to the term for which the rates may be adjusted. Rates established under this method are then good for the next year. Subsequent years are based on the immediate year's rates.
- a. At least 120 days prior to the end of each contracted term IMAGETREND will establish and communicate to CLIENT any of the anticipated increases allowed above. The intent is to allow CLIENT 30 days to review the cost.

Statements/Invoices should be mailed to:

City of Naples Fire-Rescue Department
Stephen McInerney
355 Riverside Circle
Naples, FL 34102
Phone: 239-213-4900
Email: smcinerney@naplesgov.com

EXHIBIT B – SERVICE LEVEL AGREEMENT

PERPETUAL USE LICENSE, IMAGETREND HOSTED SOLUTION VERSION 2.0

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. Data Ownership

All customer data collected with ImageTrend applications remains at all times the property of the Customer. Upon the termination of any agreement, with written request from the Customer, the customer will receive an encrypted database file including all customer data. The encryption key will be mailed under separate cover. The customer is responsible for providing the proper contact for receiving this information. If the customer requires regular database copies, ImageTrend can provide quarterly encrypted database files for an additional fee.

2. Data Protection

ImageTrend addresses customer privacy issues very seriously. ImageTrend therefore guarantees not to use or make available any personally identifiable information other than administering the client's account and collecting usage statistics in order to improve our products and services specifications. During the term of this Agreement and after termination or expiration of this Agreement, ImageTrend will not in any way transfer to any third party or use in direct or indirect competition with the other party any information or data posted by client's and others on ImageTrend's website and acknowledges that all such information is confidential ("Confidential Information"). Confidential Information includes, but is not limited to, the terms and conditions of this Agreement, technical information, price lists, data and business plans. Confidential Information is the exclusive property of the disclosing party and may be used by the receiving party solely in the performance of its obligations under this Agreement. ImageTrend acknowledges that its handling of information on behalf of client is or may be subject to federal, state or local laws, rules, regulation and restrictions regarding the privacy of consumer information. ImageTrend agrees to comply with all of such laws, rules, regulations and restrictions at its sole cost and expense. This Confidential Information section and all obligations contained therein will survive any termination or expiration of this Agreement.

3. Term

Unless otherwise defined, this agreement is in effect for one year from date of signature of proposal and/or contract, and is automatically renewable unless termination is received in writing with 60 days advance notice.

4. Price and Payment Terms

All prices and fees associated with this agreement are as stated in proposal and/or contract and will be invoiced as mutually agreed, with payment terms of Net 30 days.

5. 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 2008
- 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 facility is located in downtown Minneapolis 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 via cell-phone and email

6. 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 8:30 am to 5:00 pm CST at:
 Toll Free: 1-888-469-7789
 Phone: 952-469-1589
 Support Desk: www.imagetrend.com/support

Online Support Desk

ImageTrend offers an online support system, Support Desk, which incorporates around-the-clock incident reporting of all submitted tickets to ImageTrend's support desk specialists. Once a client submits a support ticket, he or she can easily track its process with a secure login, promoting a support log for the client and ImageTrend's support team. 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 them 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.

X – Team Support

In addition to our standard services, ImageTrend's X-Team is available for after-hour's emergency support. Our X-Team will receive notifications of issues submitted to our Online Support Desk. If an issue is deemed non-critical by the X-team they may elect to respond during normal business hours or charge for after hour's resolution.

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 1 – Critical	- Complete shutdown or partial shutdown of one or more Software functions - Access to one or more Software functions not available - Major subset of Software application impacted	Within one (1) hour of initial notification during business hours or via support@imagetrend.com or Support Desk with critical subject status.	Six hours
Severity 2 – Non-Critical	- Minor subsystem failure -Data entry or access impaired on a limited basis – usually can be delegated to local client contact as a first level or response for resolution – usually user error (i.e. training) or forgotten passwords	Within four (4) hours of initial notification	24 Business hours
Severity 3 – Non-essential	- System operational with minor issues; suggested enhancements as mutually agreed upon – typically covered in next version release as mutually agreed upon.	Same day or next business day of initial notification	Next 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 but not limited to: development, architecture, testing, documentation, builds, test and uses 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 immediately, 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 brought to the attention of both the X-Team and Senior Management.

7. Insurance

ImageTrend has professional liability insurance against errors and omissions, covering costs or expenses in the event of data loss due to transmission failures or diversion by any party either accidentally or intentionally. Insurance certificate available upon request.

8. Termination cancellation

Each of our customers reserves the right to cancel and terminate its subscription with ImageTrend at any time and for any reason with 60 days written notification. ImageTrend reserves the right to suspend and limit network resources to customers failing to pay the annual support fees at its own discretion. In the event of service suspension, full service delivery will be restored within 48 hours from the date and time of the payment made to us.

9. Limited Liability

ImageTrend's liability for damages to Client shall be limited to the lesser of: (1) Client's actual and direct damages as a result of ImageTrend's failure to provide the hosting and services set forth herein; or (2) the amount of the monthly applicable recurring fees (hosting and/or support) for the month in which ImageTrend fails to provide services as set forth in this Agreement. Client must submit a claim to ImageTrend in writing for the damages noted above within forty five (45) days from the incident. In no event shall ImageTrend's liability for damages to Client exceed the monthly

applicable recurring fees (hosting and/or support) for the month in which ImageTrend fails to provide the services requested in this proposal or contract. ImageTrend does not guarantee or otherwise take any responsibility for Client's business practices. ImageTrend shall not be responsible for any of Client's loss of business, lost profits, consequential damages, punitive damages, special damages or any other sums except as express set forth in this paragraph. ImageTrend shall not be responsible for any damages related to any interruption of business, loss of data, costs of recreating data, losses caused by delay or losses from interruption, termination or failed performance of telecommunication or information services. Client acknowledges and agrees that Client's sole and exclusive remedies in the event of a breach by ImageTrend shall be to terminate this Agreement and seek recovery damages as limited by this paragraph. In the event that this paragraph conflicts with any other terms of any agreement or proposal between Client and ImageTrend, this paragraph shall control.

Client: CITY OF NAPLES

By: Roger Reenke Acting City Manager
FOR: A. William Moss, City Manager
(Print or Type Name)

Date: Sept. 23, 2013

ImageTrend, Inc.

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

Date: Aug. 28, 2013

EXHIBIT C – HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) dated _____, 201____ (the “Effective Date”), is entered into by and between _____, a _____ corporation (the “Covered Entity”) and ImageTrend, Inc. a Minnesota corporation (the “Business Associate”).

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

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

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

WHEREAS, in order to protect the privacy and security of PHI, including E PHI, 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 E PHI; 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 E PHI, 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 E PHI. 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 E PHI. 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. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information.

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

determine whether to grant or deny any access or amendment requested by the individual. Business Associate shall have a process in place for requests for amendments and for appending such requests to the Designated Record Set, as requested by Covered Entity.

5. **Accounting of Disclosures.** Business Associate shall make available to Covered Entity in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual in accordance with 45 CFR §164.528, as amended by Section 13405(c) of the HITECH Act and any related regulations or guidance issued by HHS in accordance with such provision. Business Associate shall provide to Covered Entity such information necessary to provide an accounting within thirty (30) days of Covered Entity's request or such shorter time as may be required by state or federal law. Such accounting must be provided without cost to the individual or to Covered Entity if it is the first accounting requested by an individual within any twelve (12) month period. For subsequent accountings within a twelve (12) month period, Business Associate may charge a reasonable fee based upon the Business Associate's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies) so long as Business Associate informs the Covered Entity and the Covered Entity informs the individual in advance of the fee, and the individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination of this Agreement and shall continue as long as Business Associate maintains PHI.
6. **Withdrawal of Authorization.** If the use or disclosure of PHI in this Agreement is based upon an individual's specific authorization for the use of his or her PHI, and (i) the individual revokes such authorization in writing, (ii) the effective date of such authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid, Business Associate agrees, if it has notice of such revocation or invalidity, to cease the use and disclosure of any such individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under the Confidentiality Requirements expressly applies.
7. **Records and Audit.** Business Associate shall make available to the U.S. Department of Health and Human Services or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Covered Entity for the purpose of determining Covered Entity's compliance with the Confidentiality Requirements or any other health oversight agency, in a time and manner designated by the Secretary. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity immediately upon receipt by Business Associate of any and all requests by or on behalf of any and all federal, state and local government authorities served upon Business Associate for PHI.
8. **Implementation of Security Standards; Notice of Security Incidents.** Business Associate will use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement. Business Associate will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate acknowledges that the HITECH Act requires Business Associate to comply with 45 C.F.R. §§ 164.308, 164.310, 164.312 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.** Lastly, Business Associate will promptly report to Covered Entity any successful Security Incident of which it becomes aware. At the request of Covered Entity, Business Associate shall identify: the date of the Security Incident, the scope of the Security Incident, the Business Associate's response to the Security Incident and the identification of the party responsible for causing the Security Incident, if known.

Business Associate and Covered Entity shall take reasonable measures to ensure the availability of all affirmative defenses under the HITECH Act, HIPAA, and other state and federal laws and regulations governing PHI and EPHI.

9. Data Breach Notification and Mitigation.

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

the extent practicable any potential harm to the individuals impacted by the State Breach; and (iv) assist with the implementation of any decision by Covered Entity or any State agency, including any State Attorney General or State Consumer Affairs Department (or their respective agents), to notify individuals impacted or potentially impacted by a State Breach.

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

10. Term and Termination.

- a. This Agreement shall commence on the Effective Date and shall remain in effect until terminated in accordance with the terms of this Section 10, provided, however, that termination shall not affect the respective obligations or rights of the parties arising under this Agreement prior to the effective date of termination, all of which shall continue in accordance with their terms.
- b. Covered Entity shall have the right to terminate this Agreement for any reason upon sixty (60) 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 thirty (30) 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. Termination of this Agreement may be effected under the Termination procedures present in the ImageTrend Software License Agreement (hereby incorporated by reference), if the ImageTrend Software License Agreement has also been agreed to.
 - f. Upon the termination of all Business Arrangements, either Party may terminate this Agreement by providing written notice to the other Party.
 - g. Upon termination of this Agreement for any reason, Business Associate agrees either to return to Covered Entity or to destroy all PHI received from Covered Entity or otherwise through the performance of services for Covered Entity, that is in the possession or control of Business Associate or its agents. In the case of PHI which is not feasible to "return or destroy," Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate further agrees to comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment of such PHI.
11. **No Warranty.** PHI IS PROVIDED TO BUSINESS ASSOCIATE SOLELY ON AN "AS IS" BASIS. COVERED ENTITY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. ANY AND ALL WARRANTIES MADE BY BUSINESS ASSOCIATE TO COVERED ENTITY ARE CONTAINED WITHIN THE IMAGETREND SERVICE LEVEL AGREEMENT AND HEREBY INCORPORATED BY REFERENCE.
12. **Ineligible Persons.** Business Associate represents and warrants to Covered Entity that Business Associate (i) is not currently excluded, debarred, or otherwise ineligible to participate in any federal health care program as defined in 42 U.S.C. Section 1320a-7b(f) ("the Federal Healthcare Programs"); (ii) has not been convicted of a criminal offense related to the provision of health care items or services and not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs, and (iii) is not under investigation or otherwise aware of any circumstances which may result in Business Associate being excluded from participation in the Federal Healthcare Programs. This shall be an ongoing representation and warranty during the term of this Agreement, and Business Associate shall immediately notify Covered Entity of any change in the status of the representations and warranty set forth in this section. Any breach of this section shall give Covered Entity the right to terminate this Agreement immediately for cause.
13. **Miscellaneous.**
- a. **Notice.** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; or (iii) overnight delivery service with proof of delivery. Notices shall be sent to the addresses below. Neither party shall refuse delivery of any

notice hereunder.

If to Covered Entity:

Compliance Office

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 any later agreement(s), the Agreements shall control in the following order:
 1. This Agreement
 2. ImageTrend Software License Agreement (if present)
 3. ImageTrend Service Level Agreement
 4. Any other written Arrangement, unless

the terms of such subsequent written Arrangements are more strict with respect to PHI and comply with the Confidentiality Requirements, or the parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party; provided, however, that upon the enactment of any law, regulation, court decision or relevant government publication and/or interpretive guidance or policy that the Covered Entity believes in good faith will adversely impact the use or disclosure of PHI under this Agreement, Covered Entity may amend the Agreement to comply with such law, regulation, court decision or government publication, guidance or policy by delivering a written amendment to Business Associate which shall be effective thirty (30) days after receipt. No obligation on either Party to enter into any transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third

party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

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

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

COVERED ENTITY:

CITY OF NAPLES
By: Roger Reub, Acting City Manager
For: A. William Moss
(Print or Type Name)
City Manager
(Title)
Date: Sept. 23, 2013

BUSINESS ASSOCIATE:

By: Michael J. McBrady
Michael J. McBrady
(Print or Type Name)
President
(Title)
Date: Aug. 28, 2013

Attest
Patricia L. Rambosk
Patricia L. Rambosk, City Clerk
Date: 9/23/13

EXHIBIT D – INSURANCE CERTIFICATE

Intentionally left blank

EXHIBIT E – DELIVERABLE ACCEPTANCE SIGNOFF FORM

Acceptance Procedure

Acceptance of Deliverables

When ImageTrend has completed a Deliverable, ImageTrend shall forward such Deliverable to CLIENT with an Acceptance Form. Acceptance of a Deliverable shall be based on its conformity to the Contract Documents. Within ten (10) working days after CLIENT's receipt of such Deliverable, or as otherwise mutually agreed by the parties, CLIENT shall return to ImageTrend the Acceptance Form executed by CLIENT's project manager or shall forward to ImageTrend's project manager a written report requesting modification.

Deliverable (s) Acceptance Criteria and Amount

Acceptance Form Signoff

ImageTrend Implementation Deliverable Acceptance

Client Implementation: _____ Deliverable Name: _____

Date Submitted: _____ Date Reply Due: _____

Client Acceptance

The signatures below indicate the approval of the (Client) (Project Name) Deliverable Review Process and Acceptance Criteria process and document. Upon your acceptance and signature of this Form, fax copy back to ImageTrend at 952-985-5671 or email a copy in PDF to your Implementation Coordinator's attention.

Signature

Date

Type or Print Name

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