



Contract Number

SAP Number

Inland Counties Emergency Medical Agency

Department Contract Representative	<u>Thomas G. Lynch</u>
Telephone Number	<u>(909) 388-5823</u>
Contractor	<u>ImageTrend, Inc.</u>
Contractor Representative	<u>Michael McBrady, CEO</u>
Telephone Number	_____
Contract Term	<u>July 1, 2020 - June 30, 2025</u>
Original Contract Amount	<u>\$819,149.23</u>
Amendment Amount	_____
Total Contract Amount	<u>\$819,149.23</u>
Cost Center	<u>1110002686</u>

IT IS HEREBY AGREED AS FOLLOWS:

This Contract is hereby entered into by and between the **INLAND COUNTIES EMERGENCY MEDICAL AGENCY** (hereinafter referred to as "**ICEMA**"), and **IMAGETREND, INC.** (hereinafter referred to as "**CONTRACTOR**") for Electronic Patient Care Report (ePCR) software and support services. ICEMA and CONTRACTOR are hereinafter collectively referred to as the "Parties".

WHEREAS, ICEMA operates through a Joint Powers Agreement as the local EMS agency for San Bernardino County, pursuant to the California Health and Safety Code, Division 2.5, Chapter 4.

WHEREAS, ICEMA desires to have services performed by CONTRACTOR; and/or

WHEREAS, ICEMA desires to purchase Commercial-Off-The-Shelf Software from CONTRACTOR; and/or

WHEREAS, ICEMA desires to purchase Custom Software Development from CONTRACTOR; and/or

WHEREAS, CONTRACTOR possesses technical skill, knowledge, and capability in consulting and designing custom and off-the-shelf software solutions and performing technical software services and ICEMA desires such services.

NOW, THEREFORE, ICEMA and CONTRACTOR mutually agree to the following terms and conditions:

1. DEFINITIONS

- 1.1** “Authorized User(s)” means the designated employees, agents and business partners of ICEMA certified EMS providers as listed in Exhibit E - ICEMA Business Partners who operate a workstation that is configured to access and/or utilize the capabilities and features of the Software and who will use the Licensed Information, products and services in conjunction with ICEMA’s provision of service to its customers.
- 1.2** “Business Day” means a single 8 hour period occurring on a Monday, Tuesday, Wednesday, Thursday or Friday, 9:00 am CST to 5:00 pm CST, excluding holidays. Unless specified in a Service Order, CONTRACTOR personnel will only perform services during Business Days. Exhibit C - Service Level Agreement will control over this Clause.
- 1.3** “Business Week” means a five (5) day period, beginning Monday at 9:00 am CST and ending Friday at 5:00 pm CST, excluding holidays.
- 1.4** “Confidential information” means the proprietary products and trade secrets, 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.
- 1.5** “Commercial Off The Shelf” or “COTS” means pre-designed software products which are made available for sale by CONTRACTOR to many customers. COTS is mutually exclusive to Custom Software or Custom IP.
- 1.6** “Custom IP” or “Custom Software” means software products, or other Intellectual Property, which is designed for a specific purpose, for a specific customer or ICEMA.
- 1.7** “Deliverable” means an intangible or tangible product, material, or service produced as a result of a Service Order, and each Deliverable is specified in the corresponding Service Order from which it is produced.
- 1.8** “Disclosing Party” means the Party disclosing Confidential Information to the other Party, see also Receiving Party.
- 1.9** “Effective Date” means the date upon which both Parties have signed and executed this Contract by persons having authority to sign and bind their respective organizations.
- 1.10** “Fixed Fee” means a fixed amount of compensation due in return for a fixed Deliverable.
- 1.11** “ICEMA Data” means the data that ICEMA’s Authorized Users upload to the ICEMA website.
- 1.12** “Intellectual Property” means any intellectual property or proprietary rights in any jurisdiction, whether owned or held for use under license, whether registered or unregistered, including such rights in and to: (i) trademarks, trade dress, service marks, certification marks, logos, trade names, brand names, corporate names, assumed names and business names (“Trademarks”, which term shall include the items described in clause (viii) below); (ii) patents and any and all divisions, continuations, continuations-in-part, reissues, continuing patent applications, reexaminations or extensions thereof, any counterparts claiming priority therefrom, utility models, patents of importation/confirmation, certificates of invention, certificates of registration and like statutory rights; inventions, invention disclosures, discoveries and improvements, whether patentable or not; (iii) copyrights and works of authorship; (iv) trade secrets (including those trade secrets defined in the Uniform Trade Secrets Act and under corresponding federal, state or foreign statutory or common law), business, technical and know-how information, non-public information,

and confidential information and rights to limit the use or disclosure thereof by any Person; (v) mask works; (vi) moral rights, author's rights or rights of publicity; (vii) claims, causes of action and defenses relating to the enforcement of any of the foregoing; (viii) any applications for registration of any of the foregoing, and all renewals or extensions of any of the foregoing, whether now existing or hereafter arising; and (ix) the goodwill associated with each of the foregoing. For the avoidance of doubt, "Intellectual Property Rights" includes any and all of the foregoing related to computer software, data files, Source Code, Object Code, APIs, manuals, documentation, specifications, databases or other materials or information.

- 1.13** "Licensed Information" means any information pertaining to the Software which is owned by CONTACTOR and is licensed to ICEMA. 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.
- 1.14** "Materials" and "Expenses" means but is not limited to third-party software licenses, physical hardware, test devices, or other items, reasonable travel expenses (including but not limited to food, lodging, and transportation), printing, delivery of materials, or any other cost reasonably incurred arising out of this Contract.
- 1.15** "Master Services Contract" means this document excluding Service Orders issued from this document.
- 1.16** "Pre-Existing Materials" means code, documentation, frameworks, development accelerators, tool sets or any other materials owned by CONTRACTOR and not developed as part of the services performed for ICEMA. It may include, without limitation, Security Framework, Dashboard, ImageTrend Frameworks, Report Writer and any other tools or Intellectual Property made or used by CONTRACTOR unrelated to this Contract.
- 1.17** "On-Site Hour" means time an hour worked by CONTRACTOR personnel on ICEMA premises, or other premises of ICEMA's choosing that are not CONTRACTOR's corporate offices.
- 1.18** "Service Order" means the technical document which outlines a mutually agreed upon set of services or Deliverables and associated costs, payment terms, and acceptance procedures.
- 1.19** "Statement of Work" means the technical document which outlines a mutually agreed upon specification for particular Custom Development projects and associated costs, payment terms and acceptance procedures. This document requires ICEMA acceptance and signature prior to beginning work.
- 1.20** "Receiving Party" means the Party receiving Confidential Information from the Disclosing Party.
- 1.21** "The Contract" means collectively this Master Services Contract and all Service Orders issued from this Master Services Contract.
- 1.22** "Third-Party Materials" means software or other materials owned by a Party other than ICEMA or CONTRACTOR.
- 1.23** "Time and Materials Basis" means charges billable to the ICEMA based upon each hour worked, multiplied by the hourly rate for the work, plus the cost of any Materials necessary (including but not limited to, the cost of third-party software licenses, travel and accommodation expenses, or otherwise), or Materials beneficial (conditioned upon mutual assent of the Parties), billed on a monthly basis in arrears.

2. TERM OF CONTRACT

The term of this Contract shall be effective on July 1, 2020 through June 30, 2025, for a period of five (5) years, at a total cost not to exceed \$819,149.23, subject to Section 8 - TERMINATION of the Contract.

3. FISCAL PROVISIONS

- 3.1** The maximum amount of payment under this Contract shall not exceed \$819,149.23. The consideration to be paid to CONTRACTOR, as provided herein, shall be in full payment for all CONTRACTOR's services and expenses incurred in the performance hereof, including travel and per diem.
- 3.2** CONTRACTOR shall receive payment in accordance to ICEMA policy, receipt of deliverables as detailed in Section 4 - CONTRACTOR RESPONSIBILITIES. Each deliverable represents a flat fee to complete the work described. No additional charges will be submitted or paid for these deliverables in the absence of a written Contract amendment.
- 3.3** Upon completion of each deliverable, and following acceptance of the deliverable by ICEMA, CONTRACTOR shall submit an invoice detailing work completed, including dates for services performed, and the corresponding amount due and payable.
- 3.4** CONTRACTOR shall accept all payments from ICEMA via electronic funds transfer (EFT) directly deposited into the CONTRACTOR'S designated checking or other bank account. CONTRACTOR shall promptly comply with directions and accurately complete forms provided by ICEMA required to process EFT payments.
- 3.5** Unless otherwise specified in a Service Order, travel to the continental US shall be billed at a flat \$750 when scheduled three (3) weeks and one (1) day or more in advance of the first on-site date, and \$1,000 when scheduled 3 weeks or less, per each round-trip per person to destinations of ICEMA's choosing and back ("Round Trip Rate"), plus \$149 per diem for accommodations, food, and transportation. Travel outside of the continental US will be quoted by CONTRACTOR upon request. Travel may only be scheduled for a maximum of one business week of Monday through Friday per trip; however, ICEMA may book consecutive trips. Travel scheduling which runs from one business week into a subsequent business week(s) (e.g. start date on Friday at 8:00 am, end date Wednesday at 5:00 pm, "Overlapped Weekend") will result in CONTRACTOR invoicing ICEMA the Round Trip Rate for each Overlapped Weekend. CONTRACTOR's staff will work eight (8) hours each day, except on the first and last day of each trip CONTRACTOR may reserve up to four (4) hours of the Business Day for travel time and such hours will be billable hours invoiced to ICEMA. Travel costs will be invoiced to follow ICEMA and County Procedures.
- 3.6** Unless otherwise specified in a Service Order, CONTRACTOR's Time and Materials rate is \$145.00 per hour.

4. CONTRACTOR RESPONSIBILITIES

4.1 Project Management

CONTRACTOR will appoint a project manager with the authority to make certain decisions relevant to the CONTRACT. He/she will have direct access to CONTRACTOR's executive management for resolving problems beyond the project manager's immediate authority.

The project manager will coordinate with ICEMA's project manager through periodic meetings, create the project plan and schedule, review the project and its progress, prepare project reports and review the current task list and upcoming milestones. ICEMA and CONTRACTOR have agreed that the respective project managers will be the points of contact for the Contract.

4.2 Service Orders

- A. **Creation of Service Orders:** The Parties may, from time to time, work together to detail the specific engagement scope, pricing, acceptance criteria, and terms of services to be performed and Deliverables to be delivered by CONTRACTOR. CONTRACTOR will set forth these details as a Service Order. If the Service Order is for the purchase of COTS Software, the Service Order shall also outline the quantity and SKU of each product or service.
- B. **Limitations of Service Orders:** Service Orders may include requirements on ICEMA. Such requirements, when executed as part of a mutual agreed writing, form a material part of this Contract and of the Service Order where the requirement is presented. Additionally, CONTRACTOR may set forth factual assumptions (“Assumption”) in each Service Order. Notwithstanding anything in this Contract or the Service Order, a Service Order will be rendered void to the extent that CONTRACTOR is obligated to perform services which are impossible or impracticable. Further, a Service Order will be rendered void to the extent that CONTRACTOR is obligated to perform services materially different than originally set out in that Service Order due to an inaccurate assumption. The Parties will make commercially reasonable efforts to negotiate an alternative or modified Service Order in light of the inaccurate Assumption.
- C. **Modification of Service Orders:** Any modification to the scope or tasks identified within the Service Order that change the work budget by an estimated 16 hours of work or more shall require a new modified written Service Order or written Change Order. CONTRACTOR shall not work on the new tasks in the modified Service Order until ICEMA has provided signed written acceptance of the new Service Order. The Parties may waive this requirement on a case-by-case basis in writing. Modifications requiring less than an estimated 16 hours of work may be proposed and accepted verbally, with such modifications requiring less than 16 hours of work billed on a Time and Materials basis.
- D. **Fee Model:** The Service Order will contain fee and payment terms. The following fee models are contemplated:

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

- E. **Legal Effect:** Service Orders issued under this Master Services Contract are incorporated by reference into this Master Services Contract which collectively is called “the Contract.” Service Orders do not override the terms of this Master Services Contract unless specifically stated that they do so. Service Orders may contain their own Fee/Payment Schedules and Payment Terms; those terms are binding insofar as they concern the services or Deliverables contemplated by the Service Order. For Service Orders without their own fee and payment terms, the payment terms in Exhibit B - Support and Maintenance of Existing Products.

- F. Customized Software Development: The Parties may mutually agree to a Service Order also known as a Statement of Work for the development of new or custom software, also known as “Modified Off The Shelf” or MOTS. All normal requirements of the Service Order shall apply, but additionally the Parties must work together to mutually define a scope of work which outlines the tasks, and their timelines, to be undertaken as part of the project. Any Customized Software or MOTS Software developed under this Contract will be Intellectual Property owned by CONTRACTOR. Should ICEMA desire ownership of any Intellectual Property developed by CONTRACTOR, this must be embodied by a separate, mutually executed contract. For clarity, ICEMA shall not and will not own any CONTRACTOR’s Intellectual Property under any circumstance under this Contract. ICEMA may only receive a license thereto as outlined in each Service Order.
- G. Recurring Software Support And Maintenance: Any recurring fees under this Contract or its Service Orders will increase by 2% of the then-current price each year beginning on the first Anniversary of the Effective Date of this Contract.

4.3 Performance of Services

- A. Commencement: CONTRACTOR shall begin services described in the Service Order subsequent mutual signed execution the Service Order. No services shall begin before mutual signed and written final acceptance of each Service Order.
- B. Use Of Know How: CONTRACTOR shall use its know-how, Intellectual Property, talent, skills, and employees to perform the services. ICEMA shall conditionally receive a license to any and all pre-existing CONTRACTOR’s Intellectual Property and Know-How used in the creation of Deliverables and delivery of services as outlined below in Section 11 “Data and Intellectual Property” and Exhibit A - Software Licensing Terms.
- C. Materials: Materials (including, but not limited to, third-party software licenses, physical hardware, test devices, or other items and any other Material) that will be used in the development of the Software will be identified by CONTRACTOR to ICEMA. CONTRACTOR shall acquire such Materials as the Parties mutually agree should be acquired, and it shall be the ICEMA’s responsibility to pay for those materials.
- D. Acceptance of Services and Deliverables: CONTRACTOR shall deliver completed Deliverables and services to ICEMA for acceptance. After delivery of the Deliverable or performance of the service, ICEMA shall have no more than ninety (90) days to: 1) accept the deliverable or service, or 2) reject the deliverable or service by providing a written rejection that reasonably sets forth the reason for the rejection and the changes required to gain ICEMA’s acceptance, or 3) provide a written request for a thirty (30) additional day extension to review the Deliverable or service; CONTRACTOR shall not unreasonably withhold approval of such thirty (30) day extension. If ICEMA does not provide an acceptance within the above time frame inclusive of extensions, the Deliverable or service will be deemed accepted. After delivery of the fourth revision of the service or Deliverable, the service or Deliverable shall be deemed accepted by ICEMA. Notwithstanding the previous, should a Deliverable fail to materially conform to its specification, Statement of Work, or other design guideline, the ICEMA’s rejection shall not count towards the four rejection limit.
- E. Notification Regarding Performance: In the event of a problem or potential problem that could impact the quality or quantity of work, services, or the level of performance under the Contract, the CONTRACTOR shall notify ICEMA within one (1) working day, in writing and by telephone or fax.

5. ICEMA RESPONSIBILITIES

5.1 Project Management

ICEMA will assign a project manager as ICEMA's principal contact for this Contract, and to coordinate the activities of a team of applicable personnel designated to contribute to the implementation of the Contract.

ICEMA's project manager coordinates ICEMA resources to complete tasks and activities that are ICEMA's responsibility for the Contract. The ICEMA project manager is the CONTRACTOR's primary point of contact with ICEMA. Activities include management of ICEMA's staff; facilitating project schedules and meetings; timely approval and processing of invoices.

5.2 ICEMA will host the application and databases on their infrastructure provided and configured to the CONTRACTOR's recommended specifications.

5.3 ICEMA will host the National Trauma data set and any State specific fields. Also data fields will be cross-referenced to ICD-10 and NHTSA V3.4.0 data set for pre-population of trauma incidents upon transport to trauma facilities and for data linkage efficiencies.

5.4 If during any of the testing ICEMA determines that a Product or Service does not perform in accordance with the Statement of Work, the CONTRACTOR's Support Team shall be notified, setting forth the defects noted with specifically as requested by the CONTRACTOR.

6. GENERAL CONTRACT REQUIREMENTS

6.1 Recitals

The recitals set forth above are true and correct and incorporated herein by this reference.

6.2 Contract Amendments

CONTRACTOR agrees any alterations, variations, modifications, or waivers of the provisions of the CONTRACT, shall be valid only when reduced to writing, executed and attached to the original CONTRACT and approved by the person(s) authorized to do so on behalf of CONTRACTOR and ICEMA.

6.3 Contract Assignability

Without the prior written consent of ICEMA, the CONTRACT is not assignable by CONTRACTOR either in whole or in part.

6.4 Contract Exclusivity

This is not an exclusive CONTRACT. ICEMA reserves the right to enter into a contract with other contractors for the same or similar services. ICEMA does not guarantee or represent that the CONTRACTOR will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this CONTRACT.

6.5 Attorney's Fees and Costs

If any legal action is instituted to enforce any Party's rights hereunder, each Party shall bear its own costs and attorney fees, regardless of who is the prevailing Party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a Party hereto and payable under Indemnification and Insurance Requirements.

6.6 Reserved.

6.7 Change of Address

CONTRACTOR shall notify ICEMA in writing, of any change in mailing address within ten (10) business days of the change.

6.8 Choice of Law

This CONTRACT shall be governed by and construed according to the laws of the State of California.

6.9 Reserved.

6.10 Confidentiality

CONTRACTOR shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving Services pursuant to this CONTRACT, except for statistical information not identifying any participant. CONTRACTOR shall not use or disclose any identifying information for any other purpose other than carrying out the CONTRACTOR's obligations under this CONTRACT, except as may be otherwise required by law. This provision will remain in force even after the termination of the CONTRACT.

The Parties shall comply with applicable Federal, State, and local laws, rules, and regulations, and ICEMA policies and procedures in effect at the inception of this CONTRACT or that become effective during the term of this CONTRACT, including, but not limited to, facility and professional licensing, and or certification laws and regulations, the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. section 1320d et seq.), and the Emergency Medical Treatment and Active Labor Act (42 U.S.C. section 1395dd).

- A. Confidentiality Acknowledgement: Each Party hereby acknowledges and agrees that the other Party's Data, potential ICEMA's or customers, ICEMA or customer lists, business plans, pricing structures, and any other information a Party has marked as Confidential, constitute Confidential Information. CONTRACTOR agrees to treat (and take precautions to ensure that its authorized personnel treat) Confidential Information as confidential in accordance with the confidentiality requirements and conditions set forth below. Orally transmitted information shall not be Confidential Information unless specified as such in a writing transmitted from the Disclosing Party to the Receiving Party within fifteen (15) days of the oral transmission, with such writing providing a reasonable description and scope of the Confidential Information transmitted.
- B. Confidentiality Obligations: Each Party agrees to keep confidential all confidential information disclosed to it by the other Party in accordance herewith, and to protect the confidentiality thereof in the same manner it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of confidential information); provided, however, that the provisions of this Section 6 shall not apply to information which: (i) is in the public domain; (ii) has been acquired by a Party by means other than the disclosure of the information by the Disclosing Party; (iii) is duly obtained by a Party directly or indirectly from a third-party who has independently developed the information and is entitled to disclose the information to the Party, and such disclosure does not directly or indirectly violate the confidentiality obligation of such third-party; or (iv) becomes known publicly, without fault on the part of a Party, subsequent to the receipt of the information by Party.

- C. Business Associate Relationship: Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, regulations have been promulgated governing the privacy of individually identifiable health information. The HIPAA Privacy Rule and Security Rule specify requirements with respect to contracts between a Covered Entity and its Business Associates. CONTRACTOR shall execute and comply with the attached Business Associate Agreement (Exhibit D). CONTRACTOR further agrees to comply with the requirements of other federal and state law that applies to the information collected and maintained by CONTRACTOR for Services performed pursuant to the Contract.
- D. Survival: This Section 6 shall survive the termination of this Contract or of any license granted under this Contract.

6.11 Primary Point of Contact

CONTRACTOR will designate an individual to serve as the primary point of contact for the CONTRACT. CONTRACTOR or designee must respond to ICEMA inquiries within two (2) business days. CONTRACTOR shall not change the primary contact without written acknowledgement to ICEMA. CONTRACTOR will also designate a back-up point of contact in the event the primary contact is not available.

6.12 Reserved.

6.13 ICEMA Representative

The EMS Administrator of his/her designee shall represent ICEMA in all matters pertaining to the services to be rendered under this CONTRACT, including termination and assignment of this CONTRACT, and shall be the final authority in all matters pertaining to the Services/Scope of Work by CONTRACTOR. If this CONTRACT was initially approved by the ICEMA Board of Directors, then the ICEMA Board of Directors must approve all amendments to this CONTRACT.

6.14 Reserved.

6.15 Debarment and Suspension

CONTRACTOR certifies that neither it nor its principals or subcontracts is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). CONTRACTOR further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

6.16 Reserved.

6.17 Duration of Terms

This CONTRACT, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective Parties, provided no such assignment is in violation of the provisions of this Contract.

6.18 Employment Discrimination

During the term of the CONTRACT, CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex,

gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. CONTRACTOR shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

6.19 Environmental Requirements

In accordance with County Policy 11-08, ICEMA and/or the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. ICEMA requires CONTRACTOR to use recycled paper for any printed or photocopied material created as a result of this CONTRACT. CONTRACTOR is also required to use both sides of paper sheets for reports submitted to ICEMA whenever practicable.

To assist ICEMA and/or the County in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), CONTRACTOR must be able to annually report the County's environmentally preferable purchases. CONTRACTOR must also be able to report on environmentally preferable goods and materials used in the provision of their service to ICEMA.

6.20 Improper Influence

CONTRACTOR shall make all reasonable efforts to ensure that no ICEMA and/or County officer or employee, whose position in ICEMA enables him/her to influence any award of the CONTRACT or any competing offer, shall have any direct or indirect financial interest resulting from the award of the CONTRACT or shall have any relationship to the CONTRACTOR or officer or employee of the CONTRACTOR.

6.21 Improper Consideration

CONTRACTOR shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of ICEMA in an attempt to secure favorable treatment regarding this CONTRACT.

ICEMA, by written notice, may immediately terminate this CONTRACT if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of ICEMA with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

CONTRACTOR shall immediately report any attempt by an ICEMA employee or agent to solicit (either directly or through an intermediary) improper consideration from CONTRACTOR. The report shall be made to the supervisor or manager charged with supervision of the employee or ICEMA. In the event of a termination under this provision, ICEMA is entitled to pursue any available legal remedies.

6.22 Informal Dispute Resolution

In the event ICEMA determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this CONTRACT or breach thereof, the Parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties.

6.23 Legality and Severability

The Parties' actions under the CONTRACT shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this CONTRACT are specifically made severable. If a provision of the CONTRACT is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

6.24 Licenses, Permits and/or Certifications

CONTRACTOR shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. The CONTRACTOR shall maintain these licenses, permits and/or certifications in effect for the duration of this CONTRACT. CONTRACTOR will notify ICEMA immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this CONTRACT.

6.25 Material Misstatement/Misrepresentation

If during the course of the administration of this CONTRACT, ICEMA determines that CONTRACTOR has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to ICEMA, this CONTRACT may be immediately terminated. If this CONTRACT is terminated according to this provision, ICEMA is entitled to pursue any available legal remedies.

6.26 Mutual Covenants

The Parties to this CONTRACT mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

6.27 Reserved.

6.28 Notice of Delays

Except as otherwise provided herein, when either Party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this CONTRACT, that Party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other Party.

6.29 Ownership of Documents

All documents, data, products, graphics, computer programs and reports prepared by CONTRACTOR pursuant to the CONTRACT shall be considered property of ICEMA upon payment for services (and products, if applicable). All such items shall be delivered to ICEMA at the completion of work under the CONTRACT, subject to the requirements of Section I - Term of the CONTRACT. Unless otherwise directed by ICEMA, CONTRACTOR may retain copies of such items.

6.30 Reserved.

6.31 Air, Water Pollution Control, Safety and Health

CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this CONTRACT.

6.32 Records

CONTRACTOR shall maintain all records and books pertaining to the delivery of services under this CONTRACT and demonstrate accountability for CONTRACT performance. All records shall be complete and current and comply with all CONTRACT requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the CONTRACT.

All records relating to the CONTRACTOR's personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this CONTRACT shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

6.33 Relationship of the Parties

Nothing contained in this CONTRACT shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

6.34 Release of Information

No news releases, advertisements, public announcements or photographs arising out of the CONTRACT or CONTRACTOR's relationship with ICEMA and/or County may be made or used without prior written approval of ICEMA.

6.35 Representation of ICEMA

In the performance of this CONTRACT, CONTRACTOR, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of ICEMA.

6.36 Strict Performance

Failure by a Party to insist upon the strict performance of any of the provisions of this CONTRACT by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this CONTRACT thereafter.

6.37 Subcontracting

CONTRACTOR agrees not to enter into any subcontracting agreements for work contemplated under the CONTRACT without first obtaining written approval from ICEMA. Any subcontracting shall be subject to the same terms and conditions as CONTRACTOR. CONTRACTOR shall be fully responsible for the performance and payments of any subcontractor's Contract.

6.38 Reserved.

6.39 Reserved.

6.40 Time of the Essence

Time is of the essence in performance of this CONTRACT and of each of its provisions.

6.41 Venue

The Parties acknowledge and agree that this CONTRACT was entered into and intended to be performed in San Bernardino County, California. The Parties agree that the venue of any action or claim brought by any Party to this CONTRACT will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each Party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this CONTRACT is brought by any third-party and filed in another venue, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

6.42 Conflict of Interest

CONTRACTOR shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and ICEMA. CONTRACTOR shall make a reasonable effort to prevent employees, CONTRACTOR, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event ICEMA determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by ICEMA and such conflict may constitute grounds for termination of the CONTRACT. This provision shall not be construed to prohibit employment of persons with whom CONTRACTOR's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

6.43 Former County Administrative Officials

CONTRACTOR agrees to provide, or has already provided information on former ICEMA and/or County of San Bernardino administrative officials (as defined below) who are employed by or represent CONTRACTOR. The information provided includes a list of former County administrative officials who terminated ICEMA and/or County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of CONTRACTOR. For purposes of this provision, "ICEMA and/or County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

6.44 Disclosure of Criminal and Civil Procedures

ICEMA reserves the right to request the information described herein from the CONTRACTOR. Failure to provide the information may result in a termination of the CONTRACT. ICEMA also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The CONTRACTOR also may be requested to provide information to clarify initial responses. Negative information discovered may result in CONTRACT termination.

CONTRACTOR is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the

response is affirmative, the CONTRACTOR will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the CONTRACTOR is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the CONTRACTOR will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to ICEMA. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

6.45 Copyright

ICEMA shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this CONTRACT including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this CONTRACT shall acknowledge ICEMA as the funding agency and CONTRACTOR as the creator of the publication. No such materials, or properties produced in whole or in part under this CONTRACT shall be subject to private use, copyright or patent right by CONTRACTOR in the United States or in any other country without the express written consent of ICEMA. Copies of all educational and training materials, curricula, audio/visual aids, printer material, and periodicals, assembled pursuant to this CONTRACT must be filed with ICEMA prior to publication.

6.46 Reserved.

6.47 Iran Contracting Act

IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. (Applicable for all Contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code section 2204(a), the CONTRACTOR certifies that at the time the CONTRACT is signed, the CONTRACTOR signing the CONTRACT is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.

Contractors are cautioned that making a false certification may subject the CONTRACTOR to civil penalties, termination of existing CONTRACT, and ineligibility to bid on a CONTRACT for a period of three (3) years in accordance with Public Contract Code section 2205.

6.48 Reserved.

6.49 Reserved.

6.50 Public Health Authority

ICEMA is a public health authority as that term is defined in 45 CFR 164.501, and is authorized by law to collect and receive protected health information as set forth in 45 CFR 164.512.

6.51 No Third-Party Beneficiaries

The Parties do not intend to confer and this CONTRACT shall not be construed to confer any rights to any person, group, corporation or entity other than the Parties.

7. INDEMNIFICATION AND INSURANCE REQUIREMENTS

7.1 Indemnification

The CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless ICEMA and/or the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by ICEMA and/or the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. The CONTRACTOR indemnification obligation applies to the ICEMA and/or County's "active" as well as "passive" negligence but does not apply to ICEMA and/or the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

7.2 Additional Insured

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming ICEMA and/or the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for ICEMA and/or the County to vicarious liability but shall allow coverage for ICEMA and/or the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

7.3 Waiver of Subrogation Rights

The CONTRACTOR shall require the carriers of required coverages to waive all rights of subrogation against ICEMA and/or the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the CONTRACTOR and CONTRACTOR's employees or agents from waiving the right of subrogation prior to a loss or claim. The CONTRACTOR hereby waives all rights of subrogation against ICEMA and/or the County.

7.4 Policies Primary and Non-Contributory

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by ICEMA and/or the County.

7.5 Severability of Interests

The CONTRACTOR agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the CONTRACTOR, ICEMA and/or the County or between ICEMA and/or the County and any other insured or additional insured under the policy.

7.6 Proof of Coverage

The CONTRACTOR shall furnish Certificates of Insurance to ICEMA and/or the County Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to ICEMA, and CONTRACTOR shall maintain such insurance from the time CONTRACTOR commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Contract, the CONTRACTOR shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

7.7 Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

7.8 Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

7.9 Failure to Procure Coverage

In the event that any policy of insurance required under this Contract does not comply with the requirements, is not procured, or is canceled and not replaced, ICEMA and/or the County has the right but not the obligation or duty to cancel the Contract or obtain insurance if it deems necessary and any premiums paid by ICEMA and/or the County will be promptly reimbursed by the CONTRACTOR or ICEMA payments to the CONTRACTOR will be reduced to pay for ICEMA and/or County purchased insurance.

7.10 Insurance Review

Insurance requirements are subject to periodic review by ICEMA and/or the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of ICEMA and/or the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against ICEMA and/or the County, inflation, or any other item reasonably related to ICEMA's and/or the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Contract. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of ICEMA and/or the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of ICEMA and/or the County.

- 7.11** The CONTRACTOR agrees to provide insurance set forth in accordance with the requirements herein. If the CONTRACTOR uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the CONTRACTOR agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the CONTRACTOR shall secure and maintain throughout the Contract term the following types of insurance with limits as shown:

- 7.11.1** Workers' Compensation/Employer's Liability - A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the CONTRACTOR and all risks to such persons under this contract.

If CONTRACTOR has no employees, it may certify or warrant to ICEMA and/or the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

- 7.11.2** Commercial/General Liability Insurance - The CONTRACTOR shall carry General Liability Insurance covering all operations performed by or on behalf of the CONTRACTOR providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- A. Premises operations and mobile equipment.
- B. Products and completed operations.
- C. Broad form property damage (including completed operations).
- D. Explosion, collapse and underground hazards.
- E. Personal injury.
- F. Contractual liability.
- G. \$2,000,000 general aggregate limit.

- 7.11.3** Automobile Liability Insurance - Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the CONTRACTOR is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the CONTRACTOR owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

- 7.11.4** Umbrella Liability Insurance - An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary

coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

7.11.5 Professional Liability - Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

or

Errors and Omissions Liability Insurance - Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

or

Directors and Officers Insurance coverage with limits of not less than one million (\$1,000,000) shall be required for Contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of ICEMA and/or the County.

If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the state of the contract work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of five (5) years after contract completion.

7.11.6 Cyber Liability Insurance - CONTRACTOR, at its sole cost and expense, shall carry Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect ICEMA/the involved County entities and cover breach response cost as well as regulatory fines and penalties.

8. TERMINATION

8.1 Termination: Either Party may terminate this Contract upon giving the other Party one hundred and eighty (180) days prior written notice to the other Party in addition to any other remedy or right contained in this Contract. This right of termination is additive to other rights of termination identified within this Contract and does not preclude the exercise of those other rights.

8.2 Government Funding: Continuation of this Contract is subject to the appropriation of funds for such purpose by ICEMA Board of Directors. If funds for continued payment are not appropriated, ICEMA may terminate this project and CONTRACTOR will relieve ICEMA of any further obligation under this Contract.

8.3 Effect of Termination: Upon the expiration or termination of this Contract, the Parties shall:

A. Immediately pay to the other all amounts due under this Contract; CONTRACTOR will refund to ICEMA a prorated amount of any use or prepaid charges for the Licensed Products and/or Services, including technical support charges.

B. Subject to any Indemnification and Insurance Requirement expressed in section 7 surviving the term of this Contract, and except as covered in Section 6.10, CONTRACTOR shall not be liable for any post-termination claims, actions, losses, damages and/or liability arising out of ICEMA's unauthorized or unlicensed post-termination use of any Deliverable (except New IP as set forth in Section 11.2) or Licensed Information under the Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by ICEMA and/or the County on account of any claim.

- C. Any and all post-termination service, maintenance, updates, and support shall require a written Statement of Work (“Post-Termination Services”) unless such Post-Termination Services already have been paid for during the term of the Contract. All Post-Termination Services will be provided by CONTRACTOR at their then current hourly custom development rates. Payment for all Post-Termination Services shall be due with 30 days of CONTRACTOR’s invoice date.
- D. ICEMA shall be prohibited from any and all sublicensing, reproduction, distribution or preparing of derivative works of CONTRACTOR’s Pre-Existing IP. Without limiting the foregoing, ICEMA may not access or manipulate CONTRACTOR’s Source Code. To the extent that this Section 8.3(D) conflicts with any other provisions of the Contract, this Section 8.3(d) shall be controlling.
- E. Notwithstanding anything to the contrary herein, each Party shall have the right to terminate the Contract, including all exhibits then in effect, at the end of the initial term or any renewal term, by written notice at least one hundred and eighty (180) days in advance of the last day of the initial term or any renewal term thereafter.

9. CORRECTION OF PERFORMANCE DEFICIENCIES

- 9.1 Failure by either Party to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.
- 9.2 In the event of a non-cured breach, ICEMA may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - A. Afford CONTRACTOR thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of ICEMA; and/or
 - B. Terminate this Contract for cause, by giving written notice specifying the effective date and reason which shall be not less than fifteen (15) days after the delivery of the written notice.

10. LIMITATION OF LIABILITY

Each Party shall not, under any circumstances, be liable to the other Party for consequential, indirect, incidental, special, punitive, or exemplary damages or losses arising out of or related to this Contract, even if that Party is advised of the likelihood of such damages occurring. Contractor’s liability for any damages arising out of or in any manner related to this Contract shall be limited to claims not exceeding \$1,000,000.00 (including, but not limited to, claims for breach of contract, breach of warranty, negligence, strict liability, or tort). This limitation of liability shall not apply to claims arising out of (1) obligations of indemnity; (2) applicable insurance coverage; (3) breach of obligations of confidentiality and non-disclosure; (3) violation of law; (4) or gross negligence or willful misconduct.

11. DATA AND INTELLECTUAL PROPERTY

- 11.1 ICEMA Data: All ICEMA data provided to CONTRACTOR remains at all times the property of the ICEMA unless otherwise specified by a Service Order. CONTRACTOR will not to use or make available any personally identifiable information or patient health information other than for performing the services outlined in a Service Order, and for use in an aggregated manner to monitor, operate, and conduct statistical analyses relevant to the application’s proper functioning and maintenance. CONTRACTOR will not in any way transfer to any third-party any Confidential Information of ICEMA.
- 11.2 Grant of License to CONTRACTOR’s Pre-existing IP and Ownership of New IP: All Intellectual Property Rights connected to the CONTRACTOR pre-existing materials such as architectural

structure, modules, processes, and Know-How that may be used in Deliverables ("Pre-existing IP"), shall remain owned by CONTRACTOR . CONTRACTOR agrees to grant to ICEMA a royalty-free, worldwide, transferable, non-exclusive, use license for these architectural structures, modules, and processes that may be used solely in conjunction with the Deliverables and services performed under Service Orders and in accordance with the license selected below at Exhibit A, conditioned upon full payment of the Service Order from which the Deliverable containing Pre-Existing IP originates. This license may not be transferred, and ICEMA may not sublicense, use, reproduce, distribute or prepare derivative works of CONTRACTOR's Pre-Existing IP except to the extent strictly necessary to fulfill the purpose of a Service Order. New Deliverables utilizing the same Pre-Existing IP may require another license for that new Deliverable. New Custom Intellectual Property developed by the Parties in the course of performing a Service Order shall be owned by the Party that developed the Intellectual Property and in the case of derivative works, it shall be owned by the Party who owns the work from which the derivative is made, or as otherwise set forth in the Service Order. In the case of CONTRACTOR's Software products licensed per Exhibit A, CONTRACTOR shall own all Intellectual Property related to or arising out of any Service Order which licenses those products or Pre-Existing IP. Notwithstanding the last sentence, where a Service Order is directed towards creation of a Deliverable(s) for ICEMA, to the extent new Intellectual Property is embodied by or contained within the Deliverable(s), ICEMA shall own such Intellectual Property as a Work Made for Hire and CONTRACTOR hereby assigns and grants all other Intellectual Property rights embodied by and contained within such Deliverable(s).

12. NOTICES

Any notice required to be given by either Party to the other shall be deemed given if in writing on the date of receipt, or actual or attempted delivery, and if deposited in the United States mail, shall be sent in registered or certified form with return receipt requested, postage prepaid, addressed to the notified Party at the address set forth below, or to such other address as a Party may designate from time to time by means of notice given hereunder to the other Party.

All written notices provided for in this Contract or which either Party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other Party as follows:

To ICEMA:

EMS Administrator
ICEMA
1425 South "D" Street
San Bernardino, CA 92415-0060

To CONTRACTOR:

Michael McBrady, CEO
ImageTrend, Inc.
20855 Kensington Blvd.
Lakeville, MN 55044

Notice shall be deemed communicated two (2) working days from the time of mailing if mailed as provided in this paragraph.

13. ENTIRE CONTRACT

This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive Contract between the Parties hereto. Any prior contract, agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any Party or any representative of any Party other than those expressly contained herein. Each Party has carefully read this Contract and signs the same of its own free will.

14. ELECTRONIC SIGNATURE COUNTERPARTS

This CONTRACT may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same CONTRACT. The Parties shall be entitled to sign and transmit an electronic signature of this CONTRACT (whether by facsimile, PDF or other email transmission), which signature shall be binding on the Party whose name is contained therein. Each Party providing an electronic signature agrees to promptly execute and deliver to the other Party an original signed CONTRACT upon request.

IN WITNESS THEREOF, ICEMA and CONTRACTOR have each caused this CONTRACT to be subscribed by its respective duly authorized officers, on its behalf.

INLAND COUNTIES EMERGENCY MEDICAL AGENCY

▶

Curt Hagman, Chairman, Board of Directors

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell, Secretary

By _____
Deputy

IMAGETREND, INC.

(Print or type name of corporation, company, contractor, etc.)

By ▶ _____
(Authorized signature - sign in blue ink)

Name _____
(Print or type name of person signing contract)

Title _____
(Print or Type)

Dated: _____

Address _____

FOR COUNTY USE ONLY

Approved as to Legal Form
▶

John Tubbs II, Deputy County Counsel
Date _____

Reviewed for Contract Compliance
▶

Date _____

Reviewed/Approved by Department
▶

Thomas G. Lynch, EMS Administrator
Date _____