

Texas Department of Information Resources
APPENDIX E TO CONTRACT DIR -CPO-4408
TERM SUBSCRIPTION AGREEMENT

THIS TERM SUBSCRIPTION AGREEMENT ("Agreement") is made as of the Effective Date by and between Image API, LLC, a State of Florida limited liability company with offices located at 2002 Old St. Augustine Rd., Bldg. D, Tallahassee, FL 32301 ("Service Provider or Vendor"), and the individual or entity identified as Customer on the signature page of this Agreement ("Customer"), each a "Party".

WHEREAS, Customer desires to obtain the Term Subscription as defined herein, and Vendor wishes to provide such services to Customer;

WHEREAS, Vendor and Customer desire to set forth in DIR CONTRACT NO. DIR-CPO-4408 and this Agreement the terms applicable thereto;

NOW, THEREFORE, in consideration of the mutual covenants and restrictions contained herein, the parties hereto agree as follows:

1. DEFINITIONS

1.1. Capitalized terms in the Agreement have the following meanings:

- (a) **Authorized User** – The term "Authorized User" means an employee of the Customer that is authorized by the Customer to use the Software Product as an individual user.
- (b) **Catalog** – The term "Catalog" means a configuration specific to a business process and Authorized User population.
- (c) **Concurrent Users** – The term "Concurrent Users" means the number of Authorized Users that are simultaneously logged in to the Software Product at any given point of time, irrespective of whether any such Authorized User is using resources related to the Software Product.
- (d) **Customer Data** – The term "Customer Data" means (a) all data and files uploaded to the software by Authorized Users, and (b) all data and files created by any Authorized User as a result of the use of the Software Product.
- (e) **Documentation** – The term "Documentation" means the User's Guide and any manuals or instructions that the Vendor will make available to the Customer.
- (f) **Effective Date** – The term "Effective Date" means the date this Agreement is signed by both Vendor and Customer, whichever is later.
- (g) **Expiration Date** – The term "Expiration Date" is calculated as the Implementation Date plus the Initial Subscription Term. Upon renewal, the Expiration Date is updated per the annual renewal period.
- (h) **Initial Subscription Term** – The term "Initial Subscription Term" means the duration of the initial term, commencing on the Implementation Date.
- (i) **Implement** – The term "implement" means to install, configure, test, and make operational the Software Product and associated catalog(s) for Authorized User access.
- (j) **Implementation Date** – The term "Implementation Date" means the date that Vendor implements the Software Product in the Production Environment.

- (k) **Level I Support** – The term “Level I Support” means handling general issues or inquiries related to Customer computers, access, user rights and privileges, password resets, general “how to” user inquiries, and issues – including, but not limited to – application administration, network connectivity, and browser behavior.
- (l) **Level II Support Services** – The term “Level II Support Services” means the handling of application issues related to the Software product.
- (m) **Product Updates** – The term “Product Updates” means new versions of the Software Product, containing new functionality, break/fix, modifications, or enhancements.
- (n) **Production Environment** – The term “Production Environment” means that technical setting in which the Vendor’s products and services are put into actual commercial operation for their intended use by the Customer.
- (o) **Software Product** – The term “Software Product” means the licensed Vendor software, as well as any Documentation, for Software Product and catalog(s) licensed by Customer from Vendor.
- (p) **Subscription License Term** – The term “Subscription License Term” means a period of time commencing on the Implementation Date and continuing until this Agreement is terminated or canceled.

2. TERM LICENSE

- 2.1. **Software Product Term License.** Vendor hereby grants to Customer a non-exclusive and non-transferable license to access and use the Software Product for the Subscription License Term (as defined in Section 5.2), and receive the maintenance and support services described in this Agreement. The Software Product Term License includes the right of Customer to allow its Authorized Users to access the Software Product both from Customer’s facilities and remotely from offsite locations. Customer’s term license is limited to the number of Authorized Users and Concurrent Users as specified in Exhibit A.
- 2.2. **Product Updates.** Vendor shall make available to the Customer product updates to include new functionality, break/fix, modifications, or enhancements. Customer agrees to keep the version of the Software Product current within three product updates, unless otherwise agreed by the parties. Customer is responsible for making any process or technical changes required as a result of a product update, including testing and validation of any change. If applicable, Customer shall apply the product update in a test environment for Customer validation prior to migrating the product update to the Production Environment. Vendor shall provide instructions for applying the product update, and is available to provide project assistance for additional fees.
- 2.3. **Annual Checkpoint.** Upon reasonable notice to Customer and upon a mutually agreed schedule between the parties, Vendor shall be permitted to audit Customer’s use of the Software Product in order to determine Customer’s compliance with the licensing terms of this Agreement. Additional fees will apply if requirements are not in accordance with the maximum thresholds described herein. Customer will provide Vendor with reasonable assistance to conduct such audit and checkpoint.

3. CUSTOMER OBLIGATIONS

- 3.1. **Customer Warranties.** Customer warrants that it will use the Software Product and Documentation solely for the purposes which they are intended. Customer warrants that its use will comply with all applicable laws, regulations and ordinances, including any laws regarding the export of data or software.
- 3.2. **Responsibilities.** Customer is responsible for all information inputted, edited, authored or otherwise submitted by Customer into the Software Product and catalog(s). Vendor will have no responsibility to review Customer Data

or any information entered by Customer or its Authorized Users. Customer agrees Vendor will have no liability as to the accuracy of any content provided by Customer or its Authorized Users.

- 3.3. **Access.** Customer shall make available reasonable access to personnel, facilities, computers, software and data of Customer as Services Provider deems necessary to provide Level II support services as described in Section 4.3 herein.
- 3.4. **Infrastructure.** Customer shall be responsible for servers, operating systems, databases, storage, and other system software, infrastructure components, and network connectivity required for the operation of the Software Product. This includes patching and proper system maintenance.
- 3.5. **Backups and Recovery.** Customer shall be responsible for routine backups and recovery, as well as planning and execution of disaster recovery.
- 3.6. **Security.** Customer shall be responsible for physical security, application security, data security, and other infrastructure security management required to protect the files and data stored and managed in the Software Product.
- 3.7. **Level I Support Services.** Customer is responsible for use of compatible software in accordance with Software Product specifications. Customer shall provide “Level I Support” to include handling of issues unrelated to the Software Product:
 - (a) Customer is responsible for handling general issues or inquiries related to Customer computers, access, user rights and privileges, password resets, general “how to” user inquiries, and issues – including but not limited to – application administration, network connectivity, and browser behavior.
 - (b) Authorized Users will contact their internal help desk or internal subject matter expert(s) first, to qualify their issue and rule out unrelated issues.
 - (c) Up to three (3) contacts from Customer’s Level I Support will escalate system-related issues to Vendor for Level II assistance.
 - (d) Regular Customer contact for Level I Support or non-Level II Support issues will be subject to additional fees.

4. MAINTENANCE AND SUPPORT SERVICES

- 4.1. **Scheduled Maintenance.** Vendor shall provide product updates that include enhancements or break/fix modifications to the Software Product. The availability of product updates is subject to a regularly scheduled monthly maintenance window. The regularly scheduled monthly maintenance windows and any periods of unavailability due to maintenance, for which Customer is given advance notice, are considered “Scheduled Maintenance” for purposes of this Agreement.
- 4.2. **Level II Support Services.** Vendor shall provide remote “Level II Support Services” to include the handling of issues related to the Software Product(s):
 - (a) Level II Support is defined as resolving issues related to the Software Product(s).
 - (b) Level II Support Services are provided by Vendor via customer portal and toll free phone number during normal business hours (7:00 AM – 5:00 PM Central Time) Monday through Friday, excluding holidays. Up to three (3) logins are provided for Customer access to the customer portal.
 - (c) Level II Support tickets can be initiated or reviewed through the customer portal.

5. PAYMENT TERMS

- 5.1. **Service Fees.** Vendor shall invoice Customer for the Software Product for the Subscription License Term in accordance with the Fee Schedule attached to this Agreement and in accordance with Appendix C of DIR CONTRACT NO. DIR-CPO-4408. Invoicing will commence in the month of the Implementation Date and will continue through the month of the Expiration Date. Customer shall pay in U.S. dollars in accordance with Appendix A, Section 7 of DIR CONTRACT NO. DIR-CPO-4408. Taxes shall be handled in accordance with Appendix A, Section 7E of DIR CONTRACT NO. DIR-CPO-4408.
- 5.2. **Renewal.** After the Initial Subscription Term, the Subscription License Term may renew by Customer providing Vendor thirty days written notice prior to the then expiration date. Upon DIR written approval by an amendment, Vendor may increase the MSRP of fees annually by providing written notice to Customer at least 120 days prior to the renewal period. Vendor may not decrease percentage (%) off MSRP during the term of the contract but Vendor may increase percentage (%) off MSRP during the term of the contract.
- 5.3. **Technical Services.** Any additional services provided by Vendor to Customer that are not provided for under this Agreement shall be invoiced to Customer by Vendor at the time and material rates of Vendor prevailing at the time such services are rendered as identified in Appendix C of DIR CONTRACT NO. DIR-CPO-4408. This can include requests for enhancements, additional testing support, or upgrade project work.

6. TERM/TERMINATION

- 6.1. **Termination Limitations.** This Agreement shall be terminated or canceled in accordance with Appendix A, Section 10B of DIR CONTRACT NO. DIR-CPO-4408. Upon termination or cancellation of this Agreement, including cancelation due to non-payment, Vendor shall be entitled to deactivate Software Product Licenses and disable use of the Software Product.

7. INTELLECTUAL PROPERTY

- 7.1. **Intellectual Property.** Intellectual Property shall be handled in accordance with Appendix A, Section 4 of DIR CONTRACT NO. DIR-CPO-4408
- 7.2. **Customer Data.** Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, including all intellectual property rights relating thereto, subject to the rights and permissions granted in Section 7.3 below.
- 7.3. **Consent to Use Customer Data.** Customer hereby irrevocably grants all such rights and permissions in or relating to the Customer Data to Vendor and its personnel as are necessary to perform the Level II support services and to exercise its rights hereunder.

8. WARRANTY

- 8.1. **Maintenance and Support Services Warranty.** The Maintenance and Support Services to be provided by Vendor hereunder shall be performed in a timely and professional manner by qualified software support personnel familiar with the Software Product and shall conform to the standards generally observed in the industry for similar services at the time such services are rendered. Customer's sole remedy in the event of a breach shall be re-performance of the services.
- 8.2. **WARRANTY LIMITATION. THE SERVICE WARRANTY IN SECTION 8.1 IS IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES OF MERCHANTABILITY. VENDOR HEREBY DISCLAIMS AND CUSTOMER HEREBY WAIVES, ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED**

WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES OF MERCHANTABILITY. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE SERVICES AND SOFTWARE PRODUCT ARE PROVIDED TO CUSTOMER “AS IS.”

- 8.3. **Third Party Technology Disclaimer.** Vendor makes no representations or warranties with respect to third party technology. Vendor shall not be responsible for the software in connection with third party technology.
- 8.4. **Express Warranties.** Customer hereby acknowledges and agrees that Vendor (including officers, employees, agents, directors and independent contractors of Vendor) has not made or granted any express warranties concerning the Software Product warranty.
- 8.5. **Indemnification.** Indemnification shall be handled in accordance with Appendix A, Section 9A of DIR CONTRACT NO. DIR-CPO-4408.
- 8.6. **Limitation of Damages.** LIMITATION OF LIABILITY SHALL BE HANDLED IN ACCORDANCE WITH APPENDIX A, SECTION 9K OF DIR CONTRACT NO. DIR-CPO-4408.
- 8.7. **Data Security.** Vendor will employ security measures in accordance with applicable industry practices and agrees to comply with all applicable laws and regulations related to data security and privacy.

9. CONFIDENTIALITY

- 9.1. **Confidential Information.** To the extent allowable by the Texas Public Information Act, each Party may disclose to the other Party Confidential Information. To the extent allowable by the Texas Public Information Act, except as otherwise agreed in writing, each Party agrees that: (i) all information communicated to it by the other in connection with this Agreement and identified as confidential; and (ii) all information communicated to it that reasonably should have been understood by the receiving Party, because of the descriptions, circumstances of the disclosure, or the nature of the information itself, to be confidential to the disclosing Party, will be “Confidential Information” for purposes of this Agreement. Such Confidential Information will be deemed to have been received in confidence, and will be used only for the purposes of this Agreement. Vendor’s Confidential Information includes, but is not limited to, the Software Product, development plans, the Documentation, screenshots, and other materials related thereto. Customer Confidential Information includes, but is not limited to, Customer Data and Files.
- 9.2. **Protection of Confidential Information.** Each Party’s Confidential Information will remain the property of that Party except as otherwise expressly provided in this Agreement. Each of the parties will use at least the same degree of care to safeguard and to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid the unauthorized disclosure or publication of its information of a similar nature, and in any event, no less than reasonable care. Each Party may disclose relevant aspects of the other Party’s Confidential Information to its employees to the extent such disclosure is reasonably necessary for the performance of its obligations, or the enforcement of its rights, under this Agreement; provided, however, that such Party will use reasonable efforts to ensure that all such persons comply with these confidentiality provisions. Each Party may disclose the other Party’s Confidential Information to third party Vendors provided that such third parties are subject to written confidentiality obligations substantively similar to this Agreement and are restricted to using the Confidential Information for the sole purpose of providing the contracted services to the Party. Each Party will be responsible for any improper disclosure of Confidential Information by such Party’s employees, agents, or contractors.
- 9.3. **Exclusion of Confidential Information.** This Section 9 will not apply to any particular information that either Party can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving Party; (iii) was in the possession of the receiving Party at the time of disclosure to it and was not the subject of a pre-existing confidentiality obligation; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information (without corresponding confidentiality obligations) to it; or (v) was independently developed by or for

the receiving Party without use of the Confidential Information of the disclosing Party. In addition, a Party will not be considered to have breached its obligations under this Section 9 for disclosing Confidential Information of the other Party to the extent required to satisfy any legal requirement of a competent governmental or regulatory authority, provided that promptly upon receiving any such request and to the extent that it may legally do so, such Party advises the other Party prior to making such disclosure and provides a reasonable opportunity to the other Party to object to such disclosure, take action to ensure confidential treatment of the Confidential Information, or (subject to applicable law) take such other action as it considers appropriate to protect the Confidential Information.

- 9.4. **Notification.** Each Party will: (a) notify the other Party promptly of any actual or suspected material unauthorized possession, use or knowledge, or attempt thereof, of the other Party's Confidential Information by any person that may become known to such Party; (b) promptly furnish to the other Party details of the unauthorized possession, use or knowledge, or attempt thereof, and use reasonable efforts to assist the other Party in investigating or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt thereof, of Confidential Information; (c) use reasonable efforts to cooperate with the other Party in any litigation and investigation against third parties deemed necessary by the other Party to protect its proprietary rights; and (d) promptly use reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of Confidential Information.

10. GENERAL PROVISIONS

- 10.1. **Cooperation.** Vendor and Customer hereby acknowledge that successful performance of the Services shall require Customer to cooperate with Vendor in good faith and to provide information as may be requested to provide the Services. Customer hereby agrees to provide such good faith cooperation and information.
- 10.2. **Personnel.** Vendor shall designate qualified resources of Vendor to perform the Services. Vendor may engage qualified independent contractors to perform the Services. The personnel assigned to perform the Services shall be determined solely by Vendor with Customer concurrence.
- 10.3. **Entire Agreement.** DIR CONTRACT NO. DIR-CPO-4408 and this Agreement contain the entire understanding of the parties and supersedes previous verbal and written communications, proposals and agreements between the parties concerning the subject matter hereof. In the event of a conflict in terms, the terms of DIR Contract No. DIR-CPO-4408 shall prevail.
- 10.4. **Assignments.** Assignments shall be handled in accordance with Appendix A, Section 3D of DIR CONTRACT NO. DIR-CPO-4408.
- 10.5. **Amendments and Modifications.** Except as provided herein, alterations, modifications or amendments of a provision of this Agreement shall not be binding unless such alteration, modification or amendment is in writing and signed by Vendor and Customer.
- 10.6. **Severability.** If a provision of this Agreement is rendered invalid, void or unlawful, the remaining provisions shall remain in full force and effect.
- 10.7. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original, but which together shall constitute one and the same instrument.
- 10.8. **Governing Law.** This Agreement shall be governed by the laws of the State of Texas without regard to any rules of Conflict or choice of laws, which require the application of laws of another jurisdiction. Venue for any court proceeding arising from any matter relating to this Agreement shall lie state courts located in Travis County, Texas. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.
- 10.9. **Notice.** Notices shall be handled in accordance with Appendix A, Section 12 of DIR CONTRACT NO. DIR-CPO-4408.

10.10. **Waiver.** Waiver of breach of this Agreement shall not constitute waiver of another breach. Failing to enforce a provision of this Agreement shall not constitute a waiver or create an estoppel from enforcing such provision. Any waiver of a provision of this Agreement shall not be binding unless such waiver is in writing and signed by the waiving Party.

10.11. **Relationship of the Parties.** Nothing herein shall be construed as creating a partnership, an employment relationship, or an agency relationship between the parties, or as authorizing either Party to act as agent for the other. Each Party shall maintain its separate identity.

10.12. **Arbitration.** Dispute Resolution shall be handled in accordance with Appendix A, Section 11A of DIR CONTRACT NO. DIR-CPO-4408.

10.13. **Assurances.** Each Party hereby represents and warrants that all representations, warranties, recitals, statements and information provided to the other Party under this Agreement are true, correct and accurate as of the Effective Date to the best of their knowledge.

10.14. **Force Majeure.** Force Majeure shall be handled in accordance with Appendix A, Section 11C of DIR CONTRACT NO. DIR-CPO-4408.

11. EXCLUSIONS

11.1. **Customer Software.** Vendor is not responsible for the maintenance or support of any software other than the Software Product named herein.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives:

VENDOR: Image API, LLC

CUSTOMER:

Print Name: _____

Print Name: _____

Signature: _____

Signature: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address: _____

Address: _____

Exhibit A
Agreement Terms

Agreement:

Effective Date	
Agency / Client Name	
Initial Subscription Term	
Initial Expiration Date	
Billing Frequency	

Product(s) and Catalog(s):

Product	
Catalog	
Maximum # of Authorized Users	
Maximum # of Concurrent Users	
Maximum # of Axiom Capture Users	

Fee Schedule in accordance with Appendix C of DIR CONTRACT NO. DIR-CPO-4408