

**AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN
THE CITY OF SALINAS AND BMI IMAGING SYSTEMS, INC.**

This Agreement for Professional Services (the "Agreement") is made and entered into this Seventh day of September, 2016, by and between the **CITY OF SALINAS**, a California Charter city and municipal corporation (hereinafter "City"), and **BMI IMAGING SYSTEMS, INC.**, a California Corporation, (hereinafter "Contractor" or "BMI").

RECITALS

WHEREAS, Contractor represents that it is specially trained, experienced, and competent to perform the special services which will be required by this Agreement; and

WHEREAS, Contractor is willing to render such professional services, as hereinafter defined, on the following terms and conditions.

NOW, THEREFORE, City and Contractor agree as follows:

TERMS

1. **Scope of Service.** The project contemplated and the scope of Contractor's services are described in Exhibit A, attached hereto and incorporated herein by reference.
2. **Term; Completion Schedule.** This Agreement shall commence on October 1, 2016, and shall terminate on June 30, 2017, unless extended in writing by either party upon (30) days written notice. This Agreement may be extended only upon mutual written consent of the parties, and may be terminated only pursuant to the terms of this Agreement.
3. **Compensation.** City hereby agrees to pay Contractor for services rendered the City pursuant to this Agreement on a time and materials basis according to the rates of compensation set forth in Exhibit A. The total amount of compensation to be paid under this Agreement shall not exceed **\$100,000.00**.
4. **Billing.** Contractor shall submit to City an itemized invoice, prepared in a form satisfactory to City, describing its services and costs for the period covered by the invoice. Except as specifically authorized by City, Contractor shall not bill City for duplicate services performed by more than one person. Contractor's bills shall include the following information to which such services cost or pertain:
 - a. A brief description of services performed;
 - b. The date the services were performed;
 - c. The number of hours spent and by whom;
 - d. A brief description of any costs incurred; and
 - e. The Contractor's signature.

Any such invoices shall be in full accord with any and all applicable provisions of this Agreement.

City shall make payment on each such invoice within thirty (30) days of receipt; provided, however, that if Contractor submits an invoice which is incorrect, incomplete, or not in accord with the provisions of this Agreement, City shall not be obligated to process any payment to Contractor until thirty (30) days after a correct and complying invoice has been submitted by Contractor. The City shall process undisputed portion immediately.

5. Additional Copies. If City requires additional copies of reports, or any other material which Contractor is required to furnish as part of the services under this Agreement, Contractor shall provide such additional copies as are requested, and City shall compensate Contractor for the actual costs related to the production of such copies by Contractor.

6. Responsibility of Contractor.

(A) By executing this Agreement, Contractor agrees that the services to be provided and work to be performed under this Agreement shall be performed in a fully competent manner. By executing this Agreement, Contractor further agrees and represents to City that the Contractor possesses, or shall arrange to secure from others, all of the necessary professional capabilities, experience, resources, and facilities necessary to provide the City the services contemplated under this Agreement and that City relies upon the professional skills of Contractor to do and perform Contractor's work. Contractor further agrees and represents that Contractor shall follow the current, generally accepted practices in this area to the profession to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding the projects for which the services are rendered under this Agreement.

7. Responsibility of City. To the extent appropriate to the projects to be completed by Contractor pursuant to this Agreement, City shall:

(A) Assist Contractor by placing at its disposal all available information pertinent to the projects, including but not limited to, previous reports and any other data relative to the projects. Nothing contained herein shall obligate City to incur any expense in connection with completion of studies or acquisition of information not otherwise in the possession of City.

(B) Examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by Contractor, and render verbally or in writing as may be appropriate, decisions pertaining thereto within a reasonable time so as not to delay the services of Contractor.

(C) Joseph DeSante, Building Official shall act as City's representative with respect to the work to be performed under this Agreement. Such person shall have the complete authority to transmit instructions, receive information, interpret and define City's policies and

decisions with respect to materials, equipment, elements, and systems pertinent to Contractor's services. City may unilaterally change its representative upon notice to the Contractor.

(D) Give prompt written notice to Contractor whenever City observes or otherwise becomes aware of any defect in a project.

8. **Acceptance of Work Not a Release.** Acceptance by the City of the work to be performed under this Agreement does not operate as a release of Contractor from professional responsibility for the work performed.

9. **Indemnification and Hold Harmless.** Contractor shall indemnify, defend, and hold City and its officers, employees, and agents harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to any property, or violation of any relevant federal, state or municipal law or ordinance, or other cause in connection with the negligent, reckless or intentional acts or omission of Contractor, its employees, subcontractors or agents, on account of the Contractor's employees, subcontractors or on account of the performance or character of the work except for any such claim arising from the sole negligence or willful misconduct of the City, its officers, employees or agents.

Contractor shall reimburse the City for all costs and expenses including, but not limited to court costs, incurred by the City in enforcing the provisions of this section.

10. **Insurance.**

(A) Contractor shall, throughout the duration of this Agreement, maintain comprehensive general liability and property insurance covering all operations of the Contractor, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

(B) Contractor shall maintain the following limits:

General Liability – Contractor shall at all times during the term of this Agreement maintain in effect a policy or policies having an A.M. Best rating of A-Class VIII or better for bodily injury liability, personal injury, advertising injury and property damage, including product liability insurance with limits on the Declarations page but not less than One Million and 00/100 Dollars (\$1,000,000) per occurrence and Two Million and 00/100 (\$2,000,000) in the general aggregate and products/completed operations aggregate insuring against any and all liability of the insured with respect to premises and products/completed operations. Liability coverage shall also include coverage for underground work and/or construction performed (if applicable). The coverage afforded to the additional insureds under Contractor's policy shall be primary insurance and non-contributory. If coverage is on a claims-made basis, the Contractor shall maintain "tail coverage" no less than ten (10) years after the expiration date of the policy or policies. Any policy or policies carrying a deductible more than \$25,000.00 may be subject to review by the City of the Contractor's financials.

Auto Liability – Contractor shall provide limits on the Declarations page but not less than One Million and 00/100 (\$1,000,000) combined single limit for bodily injury and property damage having an A.M. Best rating of A Class VIII or better. Automobile Liability Symbol 1 (any auto), if the Company owns automobiles. An entity without autos shall have “Non-owned and Hired” coverage (Auto Symbols 8 & 9). The City and its elected and appointed officers, boards, commissions, agents and employees shall be named as Additional Insureds.

Workers’ Compensation – In the event the Contractor hires employees, the Contractor shall provide Workers’ Compensation Insurance sufficient to meet its statutory obligation and to provide benefits for employees with claims of bodily injury or occupational disease (including resulting death) as required by the State of California and Employer’s Liability Insurance for One Million and 00/100 Dollars (\$1,000,000). Waiver of Subrogation for Workers’ Compensation in favor of the City of Salinas is required.

Professional Liability – Contractor shall provide limits on the Declarations Page but not less than One Million and 00/100 Dollars (\$1,000,000) per occurrence and One Million and 00/100 (\$1,000,000) in the aggregate having an A.M. Best rating of A-Class VIII or better.

(C) All insurance companies with the exception of “Worker’s Compensation” and “professional errors and omissions” affording coverage to the Contractor shall be required to add the City of Salinas, its officers, and, agents as additional “insured” by endorsement under the insurance policy and shall stipulate that this insurance policy will operate as primary insured for the work performed under this Agreement and that no other insurance affected by the City or other named insured will be called upon to contribute to a loss covered thereunder. The policy shall contain no special limitations on the scope of protection afforded to City, its officers, employees or agents.

(D) All insurance companies affording coverage to Contractor shall be insurance organizations authorized by the Insurance Commissioner to transact the business of insurance in the State of California.

(E) All insurance companies affording coverage shall provide ten (10) days written notice by certified mail to the City of Salinas should the policy be canceled or reduced in coverage before the expiration date. For the purpose of this notice requirement, any material change prior to expiration shall be considered cancellation.

(F) Contractor shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City, concurrently with the submittal of this Agreement. A statement on the insurance certificate which states that the insurance company “will endeavor” to notify the certificate holder, “but failure to mail such notice shall impose no obligation or liability of any kind upon the Contractor, its agents or representatives” does not satisfy the requirements of this subsection. The Contractor shall ensure that the authorized representative of the insurance company strikes the above quoted language from the certificate.

(G) Contractor shall provide a substitute certificate of insurance no later than ten (10) days prior to the policy expiration date. Failure by the Contractor to provide such a substitution and extend the policy expiration date shall be considered default by Contractor. In the event Contractor is unable to provide a substitute certificate of insurance within the time prescribed in this subsection, Contractor shall provide written confirmation of renewal, in a form satisfactory to the City, to act as proof of insurance only until such time as a certificate of insurance has been received by the City.

(H) Maintenance of insurance by the Contractor as specified in this Agreement shall in no way be interpreted as relieving the Contractor of any responsibility whatever and the Contractor may carry, at its own expense, such additional insurance as it deems necessary.

11. Access to Records. Contractor shall maintain all preparatory books, records, documents, accounting ledgers, and similar materials including but not limited to calculation and survey notes relating to work performed for the City under this Agreement on file for at least three (3) years following the date of final payment to Contractor by City. Any duly authorized representative(s) of City shall have access to such records for the purpose of inspection, audit, and copying at reasonable times during Contractor's usual and customary business hours. Contractor shall provide proper facilities to City's representative(s) for such access and inspection.

12. Assignment. It is recognized by the parties hereto that a substantial inducement to City for entering into this Agreement was, and is, the professional reputation and competence of Contractor. This Agreement is personal to Contractor and shall not be assigned by it without express written approval of the City.

13. Changes to Scope of Work. City may at any time, and upon a minimum of ten (10) days written notice, seek to modify the scope of services to be provided for any project to be completed under this Agreement. Contractor shall, upon receipt of said notice, determine the impact on both time and compensation of such change in scope and notify City in writing. Rate of compensation shall be based upon the Contractor's rates shown in **Exhibit A** of this Agreement. Upon agreement between City and Contractor as to the extent of said impacts to time and compensation, an amendment to this Agreement shall be prepared describing such changes. Execution of the amendment by City and Contractor shall constitute the Contractor's notice to proceed with the changed scope.

14. Ownership of Documents. Title to all final documents, including drawings, specifications, data, reports, summaries, correspondence, photographs, computer software (if purchased on the City's behalf), video and audio tapes, software output, and any other materials with respect to work performed under this Agreement shall vest with City at such time as City has compensated Contractor, as provided herein, for the services rendered by Contractor in connection with which they were prepared. City agrees to hold harmless and indemnify the Contractor against all damages, claims, lawsuits, and losses of any kind

including defense costs arising out of any use of said documents, drawings, and/or specifications on any other project without written authorization of the Contractor.

15. Termination.

(A) City shall have the authority to terminate this Agreement, upon written notice to Contractor, as follows:

(1) If in the City's opinion the conduct of the Contractor is such that the interest of the City may be impaired or prejudiced, or

(2) For any reason whatsoever.

(B) Upon termination, Contractor shall be entitled to payment of such amount as fairly compensates Contractor for all work satisfactorily performed up to the date of termination based upon the Contractor's rates shown in **Exhibit A**, except that:

(1) In the event of termination by the City for Contractor's default, City shall deduct from the amount due Contractor the total amount of additional expenses incurred by City as a result of such default. Such deduction from amounts due Contractor are made to compensate City for its actual additional costs incurred in securing satisfactory performance of the terms of this Agreement, including but not limited to, costs of engaging another Contractor(s) for such purposes. In the event that such additional expenses shall exceed amounts otherwise due and payable to Contractor hereunder, Contractor shall pay City the full amount of such expense.

(C) In the event that this Agreement is terminated by City for any reason, Contractor shall:

(1) Upon receipt of written notice of such termination promptly cease all services on this project, unless otherwise directed by City; and

(2) Deliver to City all documents, data, reports, summaries, correspondence, photographs, computer software output, video and audio tapes, and any other materials provided to Contractor or prepared by or for Contractor or the City in connection with this Agreement. Such material is to be delivered to City in completed form; however, notwithstanding the provisions of Section 15 herein, City may condition payment for services rendered to the date of termination upon Contractor's delivery to the City of such material.

(D) In the event that this Agreement is terminated by City for any reason, City is hereby expressly permitted to assume the projects and complete them by any means, including but not limited to, an agreement with another party.

(E) The rights and remedy of the City and Contractor provided under this Section are not exclusive and are in addition to any other rights and remedies provided by law or appearing in any other section of this Agreement.

16. Compliance with Laws, Rules, and Regulations. Services performed by Contractor pursuant to this Agreement shall be performed in accordance and full compliance with all applicable federal, state, and City laws and any rules or regulations promulgated thereunder.

17. Exhibits Incorporated. All exhibits referred to in this Agreement and attached to it are hereby incorporated in it by this reference. In the event there is a conflict between and of the terms of this Agreement and any of the terms of any exhibit to the Agreement, the terms of the Agreement take precedence and shall control the respective duties and liabilities of the parties.

18. Independent Contractor. It is expressly understood and agreed by both parties that Contractor, while engaged in carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and not an employee of the City. Contractor expressly warrants not to represent, at any time or in any manner, that Contractor is an employee or servant of the City.

19. Integration and Agreement. This Agreement represents the entire understanding of City and Contractor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters contained herein. This Agreement may not be modified or altered except by amendment in writing signed by both parties.

20. Jurisdiction. This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in the State of California, in the County of Monterey or in the appropriate federal court with jurisdiction over the matter.

21. Severability. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of the Agreement shall continue to be in full force and effect.

22. Notices.

(A) Written notices to the City hereunder shall, until further notice by City, be addressed to:

Joseph DeSante, Building Official
65 W. Alisal Street, Suite 101
Salinas, California 93901

With a copy to:

City Attorney
City of Salinas
200 Lincoln Avenue
Salinas, California 93901

(B) Written notices to the Contractor shall, until further notice by the Contractor, be addressed to:

Will Whitney
BMI Imaging Systems, Inc.
1115 E. Arques Ave.
Sunnyvale, CA 94085

(C) The execution of any such notices by the Building Official of the City shall be effective as to Contractor as if it were by resolution or order of the City Council, and Contractor shall not question the authority of the City Manager to execute any such notice.

(D) All such notices shall either be delivered personally to the other party's designee named above, or shall be deposited in the United States Mail, properly addressed as aforesaid, postage fully prepaid, and shall be effective the day following such deposit in the mail.

23. Nondiscrimination. During the performance of this Agreement, Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, creed, sex, national origin, familial status, sexual orientation, age (over 40 years) or disability. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, ancestry, creed, sex, national origin, familial status, sexual orientation, age (over 40 years) or disability.

24. Conflict of Interest. Contractor warrants and declares that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, in any manner or degree which will render the services required under the provisions of this Agreement a violation of any applicable local, state or federal law. Contractor further declares that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed. In the event that any conflict of interest should nevertheless hereinafter arise, Contractor shall promptly notify City of the existence of such conflict of interest so that City may determine whether to terminate this Agreement. Contractor further warrants its compliance with the Political Reform Act (Government Code section 81000 et seq.) and Salinas City Code Chapter 2A that apply to Contractor as the result of Contractor's performance of the work or services pursuant to the terms of this Agreement.

25. Headings. The section headings appearing herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement.

26. Attorney's Fees. In case suit shall be brought to interpret or to enforce this Agreement, or because of the breach of any other covenant or provision herein contained, the prevailing party in such action shall be entitled to recover their reasonable attorneys' fees in addition to such costs as may be allowed by the Court. City's attorneys' fees, if awarded, shall be calculated at the market rate.

27. Non-Exclusive Agreement. This Agreement is non-exclusive and both City and Contractor expressly reserves the right to contract with other entities for the same or similar services.

28. Rights and Obligations Under Agreement. By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

29. Licenses. If a license of any kind, which term is intended to include evidence of registration, is required of Contractor, its representatives, agents or subcontractors by federal, state or local law, Contractor warrants that such license has been obtained, is valid and in good standing, and that any applicable bond posted in accordance with applicable laws and regulations.

30. 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 a single agreement.

31. Legal Representation. Each party affirms that it has been represented by legal counsel of its own choosing regarding the preparation and the negotiation of this Agreement and the matters and claims set forth herein, and that each of them has read this Agreement and is fully aware of its contents and its legal effect. Neither party is relying on any statement of the other party outside the terms set forth in this Agreement as an inducement to enter into this Agreement.

32. Joint Representation. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any party. No presumptions or rules of interpretation based upon the identity of the party preparing or drafting the Agreement, or any part thereof, shall be applicable or invoked.

33. Warranty of Authority. Each party represents and warrants that it has the right, power, and authority to enter into this Agreement. Each party further represents and warrants that it has given any and all notices, and obtained any and all consents, powers, and authorities, necessary to permit it, and the persons entering into this Agreement for it, to enter into this Agreement.

34. No Waiver of Rights. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement. The failure to provide notice of any breach of this Agreement or failure to comply with any of the terms of this Agreement shall not constitute a waiver thereof. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. A waiver by the City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the date first written above.

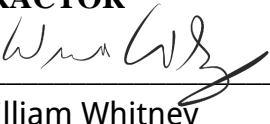
CITY OF SALINAS

Ray E. Corpuz
City Manager

APPROVED AS TO FORM:

Christopher A. Callihan, City Attorney

CONTRACTOR



By: William Whitney
Its: President

Attachments:

- 1) Exhibit A: Schedule of Work
- 2) Exhibit B: BMI Hosting Services
- 3) Exhibit C: End User License Agreement

Exhibit A

Schedule of Work

Transportation

- a. BMI will provide transportation of the Department's fiche throughout the duration of the project.

Microfiche Scanning

- a. Microfiche will be scanned in grayscale and bi-tonal format at 300 dpi.
- b. After each fiche is scanned and processed, Department staff will be able to view them in the hosted Digital ReeL application for approval of the layout and final product view.
- c. A "Milestone" (a small volume of material to represent the overall project) will be utilized to test a sample group of fiche. Using the results from the Milestone will enable Customer to determine viability of the product for their use in both form and function..
- d. Each image will be processed through OCR servers. OCR results will vary, as some images may not be suitable for OCR. BMI, at its sole determination, will decide if images or groups of images are not suitable for text search and may elect to stop processes on those images for text search purposes.

Microfilm Indexing

- a. Each fiche will have its index value the same as the fiche title (label strip).
- b. The indexing plan and structure will be coordinated between BMI and Department staff for optimal layout.

Digital ReeL – Hosted Application

- a. Scanned fiche will be loaded to the Digital ReeL application.in both physical sites, Sacramento and Sunnyvale.

Schedule of Fees

Item	Estimated Volume	Unit Price	Total Price
Microfiche Digital Conversion	52,000 Fiche	\$1.25/fiche	\$65,000
Digital ReeL Hosted Services ¹	1 year	---	Included
Project Management	1	--	\$2,500
Transportation of Fiche	3	\$300/event	\$900
Estimated Project Total			\$68,400

¹Hosting includes (5) users. Additional users can be purchased for \$500/5-user pack/year. Hosting will be billed at **\$3,600/year** one year from the Milestone 1 approval. Additional fiche may increase the hosting fee.

The following are prices for items not listed in the table above.

<u>Item</u>	<u>Unit Cost</u>
Oversize Document Scanning – 300dpi Bi-tonal Image	
A – Size Sheets – 8.5x11” and below	\$0.08 / Image
B – Size Sheets – 11x17”	\$0.50 / Sheet
C - Size Sheets – 16 x 24”	\$1.15 / Sheet
D - Size Sheets – 24 x 36”	\$1.20 / Sheet
E - Size Sheets – 36 x 42”	\$1.35 / Sheet
F - Size Sheets – 36 x 48”	\$1.40 / Sheet
Grayscale or Color (When needed)	\$1.50 / Sheet Additional
Professional Services:	
Technical Services (Lab Clerk)	\$45.00/hour
Technical Services (Project Manager)	\$75.00/hour
Technical Services (Service Tech - Remote)	\$125.00/hour
Technical Services (Development)	\$325.00/hour

Upon request, BMI may provide a Digital ReeL portal customization that reflects the Department’s website for an additional fee of **\$1,800**.

During the course of the project, BMI may be required to provide, or the Department may request, additional services beyond the Scope of Work as outlined in this document. If additional services are required or requested, BMI will inform the Department of such services and any associated fees prior to proceeding.

Tax is additional where due (*no sales tax with hosted services*).

Exhibit B

BMI HOSTING SERVICES

TERMS AND CONDITIONS

This addendum ("Addendum") sets forth the additional terms and conditions upon which BMI shall provide BMI Hosting Services to Customer under the Master Services Agreement ("MSA") having an Effective Date as set forth above.

1. **Definitions.** All definitions set forth in the MSA shall apply to this Addendum.
2. **Storage and Access to Imaged Product.** BMI shall provide a minimum hardware storage configuration of RAID 5 on which the Imaged Product will be stored. BMI will provide access to this hardware configuration in both of its two (2) hosting locations, with one configuration available at any one time at least 99% of Standard Business Hours. Standard Business Hours are defined as M-F: 5:00 AM to 5:00 PM (Pacific).
3. **Access Services.** BMI shall allow access to the Imaged Product to End Users via Internet connections from one or more of BMI data repositories. End Users will be determined by Customer, who will provide BMI with updated status information regarding those End Users. Adding or removing End Users will be at the discretion of Customer or his/her representative. That representative, when wishing to add or remove End Users from authorized status, will request that BMI support personnel remove or add any End User. Customer may also wish to be provided with software tools to allow for administration level, direct Customer controlled addition or deletion of End Users. Customer acknowledges that he/she assumes responsibility for adding, deleting or maintaining End Users, whether directly administering the End Users through its representative or through BMI technical support.
4. **Security.** The Internet by its very nature is inherently an unsecure medium. The Customer is responsible for validating the integrity of the information and data it receives and transmits over the Internet. The Customer is required to protect the security of its Internet account and usage. The Customer's passwords will be treated as private and confidential and not disclosed to or shared with any third parties. Customer agrees to protect their data and images from unauthorized use, complying with protocols for sensitive, confidential and personal information.
5. **Communications Lines.** BMI utilizes communication services of telecom third parties. Customer acknowledges that BMI does not have ultimate control of communications lines used to access the Imaged Product; and therefore, BMI cannot ultimately guarantee the security of transmissions to and from BMI to Customer. BMI routinely utilizes SSL (Secure Socket Layer) protocol for transmission of the Imaged Product to clients and can provide other enhanced data communication and security provisions upon request, such as single IP access or VPN. Unless otherwise noted, communication between BMI and Customer will utilize SSL technologies. Unless otherwise contracted, Customer should not expect bandwidth greater than 1.5Mb/s

during Standard Business Hours. Customer should not assume access will be available after Standard Business Hours (all times Pacific).

6. Maintenance.

- a. Standard Maintenance or System Upgrades. BMI shall perform preventive maintenance of its servers and other facilities in accordance with its normal maintenance schedules and procedures, as modified from time to time during the term of this Agreement. Customer acknowledges that Access Services may not be operable during periods of preventive maintenance. BMI will make reasonable efforts to inform Customer prior to any scheduled maintenance.
- b. Unscheduled Maintenance. Customer acknowledges that BMI may have to perform maintenance on an emergency basis and that Access Services may not be operable at these times. BMI shall provide Customer with notice as soon as possible in such situations and will make every reasonable effort to make Access Services available to Customer as possible.

7. **Customer Support.** Customer may contact BMI either by telephone, email, and/or other means agreed to by BMI and Customer, for limited operational and technical support pertaining to BMI Services, Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. (Pacific), excluding BMI holidays. For purposes of this section, BMI holidays are all federally observed holidays, including but not limited to, New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday following Thanksgiving, Christmas Day, and the day before and/or after Christmas Day if occurring on a regular week day. BMI will provide Customer with a toll-free telephone number for support.

EXHIBIT C
BMI
END USER LICENSE AGREEMENT

NOTICE

**Materials made accessible by this Software may be protected by U.S Copyright Law.
The person making a copy is liable for any infringement not excused by law.**

TERMS OF USE

These Terms of Use govern the terms and conditions ("Agreement") by which the Digital Reel™ software ("Software") and its contents may be accessed and used by you ("you" or "End User"). Please read them carefully.

By accessing and using the Software, you represent that (i) you have been duly authorized to access and use this Software by the provider of the Software (the "Software Provider") and (ii) you accept and agree to be bound and abide by this Agreement. If you do not agree to the terms of this Agreement, you must not access or use the Software.

1. License

Subject to the terms and conditions of this Agreement, you are granted a limited, personal right to access and use the Software as intended by the Software Provider for lawful internal business, education and/or research purposes only and for no other purpose. No right, title or ownership interest in and to the Software or to any trademark, service mark, trade name or domain name is granted under this Agreement. All rights not herein expressly granted to you are hereby expressly reserved to its owner, BMI Imaging Systems, Inc. ("BMI"), its licensees and other property owners, if any.

2. Restrictions

(a). Except to the extent authorized by the Software Provider, you agree to keep secret and not disclose any personal name and password required by the Software Provider to access and use the Software and to not share access and use of the Software with anyone else. In the event you know or suspect that a personal user name and password has been disclosed to an unauthorized person, you agree to immediately notify the Software Provider.

(b). Except to the extent permitted by law, you may not directly or indirectly (i) transmit, redistribute, Encumber, sell, rent, lease, lend, barter, sub-lease, sublicense or otherwise transfer this Software or the right to access and use this Software to any third party without the express written consent of BMI; (ii) Use the Software in connection with any service bureau without the express written consent of BMI; (iii) remove or obscure any copyright, trademark and other proprietary rights notices, legends, symbols or labels; (iv) alter, modify, decompile, disassemble, create any derivative works of the Software, including customization, translation or localization, or reverse engineer or otherwise attempt to derive the source code for the Software; (v) use the DIGITAL REEL Software or its contents for any unlawful purpose.

3. Copyright

This Software is protected under U.S. copyright laws and international treaties, trade secret, trademark and other applicable laws. All rights in and to the Software are expressly reserved to BMI. Any unauthorized copying, distribution, transmission; public display of this Software or preparation of derivative works of this Software is strictly prohibited.

NOTICE: CONTENT MADE ACCESSIBLE BY THIS SOFTWARE MAY BE PROTECTED BY U.S COPYRIGHT LAW. THE PERSON MAKING A COPY IS LIABLE FOR ANY INFRINGEMENT NOT EXCUSED BY LAW.

4. Ownership

BMI and its licensors (as applicable) are and shall remain the sole owner of all rights, title and interest in and to the Software, all derivatives thereof and all intellectual property rights related or pertaining to the aforesaid, including without limitation, all copyrights and inventions (whether patentable nor not), even if You should provide data, suggestions, ideas, concepts, inventions, works of authorship, improvements or other intellectual property as a result of the use of the Software by You.

5. Disclaimer of Warranties

EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE DIGITAL REEL SOFTWARE, DATA AND INFORMATION ACCESSIBLE THROUGH THE USE OF THE SOFTWARE AND SYSTEM ARE PROVIDED "AS IS" WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND. BMI EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND ACCURACY OF DATA OR INFORMATION.

BMI DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE IS FREE OF ALL DEFECTS OR THAT THE SOFTWARE OR ITS CONTENTS WILL BE ACCESSIBLE AT ALL TIMES.

USE OF THE SOFTWARE AND ITS CONTENT, DATA, INFORMATION AND DOCUMENTATION IS AT THE END USER'S SOLE RISK.

6. Limitation of Liability

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9. End Users Outside the US

If you are located outside the jurisdiction of the U.S., then the provisions of this Section shall apply to you. (i) this Agreement and all related documentation shall be in the English language. (LES PARTIES AUX PRESENTES CONFIRMENT LEUR VOLONTE QUE CETTE CONVENTION DE MEME QUE TOUS LES DOCUMENTS Y COMPRIS TOUT AVIS QUI S'Y RATTACHE, SOIENT REDIGES EN LANGUE ANGLAISE); and (ii) you are responsible for complying with any local laws in your jurisdiction which might impact your right to import, export or use the Software and you represent that you have complied with any regulations or registration procedures required by applicable law to make this Agreement and license valid and enforceable.

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such sanctions; or (ii) to any named party or individual on the U.S. Department of Treasury, Office of Foreign Assets Control list of Specially Designated Nationals and Blocked Persons, and/or the U.S. Department of Commerce, Bureau of Export Administration Denied Persons List or Entity List. By using the Software, Licensee agrees to the foregoing and represents and warrants that it is not located within an embargoed jurisdiction and is otherwise in compliance with these conditions.

11. Termination/Survival

This Agreement and End User's rights and license granted hereunder shall continue in perpetuity unless a termination date is specified in any purchaser order, unless terminated earlier pursuant to the terms of this Agreement. BMI may immediately suspend and/or terminate End User's right and license under this Agreement with or without notice to End User upon discovery of a material breach of this Agreement. The provisions of Sections 5, 6, 7 and 11 shall survive the termination of this Agreement.

12. General

This Agreement will be governed by the laws of the State of California without application of conflict of laws principles. The United Nations Convention for the International Sale of Goods shall not apply to this Agreement and is hereby expressly excluded. Should any provision of this Agreement be deemed invalid or unenforceable, the remaining portions shall remain valid and enforceable in accordance with the original intentions of the parties. All disputes arising from or relating to this Agreement and/or its subject matter shall be brought in a court of competent jurisdiction located in the State of California. The prevailing party in any action or proceeding to enforce the terms of this Agreement shall be entitled to an award of its reasonable attorneys' fees and costs. This Agreement contains the complete agreement between the parties with respect to the subject matter hereof. All previous and collateral agreements, representations, promises, and conditions relating to the subject matter of this Agreement are superseded by this Agreement. In the event of any conflict between this Agreement and any other terms and conditions pertaining to the access and use of the Software, this Agreement shall govern the access and use of this Software. This Agreement may not be modified or amended except in writing signed by a duly authorized officer of BMI and End User. No provision of this Agreement may be waived except in writing signed by the party to be charged. No waiver of any default or violation shall constitute a waiver of any subsequent default or violation of the same or other provision. All notices and approvals given under this Agreement must be in writing and delivered in person, or by first class mail, express mail, facsimile with confirmation of transmission, or email with return acknowledgment. Notice provided in accordance with this subsection will be deemed given when received. This Agreement shall be binding upon and inure to the benefit of the parties and their permitted successors and assigns. This Agreement and the rights granted hereunder may not be assigned without the express written consent of BMI. The section headings of this Agreement are provided for purposes of convenience only and shall be of no effect in the interpretation or meaning of any provision.

[End]