



# State of New Hampshire

DEPARTMENT OF SAFETY  
OFFICE OF THE COMMISSIONER  
33 HAZEN DR. CONCORD, NH 03305  
603/271-2791

JOHN J. BARTHELMES  
COMMISSIONER

June 15, 2017

His Excellency, Governor Christopher T. Sununu  
and the Honorable Executive Council  
State House  
Concord, NH 03301

### Requested Action

Pursuant to RSA 21-P:12-a(c), authorize the Department of Safety, Division of Fire Standards and Training and Emergency Medical Services (FSTEMS), to amend the contract with ImageTrend, Inc. (VC#169503-B001) 20855 Kensington Blvd, Lakeville, MN 55044 for the amount of \$36,900.00, increasing the contract amount from \$1,212,396.00 to \$1,249,296.00, and by extending the end date from December 31, 2017 to June 30, 2018 for the purpose of continuing to provide a statewide data repository. The contract was originally approved by Governor and Council on February 25, 2005, Item #70A; amended on July 15, 2009, Item#142; amended on August 8, 2012, Item#127; and amended on March 20, 2013, Item #71. Effective upon Governor and Council approval through June 30, 2018. Funding source: 100% Revolving Funds - Fire and EMS Fund.

Funds are available in the SFY 2018 operating budget as follows.


02-23-23-237010-40650000 Dept. of Safety – FSTEMS – Fire Stndrds & EMS Admin	<u>SFY2018</u>
024-50230 Maint Other Than Build-Gen, S/Ware Lic/Maint (Non Desktop)	\$36,900.00
Activity Code: 2370	

### Explanation

This contract amendment provides for the continuation of a statewide data repository for all emergency medical services patient care data through the Division of Fire Standards and Training and Emergency Medical Services. This system, which is used by over 5,000 emergency medical services providers, furnishes valuable information by tracking patient care throughout the State, including information about the statewide opioid epidemic. In addition to this EMS data repository, the Division also houses a statewide trauma system data repository. The Trauma Registry is a collection of data that ties pre-hospital care data to hospital data which allows EMS and hospital staff to track the care of every trauma patient through the entire process and is necessary to increase the level of care that can be provided to trauma patients throughout New Hampshire.

Both systems are currently provided by the same vendor but expire on different dates. This contract amendment will align those expiration dates, at which time both systems will be competitively bid under one contract.

Respectfully submitted,

  
John J. Barthelmes  
Commissioner of Safety

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TRAUMA AND EMERGENCY MEDICAL SERVICES INFORMATION SYSTEM  
MAINTENANCE AND ENHANCEMENTS  
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WHEREAS, pursuant to an Agreement approved by Governor and Council, as a result of RFP #2005-005, on February 25, 2005, Item #70A, amended on July 15, 2009, Item #142, further amended on August 8, 2012, Item #127 and March, 20, 2013, Item #71, (herein after referred to as the "Agreement"), ImageTrend, Inc., (hereinafter referred to as the "Vendor") agreed to supply certain services upon the terms and conditions specified in the Agreement and in consideration of payment by the Department of Safety, certain sums as specified therein;

WHEREAS, pursuant to the Agreement (Section 17: *Amendment*) and the provisions of the Agreement, the Agreement may be modified or amended only by a written instrument executed by the parties thereto and approved by the Governor and Executive Council;

WHEREAS, the Vendor and the Department have agreed to amend the Agreement in certain respects;

WHEREAS, the Department and the Vendor seek to clarify the Agreement.

WHEREAS, the Department wishes to amend the Agreement and to increase the contract price by \$36,900 to bring the total contract price to \$1,249,296.

NOW THEREFORE, in consideration of the foregoing, and the covenants and conditions contained in the Agreement and set forth herein, the parties agree as follows:

**Contract Agreement – General Provisions and Statement of Work of the Agreement is hereby amended as follows:**

1. Amend Section 1.6 of the General Provisions of the Agreement by changing the contract ending date from December 31, 2017 to June 30, 2018.
2. Amend Section 1.8 of the General Provisions of the Agreement by increasing the Price Limitation by \$36,900 from \$1,212,396 to \$1,249,296.

**Exhibit A of the Agreement is hereby amended as follows:**

1. Amend Exhibit A of the Agreement, Section 1.1: Definitions by adding the following to the table:

1.1.58	ImageTrend Elite Reporting Tools	Now means the Transactional Report Writer, Visual Informatics, Analytical Chart Reporting Tool and Analytical Tabular Reporting Tool in the Software that are based on a set of Elite Data Marts.
1.1.59	ImageTrend Elite Data Marts	Now means the relational database(s) that contain an enhanced and simplified reporting-ready format of the transactional data collected within ImageTrend Elite. The Elite Data Marts are available for use with the ImageTrend Elite Reporting Tools.

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1.1.60	State Bridge	Now means Elite EMS
1.1.61	Field Bridge and Field Bridge Xpress (FXB)	Now means Elite Field
1.1.62	Hospital Dashboard	Now means Hospital Hub
1.1.63	Report Writer with Visual Informatics	Now means Elite Reporting Tools and Elite Data Mart

2. Amend Exhibit A of the Agreement, Section 10.1 Dependencies by adding the following:

10.1.6 The State must ensure that appropriate levels of security are implemented and maintained in order to protect the integrity and reliability of its information technology resources, information, and services. State resources, information, and services must be available on an ongoing basis, with the appropriate infrastructure and security controls to ensure business continuity and safeguard State networks, Systems and Data.

10.1.7 IT Security involves all functions pertaining to the securing of State Data and Systems through the creation and definition of security policies, procedures and controls covering such areas as identification, authentication and non-repudiation.

10.1.8 All components of the Software shall be reviewed and tested to ensure they protect the State's hardware and software and its related Data assets.

3. Amend Exhibit A of the Agreement, Section 13: Internal Escalation Procedure for Disputes by changing the table as follows:

Level	IMAGETREND	State	Cumulative Allotted Time
Primary	Joe Graw, Vice President of Client Services	Richard Cooper <Project Manager>	5 Business Days
First	Dawn Renee Noll, Sales Manager – or - Dave Zaiman, Business Development Manager	Jeff Phillips <Assistant Director>	10 Business Days
Second	Dan Vanorny, Vice President of EMS and Fire -or- Michael Patock, Vice President of Health Data Services	Deborah A. Pendergast <Director>	15 Business Days
Third	Michael J. McBrady President	John J. Barthelmes <Commissioner>	20 Business Days

4. Amend Exhibit A, by adding Section 17, as follows:

17. **Grant of License**

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17.1 NON-EXCLUSIVE USE LICENSE:

In accordance with the terms and conditions hereof, IMAGETREND agrees to grant to Department and Department agrees to accept a non-transferable and non-exclusive perpetual use license of the Software. During the term of the agreement, the Department shall have access to the Software, which will be installed on servers at the IMAGETREND hosting. Department expressly acknowledges that all copies of the Software and/or Licensed Information in any form provided by IMAGETREND to Department hereunder are the sole property of IMAGETREND and/or its suppliers, and that Department shall not have any right, title, or interest to any such Software and/or Licensed Information or copies thereof except as provided in this AGREEMENT.

17.2 IMAGETREND ELITE DATA MARTS NON-EXCLUSIVE USE LICENSE:

Notwithstanding the ability to generate and provide backup system data files in compliance with the original contract 2005-005, Exhibit A, Section 14. "Deliverables" Item 12: "creation, test and implementation of a weekly file generation to the BEMS State Server". In accordance with the terms and conditions hereof, IMAGETREND agrees to grant the use of the ImageTrend Elite Data Marts only via IMAGETREND Elite Reporting Tools. This AGREEMENT does not give the Department the rights to access and query the ImageTrend Elite Data Marts directly using non-IMAGETREND SQL query tools, reporting tools, ETL tools, or any other tools or mechanisms. Direct access to ImageTrend Elite Data Marts is available via separately-priced product and service offerings from IMAGETREND. This 17.2, is subject to the Non-Exclusive Use License as covered in Section 17.1 and terms of this AGREEMENT.

17.3 PROTECTION OF SOFTWARE AND LICENSED INFORMATION.

Department agrees to respect and not to remove, obliterate, or cancel from view any copyright, trademark, confidentiality or other proprietary notice, mark, or legend appearing on any of the Software or Licensed Information, and to reproduce and include the same on each authorized copy of the Software and Licensed Information.

Department shall not copy or duplicate the Software or any part thereof except for the purposes of system backup, testing, maintenance, or recovery. Department may duplicate the Licensed Information only for internal training, provided that all the names, trademark rights, product names, copyright statement, and other proprietary right statements of IMAGETREND are reserved. IMAGETREND reserves all rights which are not expressly granted to Department in this AGREEMENT.

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

17.4 DATA OWNERSHIP AND DATA PROTECTION:

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All Department data collected with IMAGETREND Software remains at all times the property of the Department. IMAGETREND will not to use or make available any personally identifiable information other than for administering the Department's account and collecting usage statistics in order to improve our products and services specifications. During the term of this AGREEMENT and after termination or expiration of this AGREEMENT, IMAGETREND will not in any way transfer to any third party or use in direct or indirect competition with the other party any information or data posted by Department's and others on IMAGETREND's website and acknowledges that all such information is confidential.

17.5 DATA AVAILABILITY AND TRANSFER

All data defined under Exhibit A, Section 10.4.3 shall be made available in Sequel or another mutually agreeable data format and delivered to the Department upon contract termination.

6. Amend Exhibit A, by adding Section 18, as follows:

18. SOFTWARE ABSTRACT

- 18.1 The ImageTrend Service Bridge/State Bridge/Rescue Bridge/ImageTrend Elite contains and stores the data elements of an emergency medical database, including data schema and values that may originate from traditional computer aided dispatch (CAD) sources and data values that may be used in billing from pre-hospital patient care. The emergency medical database may contain certain vehicle transport information but does not contain data elements and/or values specific to the vehicle path tracking such as automatic vehicle location (AVL) or third party AVL integrations. The emergency medical database does support integrations to third party CAD and billing solutions. The emergency medical database does not support any AVL, CAD or billing functions executed directly from the database.
- 18.2 The ImageTrend Service Bridge/State Bridge/Rescue Bridge/ImageTrend Elite contains and stores the data elements of an emergency medical database as defined, described and mandated by the National EMS Information System (NEMESIS). The dataset was adopted by ImageTrend for State and local regulatory authorities as required by NEMESIS. The NEMESIS data schema and elements are the sole work of the NEMESIS organization in conjunction with the National Highway Traffic Safety Administration (NHTSA). The NEMESIS dataset contains data elements and data structures originating and potentially owned by a number of nonprofit third party organizations and government agencies such as the World Health Organization (ICD 9 and ICD 10), International Health Terminology Standards Development Organization (SNOMED), U.S Department of the Interior and U.S. Geological Survey (GNIS), National Institute of Standards and Technology (FIPS), Health Level Seven International (HL7), Joint APCO/NENA Data Standardization Working Group (AACN). The NEMESIS dataset offers customer driven extensibility that allows the end user to extend and define the dataset at their own discretion.

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**Exhibit B of the Agreement is hereby amended as follows:**

1. Amend Exhibit B of the Agreement, Section 2 by adding Section 2.3: Price Payment Schedule for Amendment D, as follows:

**2.3 Firm Fixed Price Payment Schedule for Amendment D**

Table B1D reflects the additional price for the User Management Module, integrations, custom development and additional support and maintenance. Although the following changes in names are occurring there are no changes to the annual recurring fees or additional fees for the software upgrade. Table B1B as defined in Amendment B for the core TEMSIS Application remains unchanged. The recurring fees will continue forward, however they will be established under the new product version names. All other additional specific fees are described in Amendment D: Attachment A Deliverables Description and Work Plan

**Table B1D –Firm Fixed Price Payment Schedule for Amendment D**

Deliverable 11.1	Support and hosting for TEMSIS/Elite EMS	1/1/2018 to 6/30/2018	<b>\$26,100</b>
Deliverable 11.2	Support and hosting for CAD Integration and Elite Field	1/1/2018 to 6/30/2018	<b>\$10,800</b>

2. Amend Exhibit B, Section 2 by replacing Paragraph 4 as follows:

**4. TOTAL CONTRACT PRICE**

Notwithstanding anything in the Contract to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments exceed \$1,249,296 payment by the State of the total Contract price shall be the only, and the complete reimbursement to ImageTrend, Inc. for all fees and expenses, of whatever nature, incurred by ImageTrend, Inc. in the performance hereof.

**Table 1 Contract 2005-005 – Trauma and Emergency Medical Services Information System Maintenance and Enhancements, Contract Amendment Descriptions**

<b>Contract 2005-005 (#124002)</b>	<b>AMENDMENT TYPE</b>	<b>EFFECTIVE DATE</b>	<b>END DATE</b>	<b>CONTRACT AMOUNT</b>
Contract #124002	Original Contract	February 25, 2005	December 31, 2009	\$497,000
Amendment # A	First Amendment (A)	July 15, 2009	December 31, 2012	\$244,656
Amendment # B	Second Amendment (B)	August 8, 2012	December 31, 2017	\$261,000

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Amendment # C	Third Amendment (C)	March 20, 2013	December 31, 2017	\$209,740
Amendment # D	Fourth Amendment (D)	G&C Approval	June 30, 2018	\$36,900
<b>CONTRACT TOTAL</b>				<b>\$1,249,296</b>

**Exhibit H of the Agreement is hereby amended as follows:**

1. Amend Exhibit H of the Agreement, by replacing Exhibit H, the Business Associate Agreement in its entirety with Exhibit H1.

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Except as provided herein, all provisions of the Agreement shall remain in full force and effect. This modification shall take effect upon the approval date from the Governor and the Executive Council.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first above written.

Michael J. McBrady  
Contract Signor  
ImageTrend, Inc.

Date: 3-22-2017

Corporate Signature Notarized:  
STATE OF Minnesota

COUNTY OF Dakota

On this the 22<sup>nd</sup> day of March, 2017, before me,  
Marin Carlson, the undersigned Officer Mike McBrady,  
personally appeared and acknowledged her/himself to be the CEO  
of ImageTrend, Inc., a corporation, and that she/he, as such  
CEO being authorized to do so, executed the foregoing instrument for  
the purposes therein contained, by signing the name of the corporation by her/himself as  
Michael McBrady.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Marin Laine Carlson  
Notary Public/Justice of the Peace

My Commission Expires: 01/31/2019

(SEAL)



Date: \_\_\_\_\_

Deborah A. Pendergast Steven Lavoie  
Director, Fire Standards and Training and EMS  
NH Department of Safety

Approved by the Attorney General (Form, Substance and Execution)

[Signature]  
State of New Hampshire, Department of Justice

Date: 6/26/17



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1. **Business Associate Obligations.** Business Associate may receive from Covered Entity, or create or receive on behalf of Covered Entity, health information that is protected under applicable state and/or federal law, including without limitation, PHI and EPHI. All capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Privacy Standards, Security Standards or the HITECH Act, as applicable (collectively referred to hereinafter as the "Confidentiality Requirements"). All references to PHI herein shall be construed to include EPHI. Business Associate agrees not to use or disclose (or permit the use or disclosure of) PHI in a manner that would violate the Confidentiality Requirements if the PHI were used or disclosed by Covered Entity in the same manner.
  
2. **Use of PHI.** Except as otherwise required by law, Business Associate shall use PHI in compliance with 45 C.F.R. § 164.504(e). Furthermore, Business Associate shall use PHI (i) solely for Covered Entity's benefit and only for the purpose of performing services for Covered Entity as such services are defined in Business Arrangements, and (ii) as necessary for the proper management and administration of the Business Associate or to carry out its legal responsibilities, provided that such uses are permitted under federal and state law. Covered Entity shall retain all rights in the PHI not granted herein. Use, creation and disclosure of de-identified health information by Business Associate are not permitted unless expressly authorized in writing by Covered Entity.
  
3. **Disclosure of PHI.** Subject to any limitations in this Agreement, Business Associate may disclose PHI to any third party persons or entities as necessary to perform its obligations under the Business Arrangement and as permitted or required by applicable federal or state law. Further, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that (i) such disclosures are required by law, or (ii) Business Associate: (a) obtains reasonable assurances from any third party to whom the information is disclosed that it will be held confidential and further used and disclosed only as required by law or for the purpose for which it was disclosed to the third party; (b) requires the third party to agree to immediately notify Business Associate of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Confidentiality Requirements. Additionally, Business Associate shall ensure that all disclosures of PHI by Business Associate and the third party comply with the principle of "minimum necessary use and disclosure," i.e., only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed; provided further, Business Associate shall comply with Section 13405(b) of the HITECH Act, and any regulations or guidance issued by HHS concerning such provision, regarding the minimum necessary standard and the use and disclosure (if applicable) of Limited Data Sets. If Business Associate discloses PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, to agents, including a subcontractor (collectively, "Recipients"), Business Associate shall require Recipients to agree in writing to the same restrictions and conditions that apply to the Business Associate under this Agreement. Business Associate shall report to Covered Entity any use or disclosure of PHI not permitted by this Agreement, of which it becomes aware, such report to be made within three (3) business days of the Business Associate becoming aware of such use or disclosure. In addition to Business Associate's obligations under Section 9, Business Associate agrees to mitigate, to the extent practical and unless otherwise requested by Covered Entity in writing or as directed by or as a result of a request by Covered Entity to disclose to Recipients, any harmful effect that is known to Business Associate and is the

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result of a use or disclosure of PHI by Business Associate or Recipients in violation of this Agreement.

4. **Individual Rights Regarding Designated Record Sets.** If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate shall (i) provide access to, and permit inspection and copying of, PHI by Covered Entity or, as directed by Covered Entity, an individual who is the subject of the PHI under conditions and limitations required under 45 CFR §164.524, as it may be amended from time to time, and (ii) amend PHI maintained by Business Associate as requested by Covered Entity. Business Associate shall respond to any request from Covered Entity for access by an individual within five (5) days of such request and shall make any amendment requested by Covered Entity within ten (10) days of such request. Any information requested under this Section 4 shall be provided in the form or format requested, if it is readily producible in such form or format. Business Associate may charge a reasonable fee based upon the Business Associate's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies). Covered Entity shall determine whether a denial is appropriate or an exception applies. Business Associate shall notify Covered Entity within five (5) days of receipt of any request for access or amendment by an individual. Covered Entity shall determine whether to grant or deny any access or amendment requested by the individual. Business Associate shall have a process in place for requests for amendments and for appending such requests to the Designated Record Set, as requested by Covered Entity.
5. **Accounting of Disclosures.** Business Associate shall make available to Covered Entity in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual in accordance with 45 CFR §164.528, as amended by Section 13405(c) of the HITECH Act and any related regulations or guidance issued by HHS in accordance with such provision. Business Associate shall provide to Covered Entity such information necessary to provide an accounting within thirty (30) days of Covered Entity's request or such shorter time as may be required by state or federal law. Such accounting must be provided without cost to the individual or to Covered Entity if it is the first accounting requested by an individual within any twelve (12) month period. For subsequent accountings within a twelve (12) month period, Business Associate may charge a reasonable fee based upon the Business Associate's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies) so long as Business Associate informs the Covered Entity and the Covered Entity informs the individual in advance of the fee, and the individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination of this Agreement and shall continue as long as Business Associate maintains PHI.
6. **Withdrawal of Authorization.** If the use or disclosure of PHI in this Agreement is based upon an individual's specific authorization for the use of his or her PHI, and (i) the individual revokes such authorization in writing, (ii) the effective date of such authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid, Business Associate agrees, if it has notice of such revocation or invalidity, to cease the use and disclosure of any such individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under the Confidentiality Requirements expressly applies.

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7. **Records and Audit.** Business Associate shall make available to the U.S. Department of Health and Human Services or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Covered Entity for the purpose of determining Covered Entity's compliance with the Confidentiality Requirements or any other health oversight agency, in a time and manner designated by the Secretary. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity immediately upon receipt by Business Associate of any and all requests by or on behalf of any and all federal, state and local government authorities served upon Business Associate for PHI.
  
8. **Implementation of Security Standards; Notice of Security Incidents.** Business Associate will use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement. Business Associate will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate acknowledges that the HITECH Act requires Business Associate to comply with 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316 as if Business Associate were a Covered Entity, and Business Associate agrees to comply with these provisions of the Security Standards and all additional security provisions of the HITECH Act. Furthermore, **to the extent feasible, Business Associate will use commercially reasonable efforts** to ensure that the technology safeguards used by Business Associate to secure PHI will render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI in accordance with HHS Guidance published at 74 Federal Register 19006 (April 17, 2009), or such later regulations or guidance promulgated by HHS or issued by the National Institute for Standards and Technology ("NIST") concerning the protection of identifiable data such as PHI. Lastly, Business Associate will promptly report to Covered Entity any successful Security Incident of which it becomes aware. At the request of Covered Entity, Business Associate shall identify: the date of the Security Incident, the scope of the Security Incident, the Business Associate's response to the Security Incident and the identification of the party responsible for causing the Security Incident, if known. Business Associate and Covered Entity shall take reasonable measures to ensure the availability of all affirmative defenses under the HITECH Act, HIPAA, and other state and federal laws and regulations governing PHI and EPHI.
  
9. **Data Breach Notification and Mitigation.**
  - a. **HIPAA Data Breach Notification and Mitigation.** Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any "breach" of "unsecured PHI" as those terms are defined by 45 C.F.R. §164.402 (hereinafter a "HIPAA Breach"). The parties acknowledge and agree that 45 C.F.R. §164.404, as described below in this Section 9.1, governs the determination of the date of a HIPAA Breach. In the event of any conflict between this Section 9.1 and the Confidentiality Requirements, the more stringent requirements shall govern. Business Associate will, following the discovery of a HIPAA Breach, notify Covered Entity immediately and in no event later than three (3) business days after Business Associate discovers such HIPAA Breach, unless Business Associate is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations. For purposes of reporting a HIPAA Breach to Covered Entity, the discovery of a HIPAA Breach shall occur as of the first day on which such HIPAA Breach is known to the Business

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Associate or, by exercising reasonable diligence, would have been known to the Business Associate. Business Associate will be considered to have had knowledge of a HIPAA Breach if the HIPAA Breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the HIPAA Breach) who is an employee, officer or other agent of the Business Associate. No later than seven (7) business days following a HIPAA Breach, Business Associate shall provide Covered Entity with sufficient information to permit Covered Entity to comply with the HIPAA Breach notification requirements set forth at 45 C.F.R. §164.400 *et seq.* Specifically, if the following information is known to (or can be reasonably obtained by) the Business Associate, Business Associate will provide Covered Entity with: (i) contact information for individuals who were or who may have been impacted by the HIPAA Breach (e.g., first and last name, mailing address, street address, phone number, email address); (ii) a brief description of the circumstances of the HIPAA Breach, including the date of the HIPAA Breach and date of discovery; (iii) a description of the types of unsecured PHI involved in the HIPAA Breach (e.g., names, social security number, date of birth, address(es), account numbers of any type, disability codes, diagnostic and/or billing codes and similar information); (iv) a brief description of what the Business Associate has done or is doing to investigate the HIPAA Breach, mitigate harm to the individual impacted by the HIPAA Breach, and protect against future HIPAA Breaches; and (v) appoint a liaison and provide contact information for same so that the Covered Entity may ask questions or learn additional information concerning the HIPAA Breach. Following a HIPAA Breach, Business Associate will have a continuing duty to inform Covered Entity of new information learned by Business Associate regarding the HIPAA Breach, including but not limited to the information described in items (i) through (v), above.

- b. Data Breach Notification and Mitigation Under Other Laws. In addition to the requirements of Section 9.1, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI, and referred to hereinafter as “Individually Identifiable Information”) that, if misused, disclosed, lost or stolen, Covered Entity believes would trigger an obligation under one or more State data breach notification laws (each a “State Breach”) to notify the individuals who are the subject of the information. Business Associate agrees that in the event any Individually Identifiable Information is lost, stolen, used or disclosed in violation of one or more State data breach notification laws, Business Associate shall promptly: (i) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach; (ii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach conducted by any State Attorney General or State Consumer Affairs Department (or their respective agents); (iii) comply with Covered Entity’s determinations regarding Covered Entity’s and Business Associate’s obligations to mitigate to the extent practicable any potential harm to the individuals impacted by the State Breach; and (iv) assist with the implementation of any decision by Covered Entity or any State agency, including any State Attorney General or State Consumer Affairs Department (or their respective agents), to notify individuals impacted or potentially impacted by a State Breach.
- c. Breach Indemnification. Business Associate shall indemnify, defend and hold Covered Entity and its officers, directors, employees, agents, successors and assigns harmless, from and against all reasonable losses, claims, actions, demands, liabilities, damages, costs and

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expenses (including costs of judgments, settlements, court costs and reasonable attorneys' fees actually incurred) (collectively, "Information Disclosure Claims") arising from or related to: (i) the use or disclosure of Individually Identifiable Information (including PHI) by Business Associate in violation of the terms of this Agreement or applicable law, and (ii) whether in oral, paper or electronic media, any HIPAA Breach of unsecured PHI and/or State Breach of Individually Identifiable Information by Business Associate. If Business Associate assumes the defense of an Information Disclosure Claim, Covered Entity shall have the right, at its expense and without indemnification notwithstanding the previous sentence, to participate in the defense of such Information Disclosure Claim. Business Associate shall not take any final action with respect to any Information Disclosure Claim without the prior written consent of Covered Entity. Covered Entity likewise shall not take any final action with respect to any Information Disclosure Claim without the prior written consent of Business Associate. To the extent permitted by law and except when caused by an act of Covered Entity or resulting from a disclosure to a Recipient required or directed by Covered Entity to receive the information, Business Associate shall be fully liable to Covered Entity for any acts, failures or omissions of Recipients in furnishing the services as if they were the Business Associate's own acts, failures or omissions.

- i. Covered Entity shall indemnify, defend and hold Business Associate and its officers, directors, employees, agents, successors and assigns harmless, from and against all reasonable losses, claims, actions, demands, liabilities, damages, costs and expenses (including costs of judgments, settlements, court costs and reasonable attorneys' fees actually incurred) (collectively, "Information Disclosure Claims") arising from or related to: (i) the use or disclosure of Individually Identifiable Information (including PHI) by Covered Entity, its subcontractors, agents, or employees in violation of the terms of this Agreement or applicable law, and (ii) whether in oral, paper or electronic media, any HIPAA Breach of unsecured PHI and/or State Breach of Individually Identifiable Information by Covered Entity, its subcontractors, agents, or employees.
- ii. Covered Entity and Business Associate shall seek to keep costs or expenses that the other may be liable for under this Section 9, including Information Disclosure Claims, to the minimum reasonably required to comply with the HITECH Act and HIPAA. Covered Entity and Business Associate shall timely raise all applicable affirmative defenses in the event a violation of this Agreement, or a use or disclosure of PHI or EPHI in violation of the terms of this Agreement or applicable law occurs.

**10. Term and Termination.**

- a. This Agreement shall commence on the Effective Date and shall remain in effect until terminated in accordance with the terms of this Section 10, provided, however, that termination shall not affect the respective obligations or rights of the parties arising under this Agreement prior to the effective date of termination, all of which shall continue in accordance with their terms.
- b. Covered Entity shall have the right to terminate this Agreement for any reason upon thirty (30) days written notice to Business Associate.
- c. Covered Entity, at its sole discretion, may immediately terminate this Agreement and shall

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have no further obligations to Business Associate if any of the following events shall have occurred and be continuing:

- i. Business Associate fails to observe or perform any material covenant or obligation contained in this Agreement for ten (10) days after written notice thereof has been given to the Business Associate by Covered Entity; or
    - ii. A violation by the Business Associate of any provision of the Confidentiality Requirements or other applicable federal or state privacy law relating to the obligations of the Business Associate under this Agreement.
  - d. Termination of this Agreement for either of the two reasons set forth in Section 10.c above shall be cause for Covered Entity to immediately terminate for cause any Business Arrangement pursuant to which Business Associate is entitled to receive PHI from Covered Entity.
  - e. Upon the termination of all Business Arrangements, either Party may terminate this Agreement by providing written notice to the other Party.
  - f. Upon termination of this Agreement for any reason, Business Associate agrees either to return to Covered Entity or to destroy all PHI received from Covered Entity or otherwise through the performance of services for Covered Entity, that is in the possession or control of Business Associate or its agents. In the case of PHI which is not feasible to "return or destroy," Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate further agrees to comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment of such PHI.
11. **No Warranty.** PHI IS PROVIDED TO BUSINESS ASSOCIATE SOLELY ON AN "AS IS" BASIS. COVERED ENTITY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.
12. **Ineligible Persons.** Business Associate represents and warrants to Covered Entity that Business Associate (i) is not currently excluded, debarred, or otherwise ineligible to participate in any federal health care program as defined in 42 U.S.C. Section 1320a-7b(f) ("the Federal Healthcare Programs"); (ii) has not been convicted of a criminal offense related to the provision of health care items or services and not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs, and (iii) is not under investigation or otherwise aware of any circumstances which may result in Business Associate being excluded from participation in the Federal Healthcare Programs. This shall be an ongoing representation and warranty during the term of this Agreement, and Business Associate shall immediately notify Covered Entity of any change in the status of the representations and warranty set forth in this section. Any breach of this section shall give Covered Entity the right to terminate this Agreement immediately for cause.
13. **Miscellaneous.**
- a. **Notice.** All notices, requests, demands and other communications required or permitted to be

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given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; or (iii) overnight delivery service with proof of delivery. Notices shall be sent to the addresses below. Neither party shall refuse delivery of any notice hereunder.

b.

If to Covered Entity:

NH Department of Safety  
Bureau of EMS  
Attn: Bureau Chief  
33 Hazen Drive  
Concord, NH 03305

If to Business Associate:

ImageTrend, Inc.  
Attn: Michael J. McBrady  
20855 Kensington Blvd.  
Lakeville, MN 55044

14. **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.
15. **Assignment.** Neither Party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.
16. **Severability.** Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.
17. **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangements or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangements are more strict with respect to PHI and comply with the Confidentiality Requirements, or the parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party; provided, however, that upon the enactment of any law, regulation, court decision or relevant government publication and/or interpretive guidance or policy that the Covered Entity believes in good faith will adversely impact the use or disclosure of PHI under this Agreement, Covered Entity may amend the Agreement to comply with such law, regulation, court decision or government publication, guidance or policy by delivering a written amendment to Business Associate which shall be effective thirty (30) days after receipt. No obligation on either Party to enter into any transaction is to be implied from the execution or delivery of this Agreement. This

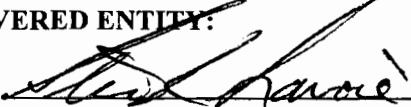
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Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

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

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

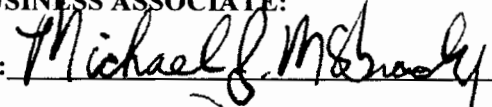
**COVERED ENTITY:**

By:   
Steven R. Lavoie, Dir of Administration  
(Print or Type Name)

\_\_\_\_\_  
(Title)

Date: 6/19/17

**BUSINESS ASSOCIATE:**

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

\_\_\_\_\_  
President  
(Title)

Date: 3-22-2017



# Authority to Sign for

# IMAGETREND<sup>®</sup> INC.

Under its Articles of Incorporation and its Bylaws, the undersigned is granted continued authority to enter into contracts on ImageTrend's behalf. Furthermore, the undersigned's authority to sign

originated on Date: 3-11-1998

Signatory Name: Michael J McBrady

Signatory Title: President and CEO

Signatory Signature: Michael J. McBrady

We, the Directors of the Board of ImageTrend, Inc., hereby witness and attest the above as true

Dated: 5-10-2017

X Michael J. McBrady  
Michael J McBrady  
Director of the Board, President, CEO

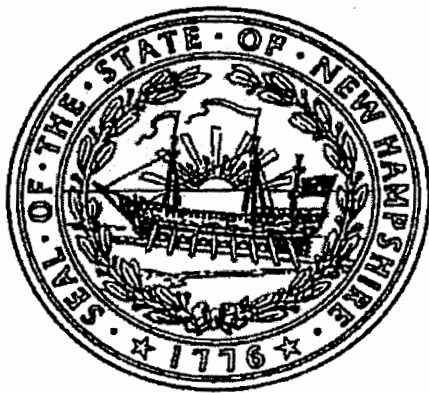
# State of New Hampshire

## Department of State

### CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that IMAGETREND, INC. is a Minnesota Profit Corporation registered to transact business in New Hampshire on November 15, 2004. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 495505



IN TESTIMONY WHEREOF.

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire.  
this 24th day of April A.D. 2017.

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
6/16/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Associated Benefits and Risk Consulting 6000 Clearwater Drive Minnetonka MN 55343	<b>CONTACT NAME:</b> Jenny Saylor	
	<b>PHONE (A/C, No, Ext):</b> 952-947-9700	<b>FAX (A/C, No):</b> 952-947-9793
<b>E-MAIL ADDRESS:</b> jenny.saylor@associatedbrc.com		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A:</b> Federal Insurance Company/Chubb		20281
<b>INSURER B:</b> ACE American Insurance Company		22667
<b>INSURER C:</b> Great Northern Insurance Co.		20303
<b>INSURER D:</b>		
<b>INSURER E:</b>		
<b>INSURER F:</b>		

**INSURED** IMAGE13  
 ImageTrend, Inc.  
 20855 Kensington Blvd.  
 Lakeville MN 55044

## COVERAGES

CERTIFICATE NUMBER: 1632302463

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
C	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y	Y	36025325	6/15/2017	6/15/2018	EACH OCCURRENCE	\$1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
							MED EXP (Any one person)	\$15,000
							PERSONAL & ADV INJURY	\$1,000,000
							GENERAL AGGREGATE	\$2,000,000
							PRODUCTS - COMP/OP AGG	\$2,000,000
								\$
C	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	Y	Y	73589234	6/15/2017	6/15/2018	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$0	Y	Y	79894923	6/15/2017	6/15/2018	EACH OCCURRENCE	\$5,000,000
							AGGREGATE	\$5,000,000
								\$
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below <input type="checkbox"/> Y/N <input checked="" type="checkbox"/> N/A		Y	71749258	6/15/2017	6/15/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
							E.L. EACH ACCIDENT	\$500,000
							E.L. DISEASE - EA EMPLOYEE	\$500,000
							E.L. DISEASE - POLICY LIMIT	\$500,000
B	Technology E&O/Cyber Liability	Y		EONG27880265 001	6/15/2017	6/15/2018	Aggregate limit	\$5,000,000
A	3rd Party Crime/Fidelity			82349826	6/15/2017	6/15/2018	Limit	\$500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Network Security and Privacy Injury Liability are included in the Technology Errors & Omissions/Professional Liability. ADDL INSD (Additional Insured) and SUBR WVD (Waiver of Subrogation) boxes checked above are included for names/project listed below only as required by written contract or agreement.

## CERTIFICATE HOLDER

## CANCELLATION

State of NH  
 33 Hazen Dr  
 Department of Safety  
 Division of Fire Standards & Training and EMS  
 Concord NH 03305

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE