

70 qb



New Hampshire Veterans Home

139 Winter Street  
Tilton, NH 03276-0229



Margaret D. LaBrecque  
Commandant

Phone: (603) 527-4400  
Fax : (603) 527-4402

June 06, 2014

Her Excellency, Governor Margaret Wood Hassan  
And the Honorable Council  
State House  
Concord, New Hampshire 03301

*Retroactive*

**REQUESTED ACTION**

Authorize the New Hampshire Veterans Home to enter into a **retroactive** contract renewal option with Northeast Mobile Dental Service, (VC 156895), 30 Pinkerton Street, Derry NH, 03038, by increasing the contract amount by \$99,000.00 from \$148,500 to \$247,500 for the sole purpose of providing dental services on site to the residents of the New Hampshire Veterans Home effective July 1, 2014 through June 30, 2016. Funding source is 38% Federal, 44% Agency Income, and 18% General Funds.

Funds are available in account titled 05-43-43-430010-5359, New Hampshire Veterans Home, Professional Services, as follows with the authority to adjust encumbrances in each of the State fiscal years through the Budget Office if needed and justified.

	<u>FY 2015</u>	<u>FY2016</u>	<u>Total</u>
#-046-500462 Non Benefited Med-Consultants	\$49,500	\$49,500	\$99,000

**EXPLANATION**

This contract is retroactive due to the time it took to get the necessary paperwork. This contract provides for dental services on site to the residents of the Home. Northeast Mobile Dental has provided in-house dental service to all of the Homes residents. Dr. Kana has provided this service satisfactorily for eight years and has developed a professional relationship with the residents. Older adults are susceptible to oral conditions and diseases due to age-related changes and chronic diseases. Typically, elders use many medications to treat medical conditions. Unfortunately, these same drugs can result in soft tissue damage in the mouth, taste bud changes, and dry mouth. By providing regular dental care to our residents the Home is helping to minimize many of the mentioned conditions.

This contract has been approved by the Attorney General's Office as to form, substance and execution. Your favorable action on this request would be appreciated.

Respectfully Submitted,

*Margaret D LaBrecque*

Margaret D. LaBrecque  
Commandant

AMENDMENT OF AGREEMENT BETWEEN  
THE NEW HAMPSHIRE VETERANS HOME  
AND  
Northeast Mobile Dental Service P.A.

This Amendment to Agreement (hereinafter called the "Amendment"), dated this 20 day of May, 2014, by and between the State of New Hampshire, acting by and through the New Hampshire Veterans Home (hereinafter called "NHVH"), and Northeast Mobile Dental Service P.A., 30 Pinkerton Street, Derry, NH , 03038, vendor number 59885 (hereinafter called the "Contractor").

WHEREAS, pursuant to an Agreement dated June 3, 2011, the Contractor has agreed to provide certain services upon the terms and conditions specified in the agreement, in consideration of payment by NHVH of certain sums specified therein; and

WHEREAS, pursuant to Contract Terms of the agreement may be amended, waived or discharged only be an instrument in writing signed by the parties thereto and only after such approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

WHEREAS, NHVH and the Contractor have agreed to amend the agreement in certain respects;

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

1. Amendment and Modification of Agreement

The Contract is hereby amended as follows:

Paragraph 1.7, Completion Date is revised as follows:

Changed from June 30, 2014 to June 30, 2016

Paragraph 1.8, Price Limitation is revised as follows:

Increased by \$99,000 from \$148,500 to \$247,500

2. Amendment and Modification of Exhibit B

The Contract is hereby amended to include the following:

B.1 will now read:

The Home agrees to pay the Contractor the sum of \$99,000 over a two year period, each fiscal year is payable in 12 monthly installments not to exceed the total dollar per fiscal year.

010-043-5359-046-0112

FY15      \$49,500.00

FY16      \$49,500.00

3. Effective Date of Amendment

The effective date of this action is July 1, 2014.

4. Continuance of Agreement

Except as specifically amended and modified by the terms and conditions of this Agreement, the Agreement and the obligations of the parties thereunder shall remain in full force and effect in accordance with the terms and conditions set forth therein.

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

Margaret D LaBrecque  
Margaret D. LaBrecque, Commandant, NH Veterans Home

5/26/14  
Date

Daniel F Kana  
Contractor, Daniel F. Kana, D.D.S

5/20/2014  
Date

STATE OF NEW HAMPSHIRE

County of

The foregoing instrument was acknowledged before me on this 20 day of May, 2014, by Daniel F. Kana, D.D.S.

Michelle Barker, NP  
Signature of Notary Public & Justice of Peace  
5/20/14  
Date  
Commission Expires  


Approved to as form, execution, and substance:  
OFFICE OF THE ATTORNEY GENERAL

By: [Signature]

6/20/14  
Date

**NEW HAMPSHIRE VETERANS HOME**

**STANDARD EXHIBIT D**  
**HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**  
**BUSINESS ASSOCIATE AGREEMENT**

The Contractor identified in Section 1.3 of the General Provisions of the Agreement agrees to comply with the Health Insurance Portability and Accountability Act, Public Law 104-191 and with the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160 and 164 and those parts of the HITECH Act applicable to business associates. As defined herein, "Business Associate" shall mean the Contractor and subcontractors and agents of the Contractor that receive, use or have access to protected health information under this Agreement and "Covered Entity" shall mean the State of New Hampshire, Veterans Home.

**BUSINESS ASSOCIATE AGREEMENT**

**(1) Definitions.**

- a. "Breach" shall have the same meaning as the term "Breach" in Title XXX, Subtitle D. Sec. 13400.
- b. "Business Associate" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- c. "Covered Entity" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- d. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR Section 164.501.
- e. "Data Aggregation" shall have the same meaning as the term "data aggregation" in 45 CFR Section 164.501.
- f. "Health Care Operations" shall have the same meaning as the term "health care operations" in 45 CFR Section 164.501.
- g. "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act, Title XIII, Subtitle D, Part 1 & 2 of the American Recovery and Reinvestment Act of 2009.
- h. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160, 162 and 164.
- i. "Individual" shall have the same meaning as the term "individual" in 45 CFR Section 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.501(g).
- j. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.

- k. “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 CFR Section 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- l. “Required by Law” shall have the same meaning as the term “required by law” in 45 CFR Section 164.501.
- m. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- n. “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C, and amendments thereto.
- o. “Unsecured Protected Health Information” means protected health information that is not secured by a technology standard that renders protected health information unusable, unreasonable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.
- p. Other Definitions - All terms not otherwise defined herein shall have the meaning established under 45 C.F.R. Parts 160, 162 and 164, as amended from time to time, and the HITECH Act.

**(2) Use and Disclosure of Protected Health Information.**

- a. Business Associate shall not use, disclose, maintain or transmit Protected Health Information (PHI) except as reasonably necessary to provide the services outlined under Exhibit A of the Agreement. Further, the Business Associate shall not, and shall ensure that its directors, officers, employees and agents, do not use, disclose, maintain or transmit PHI in any manner that would constitute a violation of the Privacy and Security Rule.
- b. Business Associate may use or disclose PHI:
  - I. For the proper management and administration of the Business Associate;
  - II. As required by law, pursuant to the terms set forth in paragraph d. below; or
  - III. For data aggregation purposes for the health care operations of Covered Entity.
- c. To the extent Business Associate is permitted under the Agreement to disclose PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from the third party that such PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party; and (ii) an agreement from such third party to notify Business Associate, in accordance with the HITECH Act, Subtitle D, Part 1, Sec. 13402 of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.
- d. The Business Associate shall not, unless such disclosure is reasonably necessary to provide services under Exhibit A of the Agreement, disclose any PHI in response to a request for disclosure on the basis that it is required by law, without first notifying Covered Entity so that Covered Entity has an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, the Business Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all remedies.

- e. If the Covered Entity notifies the Business Associate that Covered Entity has agreed to be bound by additional restrictions over and above those uses or disclosures or security safeguards of PHI pursuant to the Privacy and Security Rule, the Business Associate shall be bound by such additional restrictions and shall not disclose PHI in violation of such additional restrictions and shall abide by any additional security safeguards.

(3) **Obligations and Activities of Business Associate.**

- a. Business Associate shall report to the designated Privacy Officer of Covered Entity, in writing, any use or disclosure of PHI in violation of the Agreement, including any security incident involving Covered Entity data, in accordance with the HITECH Act, Subtitle D, Part 1, Sec. 13402.
- b. The Business Associate shall comply with all sections of the Privacy and Security Rule as set forth in, the HITECH Act, Subtitle D, Part 1, Sec. 13401 and Sec.13404.
- c. Business Associate shall make available all of its internal policies and procedures, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of Covered Entity to the Secretary for purposes of determining Covered Entity's compliance with HIPAA and the Privacy and Security Rule.
- d. Business Associate shall require all of its business associates that receive, use or have access to PHI under the Agreement, to agree in writing to adhere to the same restrictions and conditions on the use and disclosure of PHI contained herein, including the duty to return or destroy the PHI as provided under Section (3)b and (3)k herein. The Covered Entity shall be considered a direct third party beneficiary of the Contractor's business associate agreements with Contractor's intended business associates, who will be receiving PHI pursuant to this Agreement, with rights of enforcement and indemnification from such business associates who shall be governed by standard provision #13 of this Agreement for the purpose of use and disclosure of protected health information.
- e. Within five (5) business days of receipt of a written request from Covered Entity, Business Associate shall make available during normal business hours at its offices all records, books, agreements, policies and procedures relating to the use and disclosure of PHI to the Covered Entity, for purposes of enabling Covered Entity to determine Business Associate's compliance with the terms of the Agreement.
- f. Within ten (10) business days of receiving a written request from Covered Entity, Business Associate shall provide access to PHI in a Designated Record Set to the Covered Entity, or as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR Section 164.524.
- g. Within ten (10) business days of receiving a written request from Covered Entity for an amendment of PHI or a record about an individual contained in a Designated Record Set, the Business Associate shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under 45 CFR Section 164.526.

- h. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.
- i. Within ten (10) business days of receiving a written request from Covered Entity for a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill its obligations to provide an accounting of disclosures with respect to PHI in accordance with 45 CFR Section 164.528.
- j. In the event any individual requests access to, amendment of, or accounting of PHI directly from the Business Associate, the Business Associate shall within two (2) business days forward such request to Covered Entity. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or the Business Associate to violate HIPAA and the Privacy and Security Rule, the Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable.
- k. Within ten (10) business days of termination of the Agreement, for any reason, the Business Associate shall return or destroy, as specified by Covered Entity, all PHI received from, or created or received by the Business Associate in connection with the Agreement, and shall not retain any copies or back-up tapes of such PHI. If return or destruction is not feasible, or the disposition of the PHI has been otherwise agreed to in the Agreement, Business Associate shall continue to extend the protections of the 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. If Covered Entity, in its sole discretion, requires that the Business Associate destroy any or all PHI, the Business Associate shall certify to Covered Entity that the PHI has been destroyed.

**(4) Obligations of Covered Entity**

- a. Covered Entity shall notify Business Associate of any changes or limitation(s) in its Notice of Privacy Practices provided to individuals in accordance with 45 CFR Section 164.520, to the extent that such change or limitation may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall promptly notify Business Associate of any changes in, or revocation of permission provided to Covered Entity by individuals whose PHI may be used or disclosed by Business Associate under this Agreement, pursuant to 45 CFR Section 164.506 or 45 CFR Section 164.508.
- c. Covered entity shall promptly notify Business Associate of any restrictions on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(5) **Termination for Cause**

In addition to standard provision #10 of this Agreement the Covered Entity may immediately terminate the Agreement upon Covered Entity's knowledge of a breach by Business Associate of the Business Associate Agreement set forth herein as Exhibit D. The Covered Entity may either immediately terminate the Agreement or provide an opportunity for Business Associate to cure the alleged breach within a timeframe specified by Covered Entity. If Covered Entity determines that neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(6) **Miscellaneous**

- a. **Definitions and Regulatory References.** All terms used, but not otherwise defined herein, shall have the same meaning as those terms in the Privacy and Security Rule, and the HITECH Act as amended from time to time. A reference in the Agreement, as amended to include this Exhibit D, to a Section in the Privacy and Security Rule means the Section as in effect or as amended.
- b. **Amendment.** Covered Entity and Business Associate agree to take such action as is necessary to amend the Agreement, from time to time as is necessary for Covered Entity to comply with the changes in the requirements of HIPAA, the Privacy and Security Rule, and applicable federal and state law.
- c. **Data Ownership.** The Business Associate acknowledges that it has no ownership rights with respect to the PHI provided by or created on behalf of Covered Entity.
- d. **Interpretation.** The parties agree that any ambiguity in the Agreement shall be resolved to permit Covered Entity to comply with HIPAA, the Privacy and Security Rule and the HITECH Act.
- e. **Segregation.** If any term or condition of this Exhibit D or the application thereof to any person(s) or circumstance is held invalid, such invalidity shall not affect other terms or conditions which can be given effect without the invalid term or condition; to this end the terms and conditions of this Exhibit D are declared severable.
- f. **Survival.** Provisions in this Exhibit D regarding the use and disclosure of PHI, return or destruction of PHI, extensions of the protections of the Agreement in section 3D, the defense and indemnification provisions of section 3D and standard contract provision #13, shall survive the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Exhibit D.

NHVVH  
The State Agency Name

Daniel F. Kan  
Name of the Contractor

Margaret D LaBrecque  
Signature of Authorized Representative

NORTHEAST MOBILE DENTAL SERVICE  
Signature of Authorized Representative

MARGARET D LABRECQUE  
Name of Authorized Representative

DANIEL F. KANA  
Name of Authorized Representative

COMMANDANT  
Title of Authorized Representative

PRESIDENT  
Title of Authorized Representative

5/26/2014  
Date

4/27/14  
Date

# 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 NORTHEAST MOBILE DENTAL SERVICE, P.A. is a New Hampshire corporation duly incorporated under the laws of the State of New Hampshire on November 7, 1990. I further certify that all fees and annual reports required by the Secretary of State's office have been received and that articles of dissolution have not been filed.



In TESTIMONY WHEREOF, I hereto  
set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 16<sup>th</sup> day of April, A.D. 2014

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

William M. Gardner  
Secretary of State

*NORTHEAST MOBILE DENTAL SERVICE, PA*

Daniel F. Kana, D.D.S.  
John J. Ahern, D.D.S.  
Sean E. Nichols, D.D.S.  
John P. Ahern, D.D.S.  
Donald G. Hersey Jr., D.D.S.

30 Pinkerton Street • Derry, NH 03038  
Telephone: 603-432-5039

April 29, 2014

The New Hampshire Veteran's Home  
P.O. Box 229  
139 Winter Street,  
Tilton, NH. 03276-0229

To Whom It May Concern;

I Sean E. Nichols, Vice President of Northeast Mobile Dental Service, PA, certify that Daniel F. Kana has the proper authority to enter into a contractual agreement with the New Hampshire Veteran's Home.

Sincerely,



Sean E. Nichols, D.D.S.

*Paula Rose*

STATE OF NEW HAMPSHIRE  
County of Rockingham, This

29<sup>th</sup> day of April, 2014  
has personally appeared before me.

PAULA ROSE  
Notary Public - New Hampshire  
My Commission Expires September 23, 2014



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
6/18/2014

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> THE ROWLEY AGENCY INC. 139 Loudon Road P.O. Box 511 Concord NH 03302-0511	<b>CONTACT NAME:</b> Christine Holman, CPCU, CIC <b>PHONE (A/C, No, Ext):</b> (603) 224-2562 <b>E-MAIL ADDRESS:</b> cholman@rowleyagency.com	<b>FAX (A/C, No):</b> (603) 224-8012
	<b>INSURER(S) AFFORDING COVERAGE</b> INSURER A: Cincinnati Insurance Co.	
<b>INSURED</b> Northeast Mobile Dental Services PA Daniel Kana, DDS 30 Pinkerton Street Derry NH 03038	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	
	INSURER G:	

**COVERAGES** CERTIFICATE NUMBER: 14-15 all lines 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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/>			EDN0063398	7/22/2014	7/22/2015	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 2,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/>						
A	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/>			EDN0063398	7/22/2014	7/22/2015	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB CLAIMS-MADE <input type="checkbox"/>			EDN0063398	7/22/2014	7/22/2015	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
	DED <input checked="" type="checkbox"/> RETENTION \$ 10,000						
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	WC2130934-01	5/25/2014	5/25/2015	<input checked="" type="checkbox"/> WC STATUTORY LIMITS E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
	A Professional Liability						
\$ 2,000,000 PER CLAIM \$ 4,000,000 AGGREGATE							

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
Covering dental operations of the Insured during the policy period.

<b>CERTIFICATE HOLDER</b>  NH Veteran's Home 139 Winter Street Tilton, NH 03276-0229	<b>CANCELLATION</b>  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  C Holman, CPCU, CIC/C <i>Christine Holman</i>



# New Hampshire Veterans

## Home



Barry E. Conway  
Commandant

139 Winter Street  
Tilton, NH 03276-0229

Phone: (603) 527-4400  
Fax : (603) 527-4402

G+C 7/13/11  
# 98

June 28, 2011

His Excellency, Governor John H. Lynch  
And the Honorable Council  
State House  
Concord, New Hampshire 03301

### REQUESTED ACTION

Authorize the New Hampshire Veterans Home to enter into a **retroactive** contract with Northeast Mobile Dental Service, (VC 156895), 30 Pinkerton Street, Derry NH, 03038 in the amount of \$148,500 for the sole purpose of providing dental services on site to the residents of the New Hampshire Veterans Home effective July 1, 2011 through June 30, 2014. Funding source is 38% Federal, 44% Agency Income, and 18% General Funds.

Funds are available in account titled 05-43-43-430010-5359, New Hampshire Veterans Home, Professional Services, as follows with the authority to adjust encumbrances in each of the State fiscal years through the Budget Office if needed and justified.

	<u>FY 2012</u>	<u>FY2013</u>	<u>FY2014</u>	<u>Total</u>
#-046-500462 Non Benefited Med -Consultants	\$49,500	\$49,500	\$49,500	\$148.500

### EXPLANATION

This contract provides for dental services on site to the residents of the Home. In May 2011, the New Hampshire Veterans Home advertised for bids on the state of NH Purchase and Property web site as well as the New Hampshire Veterans Home web site for mobile dental services. Northeast Mobile Dental Service was the only vendor to respond to the RFP. Northeast Mobile Dental has provided in-house dental service to all of the Homes residents. Dr. Kana has provided this service satisfactorily for eight years and has developed a professional relationship with the residents. Older adults are susceptible to oral conditions and diseases due to age-related changes and chronic diseases. Typically, elders use many medications to treat medical conditions. Unfortunately, these same drugs can result in soft tissue damage in the mouth, taste bud changes, and dry mouth. By providing regular dental care to our residents the Home is helping to minimize many of the mentioned conditions. This contract includes a two-year extension option that may be exercised at the end of the three year term with Governor and Council approval

This contract is retroactive due to the time it took for the Home to put the contract out to bid and the contractor to gather all necessary documents.

This contract has been approved by the Attorney General's Office as to form, substance and execution. Your favorable action on this request would be appreciated.

Respectfully Submitted,

Barry E. Conway  
Commandant

Subject: Mobile Dental Services for the NH Veterans Home residents FORM NUMBER P-37 ( version 1/09)

**AGREEMENT**  
The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name <u>NEW HAMPSHIRE VETERANS HOME</u>		1.2 State Agency Address <u>139 WINTER STREET, TILTON, NH 03276</u>	
1.3 Contractor Name <u>Northeast Mobile Dental Service P.A.</u>		1.4 Contractor Address <u>30 Pinkerton Street, Derry NH 03038</u>	
1.5 Contractor Phone Number <u>603-432-5039</u>	1.6 Account Number <u>10-04300-5359-046-500462</u>	1.7 Completion Date <u>6/30/2014</u>	1.8 Price Limitation <u>\$ 148,500.00</u>
1.9 Contracting Officer for State Agency <u>Margaret D. LaBrecque</u>		1.10 State Agency Telephone Number <u>603-527-4840</u>	
1.11 Contractor Signature <u>Daniel F. Kawa</u>		1.12 Name and Title of Contractor Signatory <u>DANIEL F. KAWA - PRES. MOBILE DENTAL NORTHEAST</u>	
1.13 Acknowledgement: State of <u>NH</u> , County of <u>Rockingham</u> On <u>6/3/2011</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace <u>Paula Rose</u> [Seal]		PAULA ROSE Notary Public - New Hampshire My Commission Expires September 23, 2014	
1.13.2 Name and Title of Notary or Justice of the Peace <u>Paula Rose Notary Public</u>			
1.14 State Agency Signature <u>Margaret D LaBrecque</u>		1.15 Name and Title of State Agency Signatory <u>Margaret D. LaBrecque, Business Administrator IV</u>	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) By: <u>Anthony G. Blenkinsop</u> On: <u>6/28/2011</u>			
1.18 Approval by the Governor and Executive Council By: _____ On: _____			

**2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**  
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").  
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.** Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.**  
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.  
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.  
5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.  
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.  
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.  
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.  
7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

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**8. EVENT OF DEFAULT/REMEDIES.**

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

- 8.1.1 failure to perform the Services satisfactorily or on schedule;
- 8.1.2 failure to submit any report required hereunder; and/or
- 8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

- 8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;
- 8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;
- 8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or
- 8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

**9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.**

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

**10. TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination

Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

**11. CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

**12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

**13. INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

**14. INSURANCE.**

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be

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Date 6/3/11

attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

**15. WORKERS' COMPENSATION.**

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

**16. WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

**17. NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

**18. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

**19. CONSTRUCTION OF AGREEMENT AND TERMS.** This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual

intent, and no rule of construction shall be applied against or in favor of any party.

**20. THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

**21. HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**22. SPECIAL PROVISIONS.** Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

**23. SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

**24. ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

**EXHIBIT A**  
**SCOPE OF SERVICES**

**A. Scope Of Services:**

The New Hampshire Veterans Home proposes to enter into an agreement with a contractor to provide mobile dental services to all residents within the facility.

1. The Dentist shall provide the following services:
  - a) The NHVH hereby engages the Dentist and the Dentist hereby agrees to service the NHVH as an independent contractor and comply with the standards of professional practice of the Department of Health of the State of New Hampshire and the American Dental Association.
  - b) The Dentist shall perform those services customarily performed by a dentist engaged in general practice and have dental care responsibility for patients treated by him. The services are limited to examination, oral prophylaxis, scaling, fabrication and repair of dentures, restorations, oral hygiene instruction, and extractions within the limits of general practice. Compensation for dental services not provided by the Corporation shall be the responsibility of the NHVH.
  - c) The Dentist shall provide such dental equipment and supplies necessary for the provision of the dental services under the terms of this Agreement. At all times the Dentist shall remain the sole owner of said equipment.
  - d) The Dentist shall provide professional staff licensed by the State of New Hampshire for the provision of the dental services under this Agreement.
  - e) The Dentist shall pay laboratory fees incurred in the course of services provided under the terms of the Agreement.
  - f) The Dentist shall develop written dental services and oral hygiene policies and practices for the care of the patients.
  - g) The Dentist shall assure that a current record of the patient's dental status is included in the medical record within 14 days of admission, and that any emergency needs are met within 4 days of the initial resident assessment.
  - h) The Dentist shall provide at least two in-services for nursing and other appropriate personnel in carrying out the oral hygiene and dental services policies and practices per year.
  - i) The Dentist shall assure that dental care prescribed shall be within the physical and mental capacity of the patient to receive it.
  - j) The Dentist shall establish and maintain annual examinations and routine and emergency dental care.
  - k) The Dentist shall maintain a detailed list of both routine and emergency dental services.
  - l) The Dentist shall maintain adequate dental records of all dental care given as a part of the patient's medical record.

- m) The Dentist shall comply with reasonable sanitary standards required by the Department of Health of the State of New Hampshire.
  - n) The Dentist shall provide approximately 26 dental service sessions per year. These sessions will be scheduled at least 2 per month. A session is a minimum of 4 hours and a maximum of 5 hours.
  - o) A Hygienist will provide approximately 12 dental visits per year for the purpose of patient prophylaxis, staff education, patient screenings and other administrative tasks. These visits will be on an alternating schedule with the Dentist.
  - p) The Dentist will insure that malpractice insurance is maintained by his professional staff, in the amount of \$1 million/\$3 million minimum.
  - q) The Dentist agrees to follow the non-discrimination policy of the NHVH, to discharge its obligations to treat all patients and to employ any and all persons without regard to race, creed, color, national origin, sex, sponsor or disability.
  - r) The Dentist shall make available, upon written request, the contract and books, documents and records of such Dentist, which are deemed necessary as determined by the Dentist to certify the nature and extent of expenses.
  - s) The Dentist will provide the attending physician with consultations, as necessary and appropriate for any resident examined by the Dentist.
2. The Dentist shall conduct his work so as to interfere as little as possible with State business, determine the State's normal working conditions and activities in progress and shall conduct the work in the least disruptive manner.
  3. The Dentist shall sign in and out every day as well as wear a contractors ID badge, provided by State.
  4. The New Hampshire Veterans Home reserves the right to terminate this contract at any given time with a 30 day written notice.
  5. The contract and all obligations of the parties there under, shall become effective upon acceptance by the State and shall be completed in their entirety prior to a specified date (Block 1.6). Any work undertaken by the contractor prior to the effective date shall be at his sole risk and, in the event that the contract shall not become effective, the State shall be under no obligation to reimburse the Contractor for any such work. The term of the contract shall be effective upon Governor and Executive Council Approval through June 30, 2014. With the option of extending for one (1) two (2) year period.

**EXHIBIT B**  
**BUDGET AND METHOD OF PAYMENT**

The Dentist hereby offers to provide mobile dental services to the NHVH in accordance with all of the requirements of this contract at the following prices for the entire contract term:

Year 1 (Total amount invoiced monthly) \$ <u>4,125.00 x 12 months =</u>	\$ <u>49,500.00</u>
Year 2 (Total amount invoiced monthly) \$ <u>4,125.00 x 12 months =</u>	\$ <u>49,500.00</u>
Year 3 (Total amount invoiced monthly) \$ <u>4,125.00 x 12 months =</u>	\$ <u>49,500.00</u>
<b>Total not to exceed amount</b>	<b>\$ <u>148,500.00</u></b>

1. The Dentist is also authorized to receive third party payments for services rendered to residents above and beyond those covered in this contract to the extent of any applicable insurance coverage.
2. The NHVH remains responsible for ensuring that any service provided pursuant to this contract complies with all pertinent provisions of federal, state and local statutes, rules and regulations.
3. The NHVH shall make available for the use of the Dentist a multipurpose treatment room acceptable to the Dentist and in conformity with the sanitary standards of the Department of Health of the State of New Hampshire.

A. Invoicing:

The successful contractor shall agree to invoice the New Hampshire Veterans Home the amount equal to the total contract price divided by 36 months on a monthly basis. Please include one original invoice and one copy. Payment will not be due until thirty (30) days after the invoice has been received at the NH Veterans Home business office.

B. Payment:

**Payment may be withheld if work is not performed as described under SCOPE OF SERVICES, and the immediate termination of this contract could occur.**

Unless otherwise noted on the proposal, payment will be due thirty (30) days after invoicing. A check will be issued through the State Treasurer and forwarded to the Vendor within fourteen (14) days after processing begins at the agency level. Payments will be for only what has been agreed to in the RFP. The NHVH does not pay late charges or interest.

**EXHIBIT C**  
**SPECIAL PROVISIONS**

1. Dentist represents and warrants that he has obtained and maintained in force all licenses and permits required by federal, state and local authorities for the performance of dental services.
2. This agreement may be cancelled by either party at any time without cause by giving a 30 day notice in writing to the other party.
3. Treatment of any injury sustained by a member or patient, which in the opinion of the Commandant, was caused by such member or patient's wanton or reckless conduct, will not be covered by this contract. These incidents will be treated as personal liabilities of the member or patient for the services rendered.
4. Contractor is aware of the Health Insurance Portability and Accountability Act of 1996 (HIPPA) and agrees to comply with its regulations concerning privacy and security.
5. Insurance and Bond: Subparagraph 14.1.1 of the General Provisions of this contract is deleted and the following subparagraph is added: "14.1.1 professional liability insurance:
  - Professional liability insurance in amounts of not less than \$1,000,000 per claim and \$3,000,000 per incident.

## STANDARD EXHIBIT D

The Contractor identified in Section 1.3 of the General Provisions of the Agreement agrees to comply with the Health Insurance Portability and Accountability Act, Public Law 104-191 and with the Standards for Privacy of Individually Identifiable Health Information, 45 CFR Parts 160 and 164. As defined herein, "Business Associate" shall mean the Contractor and sub contractors and agents of the Contractor that receive, use or have access to protected health information under this Agreement and "Covered Entity" shall mean the New Hampshire Veterans Home.

### BUSINESS ASSOCIATE AGREEMENT

#### (1) Definitions.

- a. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR Section 164.501.
- b. "Data Aggregation" shall have the same meaning as the term "data aggregation" in 45 CFR Section 164.501.
- c. "Health Care Operations" shall have the same meaning as the term "health care operations" in 45 CFR Section 164.501.
- d. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.  
  
"HITECH ACT means the Health Information Technology for Economic and Clinical Health. Regulations announced in Federal Register August 24, 2009 in effect as of September 23, 2009.
- e. "Individual" shall have the same meaning as the term "individual" in 45 CFR Section 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.501(g).
- f. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.
- g. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR Section 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- h. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR Section 164.501.
- i. "Secretary" shall mean the Secretary of the New Hampshire Veterans Home or his/her designee.
- j. Other Definitions - All terms not otherwise defined herein shall have the meaning established under 45 C.F.R. Parts 160, 162 and 164, as amended from time to time.

**(2) Use and Disclosure of Protected Health Information.**

- a. Business Associate shall not use or disclose PHI except as reasonably necessary to provide the services outlined under Exhibit A of the Agreement. Further, the Business Associate shall not, and shall ensure that its directors, officers, employees and agents, do not use or disclose PHI in any manner that would constitute a violation of the Privacy Rule if so used by Covered Entity.
- b. Business Associate may use or disclose PHI:
- (i) for the proper management and administration of the Business Associate;
  - (ii) as required by law, pursuant to the terms set forth in paragraph d. below; or
  - (iii) for data aggregation purposes for the health care operations of Covered Entity.
- c. To the extent Business Associate is permitted under the Agreement to disclose PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from the third party that such PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party; and (ii) an agreement from such third party to immediately notify Business Associate of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.
- d. The Business Associate shall not, unless such disclosure is reasonably necessary to provide services under Exhibit A of the Agreement, disclose any PHI in response to a request for disclosure on the basis that it is required by law, without first notifying covered entity so that Covered Entity has an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, the Business Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all remedies.
- e. If the Covered Entity notifies the Business Associate that Covered Entity has agreed to be bound by additional restrictions on the uses or disclosures of PHI pursuant to the Privacy Rule, the Business Associate shall be bound by such additional restrictions and shall not disclose PHI in violation of such additional restrictions.

**(3) Obligations and Activities of Business Associate.**

- a. Business Associate shall report to the designated Privacy Officer of Covered Entity, in writing, any use or disclosure of PHI in violation of the Agreement, of which it becomes aware, within two (2) business days of becoming aware of such unauthorized use or disclosure.
- b. Business Associate shall use appropriate safeguards to prevent the use or disclosure of PHI other than as permitted by the Agreement.
- c. Business Associate shall make available all of its internal policies and procedures, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of Covered Entity to the Secretary for purposes of determining Covered Entity's compliance with HIPAA and the Privacy Rule and HITECH ACT and the Security Rule.
- d. Business Associate shall require all of its business associates that receive, use or have access to PHI under the Agreement, to agree in writing to adhere to the same restrictions and

conditions on the use and disclosure of PHI contained herein, including the duty to return or destroy the PHI as provided under Section (3)k. herein. The Covered Entity shall be considered a direct third party beneficiary of the Contractor's business associate agreements with Contractor's business associates, who will be receiving PHI pursuant to this Agreement, with rights of enforcement and indemnification from such business associates who shall be governed by standard provision #13 of this agreement for the purpose of use and disclosure of protected health information.

e. Within five (5) business days of receipt of a written request from Covered Entity, Business Associate shall make available during normal business hours at its offices all records, books, agreements, policies and procedures relating to the use and disclosure of PHI to the Covered Entity, for purposes of enabling Covered Entity to determine Business Associate's compliance with the terms of the Agreement.

f. Within ten (10) business days of receiving a written request from Covered Entity, Business Associate shall provide access to PHI in a designated record set to the Covered Entity, or as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR Section 164.524.

g. Within ten (10) business days of receiving a written request from Covered Entity for an amendment of PHI or a record about an individual contained in a Designated Record Set, the Business Associate shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under 45 CFR Section 164.526.

h. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.

i. Within ten (10) business days of receiving a written request from Covered Entity for a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill its obligations to provide an accounting of disclosures with respect to PHI in accordance with 45 CFR Section 164.528.

j. In the event any individual requests access to, amendment of, or accounting of PHI directly from the Business Associate, the Business Associate shall within two (2) business days forward such request to Covered Entity. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or the Business Associate to violate HIPAA and the Privacy Rule or HITECH ACT and the Security Rule, the Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable.

k. Within ten (10) business days of termination of the Agreement, for any reason, the Business Associate shall return or destroy, as specified by Covered Entity; all PHI received from, or created or received by the Business Associate in connection with the Agreement, and shall not retain any copies or back-up tapes of such PHI. If return or destruction is not feasible, or the disposition of the PHI has been otherwise agreed to in the Agreement, Business Associate shall continue to extend the protections of the 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. If Covered Entity, in its sole discretion, requires that the Business Associate destroy any or all PHI, the Business Associate shall certify to Covered Entity that the PHI has been destroyed.

**(4) Obligations of Covered Entity**

- a. Covered Entity shall notify Business Associate of any changes or limitation(s) in its Notice of Privacy Practices provided to individuals in accordance with 45 CFR Section 164.520, to the extent that such change or limitation may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall promptly notify Business Associate of any changes in, or revocation of permission provided to Covered Entity by individuals whose PHI may be used or disclosed by Business Associate under this Agreement, pursuant to 45 CFR Section 164.506 or 45 CFR Section 164.508.
- c. Covered entity shall promptly notify Business Associate of any restrictions on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

**(5) Termination for Cause**

In addition to standard provision #10 of this agreement the Covered Entity may immediately terminate the Agreement upon Covered Entity's knowledge of a breach by Business Associate of the Business Associate Agreement set forth herein as Exhibit D. The Covered Entity may either immediately terminate the Agreement or provide an opportunity for Business Associate to cure the alleged breach within a timeframe specified by Covered Entity. If Covered Entity determines that neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

**(6) Miscellaneous**

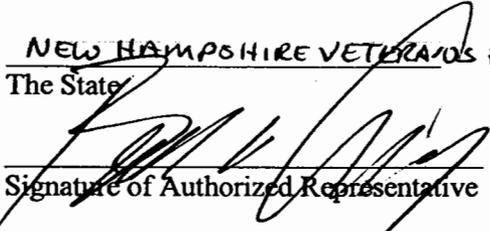
- a. Definitions and Regulatory References. All terms used, but not otherwise defined herein, shall have the same meaning as those terms in the Privacy Rule and Security Rule, as amended from time to time. A reference in the Agreement, as amended to include this Exhibit D, to a Section in the Privacy Rule and Security Rule means the Section as in effect or as amended.
- b. Amendment. Covered Entity and Business Associate agree to take such action as is necessary to amend the Agreement, from time to time as is necessary for Covered Entity to comply with the changes in the requirements of HIPAA, the Privacy Rule, HITECH ACT, the Security Rule and applicable federal and state law.
- c. Data Ownership. The Business Associate acknowledges that it has no ownership rights with respect to the PHI provided by or created on behalf of Covered Entity.
- d. Interpretation. The parties agree that any ambiguity in the Agreement shall be resolved to permit Covered Entity to comply with HIPAA, HITECH ACT and the Privacy Rule and Security Rule.
- e. Segregation. If any term or condition of this Exhibit D or the application thereof to any person(s) or circumstance is held invalid, such invalidity shall not affect other terms or conditions

which can be given effect without the invalid term or condition; to this end the terms and conditions of this Exhibit D are declared severable.

f. Survival. Provisions in this Exhibit D regarding the use and disclosure of PHI, return or destruction of PHI, extensions of the protections of the Agreement in section 3 k., the defense and indemnification provisions of section 3 d. and standard contract provision #13, shall survive the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Exhibit D.

NEW HAMPSHIRE VETERANS HOME  
The State

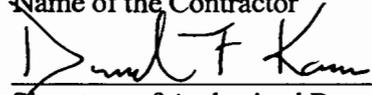
  
Signature of Authorized Representative

BARRY E. CONWAY  
Name of Authorized Representative

COMMANDANT  
Title of Authorized Representative

6/29/11  
Date

NORTHEAST MOBILE DENTAL SERVICE  
Name of the Contractor

  
Signature of Authorized Representative

DANIEL F. KANA  
Name of Authorized Representative

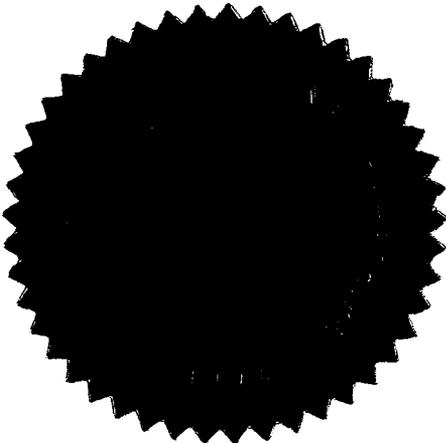
PRESIDENT  
Title of Authorized Representative

6/3/11  
Date

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 NORTHEAST MOBILE DENTAL SERVICE, P.A. is a New Hampshire corporation duly incorporated under the laws of the State of New Hampshire on November 7, 1990. I further certify that all fees and annual reports required by the Secretary of State's office have been received and that articles of dissolution have not been filed.



In TESTIMONY WHEREOF, I hereto  
set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 7<sup>th</sup> day of June, A.D. 2011

William M. Gardner  
Secretary of State

**NORTHEAST MOBILE DENTAL SERVICE, PA**

Daniel F. Kana, D.D.S.  
John J. Ahern, D.D.S.  
Sean E. Nichols, D.D.S.  
John P. Ahern, D.D.S.  
Donald G. Hersey Jr., D.D.S.

30 Pinkerton Street • Derry, NH 03038  
Telephone: 603-432-5039

June 3, 2011

To Whom It May Concern:

I John J. Ahern Treasurer of Northeast Mobile Dental Service, PA authorize Daniel F. Kana President of Northeast Mobile Dental Service to enter into a contract for the company.



John J. Ahern  
Treasurer

*Paula Rose*  
Paula Rose  
Notary Public

STATE OF NEW HAMPSHIRE  
County of Rockingham, This

3<sup>rd</sup> day of June, 2011, *John J. Ahern*,  
has personally appeared before me.

PAULA ROSE  
Notary Public - New Hampshire  
My Commission Expires September 23, 2014