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STATE OF NEW HAMPSHIRE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DIVISION OF PUBLIC HEALTH SERVICES

Lori A. Shibinette
Commissioner

Patricia Tilley
Director

29 HAZEN DRIVE, CONCORD, NH 03301
603-271-4501 1-800-852-3345 Ext. 4501
Fax: 603-271-4827 TDD Access: 1-800-735-2964
www.dhhs.nh.gov

June 16, 2021

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

REQUESTED ACTION

Authorize the Department of Health and Human Services, Division of Public Health Services, to enter into a Retroactive, Memorandum of Agreement with the National Foundation for the Centers for Disease Control and Prevention, Inc., Atlanta, GA, to provide staff to the Department to support in the Overdose Response Strategy High Intensity Drug Trafficking Area program, at no cost to the Department, with the option to renew as agreed to and executed by both CDC Foundation and the Department, , effective retroactive to April 1, 2021 upon Governor and Council approval through July 31, 2021.

EXPLANATION

This request is **Retroactive** because more time was needed to negotiate and finalize the scope of the work prior to the vendor accepting the terms of the agreement. The Centers for Disease Control and Prevention and the Office of National Drug Control Policy have funded the National Foundation for the Centers for Disease Control and Prevention, Inc. to provide specialized Overdose Response Strategy services at no cost to the Department.

The purpose of this request is for the Contractor to provide 0.3 Full-time equivalent hours a week of professional services to support the Overdose Response Strategy High Intensity Drug Trafficking Area program to assist with efforts of the opioid prevention efforts in the State. The Contactors staff will assist in the development and implementation of drug overdose information sharing systems and with evidence-based prevention programs.

The Contractor will facilitate communication of de-identified and aggregated data on drug use and overdoses, between the Department, public safety agencies, and organizations that are designed to address drug use and overdose in New Hampshire. The Contractor will collaborate with the Department and the New Hampshire Drug Intelligence Officer, to build partnerships between local New Hampshire High Intensity Drug Trafficking Area program(s), and public health entities to improve data collection and analysis around drug overdose. In addition, the Contractor will identify and promote data driven overdose prevention interventions to support and evaluate public safety-led interventions.

The Department will monitor contracted services by reviewing the reporting the Contractor submits on overdose, drug use, and drug availability related data analyses.

As referenced in Paragraph 3 Terms and Conditions of the attached Memorandum of Agreement, the parties have the option to extend the agreement as agreed to and executed by both CDC Foundation and the Department, contingent upon satisfactory delivery of services, available funding, and Governor and Council approval.

Should the Governor and Council not authorize this request, the Department will not have access to National Foundation for the Centers for Disease Control and Prevention resources to support with efforts of the High Intensity Drug Trafficking Area program, which will impact the communication of drug related data between public health agencies.

Area served: Statewide

Respectfully submitted,

Lori Shibinette

Lori A. Shibinette
Commissioner

BUSINESS ASSOCIATE AGREEMENT

BETWEEN

New Hampshire Department of Health and Human Services

AND

THE CDC FOUNDATION

I. **PURPOSE**

The New Hampshire Department of Health and Human Services (hereafter referred to as "Covered Entity") and the CDC Foundation (hereafter referred to as "Business Associate") desire to enter into this Business Associate Agreement (hereafter, "BA Agreement" or "the Agreement") for the purpose of protecting the privacy and security of clients' health information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including all pertinent regulations (45 CFR Part 160 and Part 164), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act HITECH), Title XIII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

II. **DEFINITIONS** Terms used, but not otherwise defined, in this Agreement shall have the same meanings as set forth in HIPAA and HITECH. A change to HIPAA or HITECH which modifies any defined term, or which alters the regulatory citation for the definition, shall be deemed incorporated into this Agreement.

a. Breach. "Breach" shall have the meaning given under HITECH Section 13400, 42 U.S.C § 17921, and 45 CFR §164.402.

b. Data Aggregation. "Data Aggregation" shall have the meaning given under the Privacy Rule, including, but not limited to, 45 CFR §164.501.

c. Designated Record Set. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR §164.501.

d. Disclose" and "Disclosure" shall have the meaning given in 45 CFR §160.103.

e. Electronic Protected Health Information. "Electronic Protected Health Information" (referred to below as EPHI) shall have the same meaning as the term "electronic protected health information" in 45 CFR § 160.103.

f. HIPAA. "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-91, as amended, and related HIPAA regulations (45 CFR Parts 160-164.)

g. HITECH. "HITECH" shall mean the Health Information Technology for Economic and Clinical Health Act, found in Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005.

h. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

i. "Part 2 data" means any record of information identifying a patient relating to his or her substance use disorder treatment, evaluation or referral, as protected by 42 CFR Part 2.

j. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information codified at 45 CFR Part 160 and Part 164, Subparts A and E and any other applicable provisions of HIPAA, or amendments thereto, including HITECH.

k. Protected Health Information. "Protected Health Information" (referred to below as PHI) shall have the same definition contained in 45 CFR §160.103, and may include substance use disorder treatment information (SUD) as defined in 42 CFR Part 2. For purposes of this Agreement, PHI is limited to the information created or received by Business Associate from or on behalf of Covered Entity. "Protected Health Information" includes, without limitation, "Electronic Protected Health Information," as defined below.

l. Required By Law. "Required By Law" shall have the meaning given to the term under the Privacy Rule, including but not limited to, 45 CFR §164.103, and any additional requirements created under HITECH.

m. Secretary. "Secretary" shall mean the Secretary of the U. S. Department of Health and Human Services or his/her designee.

n. Security Incident. "Security Incident" shall have the meaning given in 45 CFR §164.304.

o. Security Standards. "Security Standards" shall mean the Standards for the Protection of Electronic Protected Health Information that are codified at 45 CFR Part 160 and Part 164, Subparts A and C, and any other applicable provision of HIPAA, or amendments thereto, including HITECH.

p. Unsecured PHI. 'Unsecured PHI" shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in Section 13402 of HITECH.

q. "Use" or "Uses" shall have the meaning given in 45 CFR §160.103.

III. USE OR DISCLOSURE OF PHI BY BUSINESS ASSOCIATE

a. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the MOA, or as otherwise provided by law, if such use or disclosure would not violate the Privacy Rule or the Security Standards if done by Covered Entity.

b. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, and may disclose PHI for those purposes provided that as to any such disclosure: 1) the disclosure is required by law except as limited below; or 2) with prior approval of the Covered Entity, 3) according to the HIPAA Minimum Necessary Standard, 4) Business Associate may disclose PHI if Business Associate first obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which the person is aware in which the confidentiality of the information has been breached. 5) For data aggregation purposes, for health care operations of the Covered Entity, 6) subject to the requirements relating to disclosure, notices prohibiting re-disclosure as required by 42 CFR Part 2.32; and 7) Business Associate must resist any effort to obtain any SUD information as required by 42 CFR Part 2, and notify Covered Entity of any such effort to obtain the PHI.

c. Business Associate will notify the Covered Entity of any breach of confidentiality or security by a person to whom the Business Associate has disclosed PHI pursuant to this Section, and will mitigate and/or assist the person and the Covered Entity in mitigating any harmful effects resulting from the breach of information.

d. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).

e. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

f. Business Associate may disclose PHI to any of its subcontractors for use in filling the obligations of this Agreement as long as the subcontractor agrees in writing to the restrictions and conditions in this Agreement with respect to PHI.

g. Business Associate may disclose PHI to another entity as authorized by the Covered Entity in a separate written agreement or amendment to this agreement, if such disclosure of PHI would not violate the Privacy Rule, or HITECH, if done by Covered Entity itself and agrees to be bound by 42 CFR Part 2, as applicable.

h. Business Associate, upon entering into an agreement using PHI for any of its functions and activities on behalf of the Covered Entity or in its general operations, will make available that agreement to the Covered Entity upon request.

IV. DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI

a. Business Associate shall comply with the Confidentiality provision contained in the MOA and any Confidentiality Agreement signed by the Business Associate pursuant to that Contract for so long as this BA Agreement remains in effect.

b. Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement or as required by law. Business Associate will not use PHI in any manner that would constitute a violation of the Privacy Rule, Security Standards, HIPAA, HITECH, or 42 CFR Part 2 if so used by Covered Entity.

c. Business Associate shall develop, implement, maintain, and use appropriate safeguards to prevent any use or disclosure of PHI or EPHI other than as provided by this Agreement, and shall implement administrative, physical, and technical safeguards to comply with the Security Standards as required by 45 CFR Sections 164.308, 164.310, 164.312 and 164.316 in order to protect the confidentiality, integrity, and availability of EPHI or PHI that Business Associate creates, receives, maintains, or transmits, to the same extent as if Business Associate were a Covered Entity, pursuant to HITECH Section 13401, 42 U.S.C. § 17931. These safeguards are required regardless of the mechanism used to transmit the information.

d. Business Associate shall adopt the effective and appropriate technical safeguards and technology and methodology standards provided in any guidance issued by the Secretary pursuant to HITECH Sections 13401-13402, 42 U.S.C. §§ 17931-17932.

e. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement or of a Breach of Unsecured PHI, pursuant to 45 CFR § 164.530(f) and HITECH § 13402.

f. Business Associate shall notify Covered Entity by the most expedient manner within one business day of any use or disclosure of PHI or EPHI not authorized by this Agreement or in violation of any applicable federal or state laws or regulations of which Business Associate becomes aware, or of any suspected or actual Security Incident or Breach, unless delayed in accordance with 45 CFR §164.412. Business Associate shall notify Covered Entity immediately upon the law enforcement delay being lifted.

g. In addition to the notification required by IV(f), Business Associate will provide written notification of a Breach of Unsecured PHI to Covered Entity without unreasonable delay and in no event later than 5 calendar days after discovery of the Breach. A Breach of Unsecured PHI shall be treated as discovered by the Business Associate as of the first day on which such breach is known to Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate. Notification of a Breach of Unsecured PHI required by this paragraph shall comply with HITECH Section 13402, 42 U.S.C. § 17932, and 45 CFR § 164.410. The Breach notice shall include, to the extent possible, the identification of each individual whose Unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during the Breach. Business Associate shall provide Covered Entity with the following information at the time of the Breach notification or promptly thereafter as soon as information becomes available:

1. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known, and the nature of the non-permitted use or disclosure;

2. A description of the unsecured PHI that was involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

3. Who made the non-permitted use or disclosure;

4. Who received the non-permitted use or disclosure;

5. Any steps individuals should take to protect themselves from potential harm resulting from the Breach; and

6. What Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further breaches.

h. Business Associate shall ensure that any agent or subcontractor to whom it provides PHI received from Covered Entity, or that creates, receives, maintains, or transmits PHI on behalf of Business Associate, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information, including this paragraph, and agrees to implement reasonable and appropriate safeguards to protect such PHI, including the safeguards required by paragraph IV(c) and IV(d) above with respect to PHI. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of such violation.

i. Business Associate shall provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to fulfill the requirements of 45 CFR § 164.524 if the Business Associate has PHI in a designated record set. If Business Associate receives a request directly from an Individual, Business Associate will direct the Individual to the Covered Entity.

j. Business Associate shall make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity, if Business Associate has PHI in a Designated Record St. Business Associate shall not amend PHI received from the Covered Entity or created and/or provided to the Business Associate on behalf of the Covered Entity unless the amendment is directed by or consented to by the Covered Entity. If an Individual requests an amendment of PHI directly from Business Associate or any of its agents or subcontractors, Business Associate will direct Individual to Covered Entity. The Business Associate shall provide a copy of the amended PHI to the Covered Entity.

k. Business Associate agrees to 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 § 164.528. Business Associate agrees to collect and maintain disclosure information as it relates to PHI including: (i) the date of disclosure; (ii) the name of the entity or person who received the PHI and, if known, the address of the entity or person: (iii) a brief description of the PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the Individual of the basis for the disclosure, or a copy of the written request for disclosure under 45 CFR § 164.502(a)(2)(ii) or 164.512, if any. Business Associate will maintain records related to disclosures of PHI for at least six (6) years after the date of the disclosure. The provisions of this subparagraph shall survive termination of this Agreement.

l. Business Associate will provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, information collected in accordance with Section IV(k) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. In addition, Business Associate agrees to make PHI available for purposes of accounting of disclosures as required by Section 164.528 of the Privacy Rule and Section 13405(c)(3) of HITECH, 42 U.S.C. § 17935(c)(3). If the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall within five (5) days of a request forward it to Covered Entity in writing.

m. Business Associate shall comply with any requests for restrictions on certain disclosures of PHI pursuant to Section 164.522 of the Privacy Rule to which Covered Entity has agreed and of which Business Associate is notified by Covered Entity

n. Business Associate shall comply, pursuant to HITECH and its implementing regulations, with all additional requirements of the Privacy Rule, including those contained in 45 CFR 164.502(e) and 164.504(e)(1)(ii) at such time as the requirements are applicable to Business Associate, pursuant to HITECH Section 13404, 42 U.S.C. § 17934.

o. If applicable, and if requested by Covered Entity, Business Associate will provide a copy of Covered Entity's Notice of Privacy Practices to the client at the time of first contact, and maintain documentation of the client's receipt of the Notice.

p. Business Associate shall make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of the Secretary determining compliance with the Privacy Rule. Business Associate shall comply and cooperate with any request for documents or other information from the Secretary directed to Covered Entity that seeks documents or other information held by Business Associate. Business Associate shall provide to Covered Entity a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.

q. Business Associate and its agents and subcontractors may only request, use, or disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use, or disclosure pursuant to this agreement and consistent with Covered Entity's minimum necessary policies and procedures. Except as otherwise permitted by HIPAA standards, until the effective date on which the Secretary issues guidance on what constitutes "minimum necessary," when using or disclosing PHI or responding to a request for PHI, Business Associate and its agents or subcontractors must limit such PHI, to the extent practicable, to a Limited Data Set, or if more information than a Limited Data Set is required, to the minimum necessary to accomplish the intended purpose of such use, disclosure or request. After the effective date on which the Secretary issues guidance on what constitutes "minimum necessary," Business Associate and its agents or subcontractors shall only request, use, and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure, and shall comply with the Secretary's guidance on what constitutes "minimum necessary." See HITECH Section 13405, 42 U.S.C. § 17935.

r. Business Associate shall provide Covered Entity reasonable access to its premises for review and demonstration of its internal practices and procedures for safeguarding PHI of Covered Entity for purposes of determining that Business Associate has complied with this Agreement and HITECH; provided that 1) the Parties mutually agree in advance upon the scope, location and timing of such access, and 2) Covered Entity shall protect confidential and proprietary information of Business Associate to which Covered Entity has access.

s. Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.

t. If Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of Covered Entity's obligations under the Agreement or other arrangement, Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, Business Associate must terminate the Agreement or other arrangement if feasible, or, if termination is not feasible, report the problem to the Secretary. Business Associate shall provide written notice to Covered Entity of any pattern of activity or practice of the Covered

Entity that Business Associate believes constitutes a material breach or violation of the Covered Entity's obligations under the Agreement within five (5) days of discovery and shall meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

u. Business Associate acknowledges that if it violates any of the requirements provided under this Business Associate Agreement, Business Associate will be subject to the same civil and criminal penalties that a Covered Entity would be subject to if such Covered Entity violated the same requirement.

v. The additional requirements of HITECH that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate and shall be and by this reference are incorporated into this Agreement.

w. Business Associate will contact the Covered Entity's Privacy Officer at DHHSPrivacyOfficer@dhhs.nh.gov, at any time clarification or guidance is needed regarding compliance with the terms of this Agreement.

x. Business Associate shall not use or disclose PHI for fundraising or marketing purposes.

y. Business Associate may not enter into any agreements with its agents or subcontractors pertaining to its obligations under this Agreement without the express written consent of Covered Entity.

V. DUTIES OF COVERED ENTITY

a. If applicable, Covered Entity shall provide the Business Associate with a copy of its policies and procedures implementing the Privacy Rule, including the Notice of Privacy Practices.

b. Covered Entity shall notify Business Associate of any limitation(s) in Covered Entity's Notice of Privacy Practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

c. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI, within a reasonable period of time after Covered Entity becomes aware of such changes to or revocation of permission.

d. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to or must comply with in accordance with 45 CFR § 164.522 and HITECH § 13405(a), 42 USC § 17935(a), to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

e. Covered Entity will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

VI. TERM AND TERMINATION

a. Term. The Term of this Agreement shall be effective as of April 1, 2021 and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

b. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall do any of the following:

1. Provide an opportunity for Business Associate to cure the breach or end the violation, and terminate this Agreement and MOA if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;

2. Immediately terminate this Agreement and MOA if Business Associate has breached a material term of this Agreement and cure is not feasible;

3. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary;

4. Immediately stop all further disclosures of PHI to Business Associate pursuant to each agreement between Covered Entity and Business Associate that is the subject of such breach, until the breach is cured.

c. Effect of Termination.

1. Except as provided in paragraph (2) of this section, upon termination of this Agreement for any reason or upon written demand from Covered Entity, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies, including backups, of the PHI. If the return or destruction of PHI held by the Business Associate is not permissible pursuant to applicable law, the Business Associate will extend the protections of this Agreement to the PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible.

2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, 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.

d. Continuing Privacy Obligation. Business Associate's obligation to protect the privacy of PHI is continuous and survives any termination, cancellation, expiration, or other conclusion of this Agreement or any other agreement between Business Associate and Covered Entity.

VII. INDEMNIFICATION (the following does not apply to other government agencies or political subdivisions)

Business Associate agrees to liability for its own and its employees, acts and omissions as described in section 7 of the Memorandum of Agreement.

VIII. MISCELLANEOUS

a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule or the Security Standards means the section as in effect or as amended.

b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement to comply with the requirements of the Privacy Rule, the Security Standards, HIPAA, HITECH, or any other state or federal law affecting this Agreement. If a Party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of HITECH or its regulations, such Party shall notify the other Party in writing. For a period of thirty days, the Parties shall address such concern in good faith and amend the terms of the Agreement if necessary to bring it into compliance. If, after such thirty day period, the Agreement fails to comply with HIPAA, the Privacy Rule, the Security Standards or HITECH, then either Party has the right to terminate upon written notice to the other Party.

c. Survival. The respective rights and obligations of Business Associate under Section VI(c) and VI(d) of this Agreement shall survive termination of this Agreement.

d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule and the Security Standards, and the safeguards in 42 CFR Part 2.

e. All notices pursuant to this Agreement must be given in writing and shall be effective when received if hand-delivered or upon dispatch if sent by reputable overnight delivery service, facsimile, or U.S. Mail to the appropriate address or facsimile number. Notification of any unauthorized use or disclosure of PHI or of a Breach of Unsecured PHI under paragraphs IV(f) and IV(g) shall be made to the DHHSInfoSecurityOffice@dhhs.nh.gov .

f. Business Associate and Covered Entity agree that Individuals who are the subject of PHI are not third-party beneficiaries of this Agreement.

g. The parties acknowledge that state and federal laws relating to electronic data security and privacy are evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA and HITECH and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all PHI that it receives or creates pursuant to this Agreement. Upon Covered Entity's request, Business Associate agrees to promptly enter into negotiations with Covered Entity concerning the terms of any amendment to the Agreement embodying written assurances consistent with the standards and requirements of HIPAA and HITECH or other applicable laws. Covered Entity may terminate this Agreement and MOA upon thirty (30) days written notice if (i) Business Associate does not promptly enter into negotiations to amend this Agreement when requested by Covered Entity pursuant to this Section, or (ii) Business Associate does not enter into an amendment to this Agreement providing

assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and HITECH.

h. If any provision of this Agreement violates any applicable statute, ordinance, or rule of law in any jurisdiction that governs this Agreement, such provision shall be ineffective to the extent of such violation without invalidating any other provision of this Agreement.

i. This Agreement may not be amended, altered, or modified except by written agreement signed by Business Associate and Covered Entity.

j. No provision of this Agreement may be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision.

k. The persons signing below have the right and authority to execute this Agreement for their respective entities and no further approvals are necessary to create a binding Agreement.

l. Neither Covered Entity nor Business Associate shall use the names or trademarks of the other party or of any of the respective party's affiliated entities in any advertising, publicity, endorsement, or promotion unless prior written consent has been obtained for the particular use contemplated.

m. All references to specific statutes, codes, or regulations shall be deemed to be references to those statutes, codes or regulations as they may be amended from time to time.

n. Neither party is an employee, agent, partner, or joint venturer of the other. Neither party has the right or authority to control or direct the activities of the other or the right or authority to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party, unless expressly authorized in this or another agreement between the parties.

AS TO New Hampshire Department of Health and Human Services

BY: Patricia M. Tilley
846FB38F5BFD4CB...

Its: Director

DATE: 6/15/2021

MAILING ADDRESS:

29 Hazen Dr
Concord NH 03301

AS TO THE CDC Foundation

BY: Monique S. Patrick
C2FAB2D887AC4F1...

Its: COO

DATE: 6/11/2021 | 11:09:35 AM EDT

MAILING ADDRESS:

DocuSign Envelope ID: 6760A54D-2D83-4C16-B769-DE54690A920E

CDC Foundation
Together our impact is greater

MEMORANDUM OF AGREEMENT

Contracting Party:	New Hampshire Department of Health and Human Services, Division of Public Health Services
Project Number:	4001.01.01.08
Project Name:	Capacity Building for Public Health Analysts in the Overdose Response Strategy

1. **PURPOSE:**
The National Foundation for the Centers for Disease Control and Prevention, Inc. (hereafter CDC Foundation) and the New Hampshire Department of Health and Human Services, Division of Public Health Services, (hereafter the Department) hereby enter into this Memorandum of Agreement (hereafter MOA) for the purpose of supporting the Overdose Response Strategy (ORS) by assisting with efforts of New England High Intensity Drug Trafficking Area (HIDTA) program, the Department, New Hampshire Information Analysis Center (NHIAC), and other key partners in the development and implementation of drug overdose information sharing systems and evidence-based prevention programs.

2. **SCOPE OF SERVICES:**

2.1. Responsibilities of the Department. Under the terms of this MOA, the Department shall be responsible for:

- Providing a safe and secure space in the Department offices at 29 Hazen Drive, 2nd Floor, Concord, NH 03301 (or other appropriate location) for one CDC Foundation employee, a Public Health Analyst (PHA).
- Provide the CDC Foundation PHA with, data, and Department systems privacy, confidentiality, security, and other training regarding use of the Department's Central Office and systems.
- Provide the CDC Foundation PHA with the following amenities: printer access, copy machine access, meeting room access, kitchen/breakroom access, clearance to enter the Central Office, and parking.
- As may be required or necessary, provide the CDC Foundation PHA with a desktop or laptop, accessories (including dock, monitor, keyboard, mouse or headset), software and DHHS network access as necessary for the health data analysis and assessment to provide the professional support as described herein.
- Ensure the safety of CDC Foundation PHA, including requiring and utilizing safe infection prevention control practices, such as proper personal protective equipment, as set forth by the CDC, and inform the CDC Foundation of CDC Foundation PHA that fall ill.
- Notify the CDC Foundation if concerns arise regarding the CDC Foundation PHA's ability to complete designated project assignments or in any other manner.

2.2. Responsibilities of the CDC Foundation. Under the terms of this MOA, CDC Foundation shall be responsible for:

- CDC Foundation will temporarily assign PHA to work at the Department's designated workspace. The CDC Foundation PHA will comply with the policies and procedures of the CDC Foundation in addition to any agreements and procedures required by the Department and agreed to prior to commencing work at the Department's designated workspace.
- CDC Foundation PHA will be provided human resources support and training materials for successful onboarding including but not limited to information regarding CDC Foundation benefits, instructions for the completion of timesheets and requests for leave.

- CDC foundation in collaboration with CDC Foundation PHA, HIDTA, Department, and NHIAC will create an Action Plan that will outline activities conducted by PHA for the Department and others as part of the collaboration. The Action Plan will be adjusted as necessary according to the Department and others participating.
- CDC Foundation PHA shall assist with:
  - Facilitating data sharing and joint initiatives of de-identified and/or aggregated data as determined by the Department, between public health and public safety agencies and organizations that are designed to address illicit drug use and overdose.
  - Collaborating with New Hampshire Drug Intelligence Officer (DIO) to build partnerships between local HIDTA program(s) and public health entities where permissible by state and federal confidentiality laws relating to confidential protected health information and 42 CFR Part 2 records, if applicable.
  - Developing specialized knowledge of significant drug use and overdose related datasets in New Hampshire.
  - Identifying and promoting promising overdose prevention interventions at the intersection of public health and public safety in New Hampshire.
  - Supporting and evaluating public safety-led interventions designed to connect people who use drugs to care and treatment.
  - Conducting overdose, drug use, and drug availability related data analyses on behalf of partner agencies, as needed.
  - Presenting to diverse audiences on overdose trends and local response efforts.
  - Supporting projects that enhance public health/public safety collaborations through the identification of appropriate local partners, qualitative and quantitative data collection, and dissemination of project findings.

3. TERMS AND CONDITIONS

3.1. Effective Dates. This MOA shall be effective on April 1, 2021 and will terminate on July 31, 2021. The term of the MOA may be extended by an amendment agreed to and executed by both CDC Foundation and the Department.

3.2. Termination.

- Either party may terminate this MOA by providing thirty (30) days written notice of termination to the other party.
- The Department may terminate this MOA for cause, default, or negligence on CDC Foundation's part at any time without thirty days advance written notice. The Department may, at its option, allow CDC Foundation a reasonable time to cure the default before termination.

4. AMENDMENTS

The MOA may only be amended by written agreement of all parties, and subject to required State/Governor and Council approval.

5. CONFIDENTIALITY

5.1. CDC Foundation shall comply with all confidentiality obligations under federal and state laws and the Department policies and requirements including but not limited to the Federal Educational Rights and Privacy Act, 20 U.S.C. §1232g, and the Health Insurance Portability and Accountability Act (HIPAA), Public Law 104-92, as amended, and regulations (45 CFR Parts 160 and 164), and 42 CFR Part 2 for the confidentiality and protection of substance use disorder information, and any state confidentiality laws, as applicable. Confidential information means information known or maintained in any form, whether recorded or not, consisting of protected health information, other health information, personal information, personally identifying information, confidential business information, and any other information required by law to be treated as confidential, designated as confidential by the Department, or known or believed by the CDC Foundation or the CDC Foundation's employee or agent to be claimed as confidential or entitled to confidential treatment.

5.2. CDC Foundation and the PHA will not:

- access, view, use, or disclose confidential information without prior written authorization from the Department;
- discuss confidential information obtained in the course of its relationship with the Department with any other person or in any location outside of its area of responsibility in the Department (including with other state of NH agencies such as the Department of Safety, NHIAC or any other state of NH employees outside of the Department); or
- make any unauthorized copy of confidential information, or remove or transfer this information to any unauthorized location or media; and CDC Foundation shall sign the Department's Business Associate Agreement (Attachment A) and the PHA shall sign the Department's Business Use and Confidentiality Agreement (Attachment B) before commencing work.

5.3. CDC Foundation shall direct any request it receives for confidential information obtained through performance of services under this MOA, including a subpoena, litigation discovery request, court order, or Freedom of Information Act request, to the Department's signatory indicated below as soon as possible, and in every case within one business day of receipt. CDC Foundation shall make no disclosure of confidential information without proper notice to the Department and without providing the Department the opportunity to object and/or to pursue further court action. If after providing proper notice to the Department, the CDC Foundation discloses confidential information pursuant to a valid legal requirement, the CDC Foundation must document the disclosure and make the documentation and authorization available for the Department's inspection and audit.

5.4. CDC Foundation must ensure that its employees, agents, and subcontractors who may have access to the Department's confidential information are aware of and comply with these confidentiality requirements. CDC Foundation must ensure that any release of confidential information is limited to the minimum necessary to meet its obligations under this MOA and applicable law. If CDC Foundation is a Business Associate and will or may have access to any Protected Health Information (PHI) and substance use disorder information (SUD) under the Health Insurance Portability and Accountability Act (HIPAA), Public Law 104-92, as amended, and regulations (45 CFR Parts 160 and 164), and 42 CFR Part 2 the Parties will sign and comply with the Business Associate Agreement (Attachment A) and agree to follow all parts of 42 CFR Part 2 as applicable, and protect PHI in compliance with HIPAA and 42 CFR Part 2.

5.5. CDC Foundation must immediately notify the Department's Privacy Officer at DHHSPrivacyOfficer@dhhs.nh.gov; and the Department's Information Security Officer at DHHSInformationSecurityOffice@dhhs.nh.gov; of any unauthorized use or disclosure of confidential information received under this MOA. CDC Foundation will promptly notify the Information Security Officer and the Department of any suspected or actual breach of security of an individual's personally identifying information under applicable law.

5.6. CDC Foundation's obligations under this provision and any other agreements concerning confidentiality shall survive termination, cancellation, or expiration of the MOA.

6. RECORDKEEPING, AUDITS, & INSPECTIONS

CDC Foundation shall create and maintain adequate records to document all matters covered by this MOA. CDC Foundation shall retain all such records for six (6) years or other longer period required by law after termination, cancellation, or expiration of the MOA and make records available for inspection and audit at any time the Department deems necessary. If any litigation, claim or audit has begun but is not completed at the end of the six-year period, or if audit findings have not been resolved at the end of the six-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. CDC Foundation shall allow the Department to inspect facilities and locations where activities under this MOA are to be performed on reasonable notice. Unjustified failure to produce any records required under this paragraph may result in immediate termination of this MOA with no further obligation on the part of the Department.

CDC Foundation must dispose of records containing the Department Confidential information in a secure manner such as shredding or incineration once the required retention period has ended. Confidential information means information known or maintained in any form, whether recorded or not, consisting of protected health information, other health information, personal information,

personal identifying information, confidential business information, or any other information required by law to be treated as confidential, designated as confidential by the Department.

7. **LIABILITY, NO AGENCY RELATIONSHIP.**
Neither party shall be liable for any claims, demands, expenses, liabilities and losses (including reasonable attorney's fees) which may arise out of any acts or failures to act by the other party, its employees or agents, in connection with the performance of services pursuant to this MOA. Neither party is an employee, agent, partner, or joint venturer of the other. Neither party has the right or authority to control or direct the activities of the other or the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party, unless expressly authorized in this MOA.

8. **NON-DISCRIMINATION.**
No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in relation to activities carried out under this contract on the grounds of race, religion, color, sex, age, national origin, disability, or any other basis prohibited by law. This includes the provision of language assistance services to individuals of limited English proficiency eligible for services provided by the Department.

9. **DRUG FREE WORKPLACE.**
By signing this MOA, the CDC Foundation certifies that it will comply with all applicable provisions of The Drug-free Workplace Act of 1988, 48 CFR § 52.223-6 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701-707).

10. **CHOICE OF LAW.**
The MOA, any dispute, claim, or controversy relating to the MOA and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of New Hampshire, except its choice of law rules.

11. **DISPUTES.**
This MOA will be interpreted, applied and enforced pursuant to the laws of the State of New Hampshire, including New Hampshire's statutes of limitation. Any action to enforce or interpret this Agreement, or arising therefrom, must be brought exclusively in the courts located in New Hampshire and the parties hereby consent to the exclusive jurisdiction of these courts in any such litigation and waive any claim of forum non conveniens with respect thereto.

12. **INSURANCE.**
Each party will maintain professional, malpractice and general liability insurance, and may be required to provide the other party with satisfactory evidence of such coverage. Neither party will provide individual coverage for the other party's employees, with each party being responsible for coverage of its employees.

13. **LICENSES**
During the term of this MOA, each party shall maintain its respective federal and state licenses, certifications, and accreditations required for the provision of services herein. CDC Foundation will immediately notify the Department if a board, association, or other licensing authority takes any action to revoke or suspend the license, certification, or accreditation of CDC Foundation or CDC Foundation's employees or agents providing or performing services under this MOA.

14. **FINANCIAL RESPONSIBILITY.**
Each party shall bear and be responsible solely for its own costs and expenses necessary to comply with this MOA.

15. **COMPLIANCE WITH LAWS.**
CDC Foundation shall comply with all applicable laws and regulations in the performance of this MOA.

16. SEVERABILITY.
The invalidity or unenforceability of any provision of this MOA shall not affect the validity or enforceability of any other provision, which shall remain in full force and effect.

17. ATTACHMENTS/ADDENDA:
Any attachments, addenda or other materials attached to the MOA are specifically incorporated into and made part of this MOA.

IN WITNESS WHEREOF, the parties have executed this Agreement.

For NH Department of Health and Human Services

DocuSigned by:
Patricia M. Tilley
846FB38F5BFD4C8...

6/15/2021
Date

Patricia Tilley, Director
Division of Public Health Services
NH Department of Health and Human Services
29 Hazen Drive
Concord NH 03301
603-271-4612
Patricia.Tilley@dhhs.nh.gov

"CDC Foundation"
National Foundation for the Centers for Disease Control and Prevention, Inc.

DocuSigned by:
Monique S. Patrick
C2EAB2D997AC4E1...

6/11/2021 | 11:09:35 AM EDT
Date

Monique S. Patrick, COO
600 Peachtree Street NE, Suite 1000
Atlanta, GA 30308-2215
Phone: (404) 653-0790
mpatrick@cdcfoundation.org

CERTIFICATE OF AUTHORITY

I, Judith Monroe, CEO, hereby certify that:
(Name of the elected Officer of the Corporation/LLC; cannot be contract signatory)

1. I am a duly elected Clerk/Secretary/Officer of the National Foundation for the Centers for Disease Control and Prevention, Inc. (dba "CDC Foundation").
(Corporation/LLC Name)

2. That Monique S. Patrick (may list more than one person)
(Name and Title of Contract Signatory)

is duly authorized on behalf of the CDC Foundation to enter into the Memorandum of Agreement effective April 1, 2021 with the State
(Name of Corporation/ LLC)

of New Hampshire and any of its agencies or departments and further is authorized to execute any and all documents, agreements and other instruments, and any amendments, revisions, or modifications thereto, which may in his/her judgment be desirable or necessary to effect the purpose of this vote.

3. I hereby certify that said authority has not been amended or repealed and remains in full force and effect as of the date of the contract/contract amendment to which this certificate is attached. This authority **remains valid for thirty (30)** days from the date of this Certificate of Authority. I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that the person(s) listed above currently occupy the position(s) indicated and that they have full authority to bind the corporation. To the extent that there are any limits on the authority of any listed individual to bind the corporation in contracts with the State of New Hampshire, all such limitations are expressly stated herein.

Dated: 6/25/2021 | 5:57:44 PM EDT

DocuSigned by:
Judy Monroe
9050471F3C37141A...
Signature of Officer
Name: Judith A. Monroe
Title: CEO and President

Client#: 1542187 CDCFOU

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 6/23/2021

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 have ADDITIONAL INSURED provisions or 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 any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
USI Insurance Services, LLC
1 Concourse Pkwy NE
Suite 700
Atlanta, GA 30328

CONTACT NAME: Atlanta Certificate Request
PHONE (A/C, No, Ext): 404 923-3700 FAX (A/C, No):
E-MAIL ADDRESS: atlcertrequest@usi.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Travelers Property Cas. Co. of America	25674
INSURER B : Federal Insurance Company	20281
INSURER C : Phoenix Insurance Company	25623
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
CDC Foundation
600 Peachtree Street, NE
Suite 1000
Atlanta, GA 30308

COVERAGES CERTIFICATE NUMBER: 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	X COMMERCIAL GENERAL LIABILITY	X		6306J67463A	07/01/2020	07/01/2021	EACH OCCURRENCE	$1,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$1,000,000
							MED EXP (Any one person)	$20,000
							PERSONAL & ADV INJURY	$1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$2,000,000
	POLICY PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$2,000,000
	OTHER:							$
A	AUTOMOBILE LIABILITY			BA6J547836	07/01/2020	07/01/2021	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS ONLY / X NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
B	X UMBRELLA LIAB X OCCUR			93647908	07/01/2020	07/01/2021	EACH OCCURRENCE	$25,000,000
A	X EXCESS LIAB X CLAIMS-MADE			CUP2L105166	07/01/2020	07/01/2021	AGGREGATE	$25,000,000
	DED RETENTION $							$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			UB6K914660	07/01/2020	07/01/2021	X PER STATUTE OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N N (Mandatory in NH)	N / A					E.L. EACH ACCIDENT	$1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$1,000,000
							E.L. DISEASE - POLICY LIMIT	$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Certificate holder is included as an additional insured under the general liability policy as per written contract.

CERTIFICATE HOLDER

State of NH
Department of Health and Human Services
129 Pleasant Street
Concord, NH 03301-3857

CANCELLATION

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
Paula B Bulman

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