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Lori A. Shibinette  
Commissioner

Patricia M. Tilley  
Director

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
*DIVISION OF PUBLIC HEALTH SERVICES*

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  
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June 21, 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 amend an existing cooperative project agreement with University of New Hampshire (VC# 177867), Durham, NH, to support wastewater surveillance for COVID-19 at New Hampshire Hospital, with no change to the price limitation of \$2,182,500 and no change to the contract completion date of December 31, 2021 effective upon Governor and Council approval. 100% Federal Funds.

The original contract was approved by the Governor on December 30, 2020, and presented to the Executive Council as an Informational Item on January 22, 2021 (Informational Item #H), as approved by the Governor on March 3, 2021, and presented to the Executive Council as an Informational Item on April 7, 2021 (Informational Item #J), and most recently approved by the Governor on June 4, 2021, and presented to the Executive Council as an Informational Item on June 30, 2021, Item # N.

Funds were encumbered for this contract as shown below.

**05-95-90-900010-19510000 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS  
DEPT OF, HHS: PUBLIC HEALTH SERV DIV, ADMINISTRATION, LONG TERM CARE  
FACILITIES – GOFERR FUNDS**

| State Fiscal Year | Class / Account | Class Title          | Job Number      | Current Budget   | Increased (Decreased) Amount | Revised Budget   |
|-------------------|-----------------|----------------------|-----------------|------------------|------------------------------|------------------|
| 2021              | 103-502507      | Contracts for Op Svc | 90029000        | \$562,500        | \$0                          | \$562,500        |
|                   |                 |                      | <b>Subtotal</b> | <b>\$562,500</b> | <b>\$0</b>                   | <b>\$562,500</b> |

**05-95-90-903010-19010000 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS  
DEPT OF, HHS: PUBLIC HEALTH SERV DIV, BUREAU OF LABORATORY SERVICES, ELC  
CARES COVID-19**

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
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| State Fiscal Year | Class / Account | Class Title            | Job Number      | Current Budget     | Increased (Decreased) Amount | Revised Budget     |
|-------------------|-----------------|------------------------|-----------------|--------------------|------------------------------|--------------------|
| 2021              | 102-500731      | Contracts for Prog Svc | 90183538        | \$1,620,000        | \$0                          | \$1,620,000        |
|                   |                 |                        | <b>Subtotal</b> | <b>\$1,620,000</b> | <b>\$0</b>                   | <b>\$1,620,000</b> |
|                   |                 |                        | <b>Total</b>    | <b>\$2,182,500</b> | <b>\$0</b>                   | <b>\$2,182,500</b> |

**EXPLANATION**

The purpose of this request is to support wastewater surveillance for COVID-19. The Contractor will complete COVID-19 biomarker analysis in wastewater samples at select sewer pipe or manhole locations at New Hampshire Hospital. The Contractor will complete wastewater COVID-19 testing to confirm whether there is a COVID-19 outbreak currently in progress in New Hampshire Hospital.

New Hampshire Hospital has used various restrictions to manage the COVID-19 pandemic including eliminating the ability for patients to have independent times out of the unit, limiting the size of groups, eliminating gym and cooking groups as high transmission risk settings, and eliminating visitation by family and friends. Having the ability to detect whether a COVID-19 outbreak is in progress provides assurances that will allow New Hampshire Hospital to remove restrictions more quickly.

The number of individuals served through this agreement, will depend on the trajectory of COVID-19. Through this agreement, the University of New Hampshire may perform up to 6,000 COVID-19 test per week.

The Contractor will complete the processing of the data and provide the supplies and courier to take the test samples from New Hampshire Hospital to the Contractor's laboratory. The Contractor will provide the data results and provide guidance throughout the project.

The Department will monitor contracted services by reviewing the daily data from the wastewater analysis.

As referenced in Exhibit A, Project Period of the original cooperative project agreement, the parties have the option to extend the agreement for up to one (1) additional year, contingent upon satisfactory delivery of services, available funding, agreement of the parties and Governor and Council approval. The Department is not exercising its option to renew at this time.

Should the Governor and Council not authorize this request Wastewater COVID-19 testing will not occur and New Hampshire Hospital may have increased COVID-19 transmission risk and perhaps unnecessary restrictions to an already vulnerable patient population.

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
Page 3 of 3

Area served: Statewide

Source of Funds: CFDA #93.323, FAIN #NU50CK000522

In the event that the Federal Funds become no longer available, General Funds will not be requested to support this program.

Respectfully submitted,

DocuSigned by:  
**Ann H. N. Landry**  
24BA837E08EB488...

Lori A. Shibinette  
Commissioner

AMENDMENT #3 to  
COOPERATIVE PROJECT AGREEMENT  
between the

STATE OF NEW HAMPSHIRE, Department of Health and Human Services  
and the

University of New Hampshire of the UNIVERSITY SYSTEM OF NEW HAMPSHIRE

The Cooperative Project Agreement, approved by the Governor of the State of New Hampshire on December 30, 2020, March 3, 2021, and June 4, 2021, for the Project titled "COVID-19 Sample Testing," Campus Project Director, Marc Eichenberger, is and all subsequent properly approved amendments are hereby modified by mutual consent of both parties for the reason(s) described below:

**Purpose of Amendment (Choose all applicable items):**

- Extend the Project Agreement and Project Period end date.
- Provide additional funding from the State for expansion of the Scope of Work under the Cooperative Project Agreement.
- Other: Revised scope of work.

**Therefore, the Cooperative Project Agreement is and/or its subsequent properly approved amendments are amended as follows (Complete only the applicable items):**

- Article A. is revised to replace the State Department name of \_\_\_\_\_ and/or USNH campus from \_\_\_ to \_\_\_.
- Article B. is revised to replace the Project End Date of \_\_\_\_\_ with the revised Project End Date of \_\_\_\_\_, and Exhibit A, article B is revised to replace the Project Period of \_\_\_\_\_ with \_\_\_\_\_.
- Article C. is amended to expand Exhibit A by including the proposal titled, "\_\_\_\_," dated \_\_\_\_.
- Article D. is amended to change the State Project Administrator to **Christine Bean**.
- Article E. is amended to change the State Project Director to \_\_\_ and/or the Campus Project Director to \_\_\_.
- Article F. is amended to add funds in the amount of \_\_\_ and will read:

Total State funds in the amount of **\$2,182,500** have been allotted and are available for payment of allowable costs incurred under this Project Agreement. State will not reimburse Campus for costs exceeding the amount specified in this paragraph.

- Article F. is amended to change the cost share requirement and will read:

Campus will cost-share \_\_\_% of total costs during the amended term of this Project Agreement.

DS  
kj

- Article F. is amended to change the source of Federal funds paid to Campus and will read:

Federal funds paid to Campus under this Project Agreement as amended are from Grant/Contract/Cooperative Agreement No. from under CFDA# 93.323. Federal regulations required to be passed through to Campus as part of this Project Agreement, and in accordance with the Master Agreement for Cooperative Projects between the State of New Hampshire and the University System of New Hampshire dated November 13, 2002, are attached to this document as revised Exhibit B, the content of which is incorporated herein as a part of this Project Agreement.

Article G. is exercised to amend Article(s) of the Master Agreement for Cooperative Projects between the State of New Hampshire and the University System of New Hampshire dated November 13, 2002, as follows:

**Article** is amended in its entirety to read as follows:  
**Article** is amended in its entirety to read as follows:

Article H. is amended such that:

- State has chosen **not to take** possession of equipment purchased under this Project Agreement.
- State has chosen to **take** possession of equipment purchased under this Project Agreement and will issue instructions for the disposition of such equipment within 90 days of the Project Agreement's end-date. Any expenses incurred by Campus in carrying out State's requested disposition will be fully reimbursed by State.
- Exhibit A is amended as attached.
- Exhibit B is amended as attached.

All other terms and conditions of the Cooperative Project Agreement remain unchanged.

This Amendment, all previous Amendments, the Cooperative Project Agreement, and the Master Agreement constitute the entire agreement between State and Campus regarding the Cooperative Project Agreement, and supersede and replace any previously existing arrangements, oral and written; further changes herein must be made by written amendment and executed for the parties by their authorized officials.

This Amendment and all obligations of the parties hereunder shall become effective on the date of Governor approval of this Amendment to the Cooperative Project Agreement.

IN WITNESS WHEREOF, the following parties agree to this **Amendment # 1** to the Cooperative Project Agreement.

**By An Authorized Official of:**

**University of New Hampshire**

Name: Karen M. Jensen

Title: Director, Pre-Award

Signature and Date: *Karen Jensen* 6/23/2021

**By An Authorized Official of: the New Hampshire Office of the Attorney General**

Name: Catherine Pinos

Title: Attorney

Signature and Date: *Catherine Pinos* 6/24/2021

**By An Authorized Official of:**

**NH DHHS, Division of Public Health Services**

Name: Patricia Tilley

Title: Director

Signature and Date: *Patricia M. Tilley* 6/24/2021

**By An Authorized Official of: the New Hampshire Governor & Executive Council**

Name:

Title:

Signature and Date:

**EXHIBIT A**

- A. Project Title:** COVID-19 Sample Testing
- B. Project Period:** December 14, 2020 through December 31, 2021.
- C. Objectives:** See Exhibit A-2 Scope of Services
- D. Scope of Work:** See Exhibit A-2 Scope of Services, Standard Exhibit I Business Associate Agreement, and Exhibit K DHHS Informational Security Requirements. Please note Exhibits C through H and Exhibit J are reserved. Modifications to Exhibit A-2 Scope of Services are as follows:
  - 1. Modify Exhibit A-2, Scope of Services, Section 1, Subsection 1.4, to read:
    - 1.4. Provide test collection supplies to the entities listed in Subsection 1.2, for surveillance and outbreak testing, as specified by the Department, in quantities specified by the department, by Contractor-provided courier service or overnight delivery service, supplies shall include:
      - 1.4.1. Anterior nares swabs;
      - 1.4.2. Transport tubes; and
      - 1.4.3. Instructions for collection of specimens.
  - 2. Modify Exhibit A-2, Scope of Services, Section 1, Subsection 1.6, Paragraph 1.6.1., to read:
    - 1.6.1. Perform up to 6,000 tests per week five (5) days per week, Monday through Friday. The number of tests per day may vary as agreed upon by both parties.
  - 3. Add Exhibit A-2, Scope of Services, Section 1., Subsection 1.11, to read:
    - 1.11. The Contractor shall complete SARS-CoV-2 biomarker analysis in wastewater samples at select sewer pipe or manhole at New Hampshire Hospital. The Contractor shall:
      - 1.11.1. Prepare and supply sample bottles and labels.
      - 1.11.2. Provide courier services from New Hampshire Hospital to the Contractor.
      - 1.11.3. Train New Hampshire Hospital staff in sample collection and storage.
      - 1.11.4. Complete pre-processing and extraction of viral RNA.
      - 1.11.5. Complete ddPCR quantification of the SARS-CoV-2 N1 and N2 biomarkers.
  - 4. Add Exhibit A-2, Scope of Services, Section 4 Reporting Requirements, Section 4.2 to read:
    - 4.2. The Contractor shall submit daily data from the analysis completed in Section 1.11.
  - 5. Modify Exhibit B-1, Payment Terms, Section 3, to read:
    - 3. Payment for services billed to the State of New Hampshire in accordance with Exhibit A-2, Scope of Services, shall be on a cost reimbursement basis for actual deliverables in the fulfillment of this Agreement, as specified below:

| Service                       | Cost             |
|-------------------------------|------------------|
| COVID-19 Testing              | \$31.25 per test |
| SARS-CoV-2 Biomarker Analysis | \$200            |
| Delivery                      | \$80 per run     |

|                                 |                 |
|---------------------------------|-----------------|
| Training for Sample Collection. | \$200 per event |
|---------------------------------|-----------------|

**E. Deliverables Schedule:** See Exhibit A-2 Scope of Services

**F. Budget and Invoicing Instructions:** See Exhibit B-1.



**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
***DIVISION OF PUBLIC HEALTH SERVICES***

Lori A. Shiblett  
 Commissioner

Patricia M. Tilley  
 Interim Director

29 HAZEN DRIVE, CONCORD, NH 03301  
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 www.dhhs.nh.gov

June 7, 2021

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

**INFORMATIONAL ITEM**

Pursuant to RSA 4:45, RSA 21-P:43, and Section 4 of Executive Order 2020-04 as extended by Executive Orders 2020-05, 2020-08, 2020-09, 2020-10, 2020-14, 2020-15, 2020-16, 2020-17, 2020-18, 2020-20, 2020-21, 2020-23, 2020-24, 2020-25, 2021-01, 2021-02, 2021-04, 2021-05, 2021-06, and 2021-08, Governor Sununu authorized the Department of Health and Human Services, Division of Public Health Services, to enter into a **Sole Source** amendment to a cooperative project agreement with the University of New Hampshire (VC# 177867), Durham, NH, for laboratory services to assist with testing COVID-19 samples from long-term care and other facilities, by extending the completion date from June 30, 2021, to December 31, 2021, with no change to the price limitation of \$2,182,500. 100% Federal Funds.

The original contract was approved by the Governor on December 30, 2020, and presented to the Executive Council as an Informational Item on January 22, 2021 (Informational Item #H), and most recently approved by the Governor on March 3, 2021, and presented to the Executive Council as an Informational Item on April 7, 2021 (Informational Item #J).

Funds are anticipated to be available in State Fiscal Year 2022, upon the availability and continued appropriation of funds in the future operating budget, with the authority to adjust budget line items within the price limitation and encumbrances between state fiscal years through the Budget Office, if needed and justified.

**05-95-90-900010-19510000 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS  
 DEPT OF, HHS: PUBLIC HEALTH SERV DIV, ADMINISTRATION, LONG TERM CARE  
 FACILITIES – GOFERR FUNDS**

| State Fiscal Year | Class / Account | Class Title          | Job Number      | Current Budget   | Increased (Decreased) Amount | Revised Budget   |
|-------------------|-----------------|----------------------|-----------------|------------------|------------------------------|------------------|
| 2021              | 103-502507      | Contracts for Op Svc | 90029000        | \$562,500        | \$0                          | \$562,500        |
|                   |                 |                      | <b>Subtotal</b> | <b>\$562,500</b> | <b>\$0</b>                   | <b>\$562,500</b> |

**05-95-90-903010-19010000 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS  
 DEPT OF, HHS: PUBLIC HEALTH SERV DIV, BUREAU OF LABORATORY SERVICES, ELC  
 CARES COVID-19**

| State Fiscal Year | Class / Account | Class Title            | Job Number      | Current Budget     | Increased (Decreased) Amount | Revised Budget     |
|-------------------|-----------------|------------------------|-----------------|--------------------|------------------------------|--------------------|
| 2021              | 102-500731      | Contracts for Prog Svc | 90183538        | \$1,620,00         | \$0                          | \$1,620,00         |
|                   |                 |                        | <b>Subtotal</b> | <b>\$1,620,000</b> | <b>\$0</b>                   | <b>\$1,620,000</b> |
|                   |                 |                        | <b>Total</b>    | <b>\$2,182,500</b> | <b>\$0</b>                   | <b>\$2,182,500</b> |

**EXPLANATION**

This item is **Sole Source** because the agreement was originally approved as sole source and MOP 150 requires any subsequent amendments to be labeled as sole source. The Department, in the interest of the public's health and safety, determined the University of New Hampshire had the capacity to quickly respond to the COVID-19 pandemic and assist the New Hampshire Public Health Laboratory with processing a high volume of COVID-19 tests.

The purpose of this amendment to the cooperative project agreement is for the University of New Hampshire to continue to provide laboratory services to assist with testing COVID-19 samples from long-term care and other facilities. The University of New Hampshire is providing laboratory testing on COVID-19 samples that are received from long-term care and other facilities and completing pre-testing, testing, and post-testing functions. The University of New Hampshire is providing test collection supplies to the facilities, which include the swabs, tubes, and mail packaging materials. Once the samples are collected, the University of New Hampshire tests the samples in its laboratory and sends all COVID-19 test results to the Department; positive results must be faxed to the Department the same day. Results are communicated to the facility within seventy-two hours from sample testing.

The number of individuals served through this agreement, will depend on the trajectory of COVID-19. Through this agreement, the University of New Hampshire may perform up to 6,000 COVID-19 test per week.

As referenced in Exhibit A, Project Period of the original cooperative project agreement, the parties have the option to extend the agreement for up to one (1) additional year, contingent upon satisfactory delivery of services, available funding, agreement of the parties, and appropriate State approval. The Department is exercising its option to renew services for six (6) months of the six (6) months available.

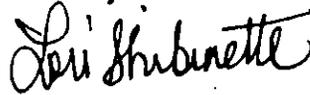
Area served: Statewide

Source of Funds: CFDA #93.323, FAIN #NU50CK000522

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
Page 3 of 3

In the event that the Federal Funds become no longer available, General Funds will not be requested to support this program.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lori Shibinette". The signature is written in a cursive, flowing style.

Lori A. Shibinette  
Commissioner

**AMENDMENT #2 to  
COOPERATIVE PROJECT AGREEMENT**  
between the

STATE OF NEW HAMPSHIRE, **Department of Health and Human Services**  
and the

**University of New Hampshire** of the UNIVERSITY SYSTEM OF NEW HAMPSHIRE

The Cooperative Project Agreement, approved by the State of New Hampshire Governor on December 30, 2020 and March 3, 2021, for the Project titled "COVID-19 Sample Testing," Campus Project Director, Marc Sedam, is and all subsequent properly approved amendments are hereby modified by mutual consent of both parties for the reason(s) described below:

**Purpose of Amendment (Choose all applicable items):**

- Extend the Project Agreement and Project Period end date.
- Provide additional funding from the State for expansion of the Scope of Work under the Cooperative Project Agreement.
- Other:

**Therefore, the Cooperative Project Agreement is and/or its subsequent properly approved amendments are amended as follows (Complete only the applicable items):**

- Article A. is revised to replace the State Department name of \_\_\_\_\_ and/or USNH campus from \_\_\_\_\_ to \_\_\_\_\_.
- Article B. is revised to replace the Project End Date of June 30, 2021 with the revised Project End Date of December 31, 2021, and Exhibit A, article B is revised to replace the Project Period of December 14, 2020 - June 30, 2021 with December 14, 2020 – December 31, 2021
- Article C. is amended to expand Exhibit A by including the proposal titled, "\_\_\_\_," dated \_\_\_\_\_.
- Article D. is amended to change the State Project Administrator to **Christine Bean**.
- Article E. is amended to change the State Project Director to \_\_\_\_\_ and/or the Campus Project Director to \_\_\_\_\_.
- Article F. is amended to add funds in the amount of \_\_\_\_\_ and will read:

Total State funds in the amount of **\$2,182,500** have been allotted and are available for payment of allowable costs incurred under this Project Agreement. State will not reimburse Campus for costs exceeding the amount specified in this paragraph.

- Article F. is amended to change the cost share requirement and will read:

Campus will cost-share \_\_\_\_\_% of total costs during the amended term of this Project Agreement.

Campus Authorized Official \_\_\_\_\_

Date 5/24/2021

- Article F. is amended to change the source of Federal funds paid to Campus and will read:

Federal funds paid to Campus under this Project Agreement as amended are from Grant/Contract/Cooperative Agreement No. from under CFDA# 93.323. Federal regulations required to be passed through to Campus as part of this Project Agreement; and in accordance with the Master Agreement for Cooperative Projects between the State of New Hampshire and the University System of New Hampshire dated November 13, 2002, are attached to this document as revised Exhibit B, the content of which is incorporated herein as a part of this Project Agreement.

Article G. is exercised to amend Article(s) of the Master Agreement for Cooperative Projects between the State of New Hampshire and the University System of New Hampshire dated November 13, 2002, as follows:

**Article** is amended in its entirety to read as follows:  
**Article** is amended in its entirety to read as follows:

Article H. is amended such that:

- State has chosen **not to take** possession of equipment purchased under this Project Agreement.
- State has chosen **to take** possession of equipment purchased under this Project Agreement and will issue instructions for the disposition of such equipment within 90 days of the Project Agreement's end-date. Any expenses incurred by Campus in carrying out State's requested disposition will be fully reimbursed by State.
- Exhibit A is amended as attached.
- Exhibit B is amended as attached.

All other terms and conditions of the Cooperative Project Agreement remain unchanged.

This Amendment, all previous Amendments, the Cooperative Project Agreement, and the Master Agreement constitute the entire agreement between State and Campus regarding the Cooperative Project Agreement, and supersede and replace any previously existing arrangements, oral and written; further changes herein must be made by written amendment and executed for the parties by their authorized officials.

This Amendment and all obligations of the parties hereunder shall become effective on the date of Governor approval of this Amendment to the Cooperative Project Agreement.

Campus Authorized Official   
Date 5/24/2021

IN WITNESS WHEREOF, the following parties agree to this **Amendment # 1** to the Cooperative Project Agreement.

**By An Authorized Official of:  
University of New Hampshire**

Name: Karen M. Jensen

Title: Director, Pre-Award

5/24/2021

DocuSigned by:

Signature and Date:

*Karen Jensen*

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**By An Authorized Official of: the New  
Hampshire Office of the Attorney General**

Name: Catherine Pinos

Title: Attorney

5/25/2021

DocuSigned by:

Signature and Date:

*Catherine Pinos*

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**By An Authorized Official of:**

**NH DHHS, Division of Public Health Services**

Name: Patricia Tilley

Title: Director

5/24/2021

DocuSigned by:

Signature and Date:

*Patricia M. Tilley*

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**By An Authorized Official of: the New  
Hampshire Governor & Executive Council**

Name:

Title:

Signature and Date:

Campus Authorized Official

DS  
*KJ*

5/24/2021  
Date

**EXHIBIT A – Amendment # 1**

- A. Project Title:** COVID-19 Sample Testing
- B. Project Period:** December 14, 2020 through December 31, 2021.
- C. Objectives:** See Exhibit A-1 Scope of Services
- D. Scope of Work:** See Exhibit A-1 Scope of Services, Standard Exhibit I Business Associate Agreement, and Exhibit K DHHS Informational Security Requirements. Please note Exhibits C through H and Exhibit J are reserved. Modifications to Exhibit A-1 Scope of Services are as follows:
  - 1. Modify Exhibit A-1, Scope of Services, Section 1.6.1, to read:
    - 1.6.1. Perform up to 6,000 tests per week, five (5) days per week (Monday through Friday). The number of tests per day may vary as agreed upon by both parties.
- E. Deliverables Schedule:** See Exhibit A-1 Scope of Services
- F. Budget and Invoicing Instructions:** See Exhibit B-1.

Campus Authorized Official   
Date 5/24/2021

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Lori A. Shibleyette  
Commissioner

Lisa M. Morris  
Director

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF PUBLIC HEALTH SERVICES

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March 4, 2021

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

**INFORMATIONAL ITEM**

Pursuant to RSA 4:45, RSA 21-P:43, and Section 4 of Executive Order 2020-04 as extended by Executive Orders 2020-05, 2020-08, 2020-09, 2020-10, 2020-14, 2020-15, 2020-16, 2020-17, 2020-18, 2020-20, 2020-21, 2020-23, 2020-24, 2020-25, 2021-01, and 2021-02, Governor Sununu has authorized the Department of Health and Human Services, Division of Public Health Services, to enter into a **Retroactive, Sole Source** amendment to a cooperative project agreement with University of New Hampshire (VC# 177867), Durham, NH, for laboratory services to assist in the testing of the COVID-19 samples from long-term care and other facilities, by increasing the price limitation by \$562,500 from \$1,620,000 to \$2,182,500 and by extending the completion date from December 30, 2020, to June 30, 2021, effective retroactive to December 31, 2020. 100% Federal Funds.

The original contract was approved by the Governor on December 30, 2020, and presented to the Executive Council as an Informational Item on January 22, 2021 (Informational Item #H).

Funds are available in the following accounts for State Fiscal Year 2021, with the authority to adjust budget line items within the price limitation through the Budget Office, if needed and justified.

**05-95-90-900010-19510000 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS  
DEPT OF, HHS: PUBLIC HEALTH SERV DIV, ADMINISTRATION, LONG TERM CARE  
FACILITIES - GOFERR FUNDS**

| State Fiscal Year | Class / Account | Class Title          | Job Number      | Current Budget   | Increased (Decreased) Amount | Revised Budget   |
|-------------------|-----------------|----------------------|-----------------|------------------|------------------------------|------------------|
| 2021              | 103-502507      | Contracts for Op Svc | 90029000        | \$562,500        | \$0                          | \$562,500        |
|                   |                 |                      | <b>Subtotal</b> | <b>\$562,500</b> | <b>\$0</b>                   | <b>\$562,500</b> |

**05-95-90-903010-19010000 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS  
DEPT OF, HHS: PUBLIC HEALTH SERV DIV, BUREAU OF LABORATORY SERVICES, ELC  
CARES COVID-19**

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
Page 2 of 3

| State Fiscal Year | Class / Account | Class Title            | Job Number      | Current Budget   | Increased (Decreased) Amount | Revised Budget     |
|-------------------|-----------------|------------------------|-----------------|------------------|------------------------------|--------------------|
| 2021              | 102-500731      | Contracts for Prog Svc | 90183538        | \$0              | \$1,620,000                  | \$1,620,000        |
|                   |                 |                        | <b>Subtotal</b> | <b>\$0</b>       | <b>\$1,620,000</b>           | <b>\$1,620,000</b> |
|                   |                 |                        | <b>Total</b>    | <b>\$562,500</b> | <b>\$1,620,000</b>           | <b>\$2,182,500</b> |

### EXPLANATION

This item is **Retroactive** because the funding for this agreement was not received from the Centers for Disease Control for COVID-19 testing until January 14, 2020. Consequently, the funds could not be accepted into the operating budget until after the completion date expired. This item is **Sole Source** because the agreement was originally approved as sole source and MOP 150 requires any subsequent amendments to be labeled as sole source. The Department, in the interest of the public's health and safety, determined the University of New Hampshire had the capacity to quickly respond to the COVID-19 pandemic and assist the New Hampshire Public Health Laboratory with processing a high volume of COVID-19 tests.

The purpose of this amendment to the cooperative project agreement is for the University of New Hampshire to continue to provide laboratory services to assist with testing COVID-19 samples from long-term care and other facilities. The University of New Hampshire is providing laboratory testing on COVID-19 samples that are received from long-term care and other facilities and completing pre-testing, testing, and post-testing functions. The University of New Hampshire is providing test collection supplies to the facilities, which include the swabs, tubes, and mail packaging materials. Once the samples are collected, the University of New Hampshire tests the samples in its laboratory and sends all COVID-19 test results to the Department; positive results must be faxed to the Department the same day. Results are communicated to the facility within seventy-two hours from sample testing.

The number of individuals served through this agreement, will depend on the trajectory of COVID-19. Through this agreement, the University of New Hampshire may perform up to 6,000 COVID-19 tests per week.

As referenced in Exhibit A, Project Period of the original cooperative project agreement, the parties have the option to extend the agreement for up to one (1) additional year, contingent upon satisfactory delivery of services, available funding, agreement of the parties, and appropriate State approval. The Department is exercising its option to renew services for six (6) months of the one (1) year available.

Area served: Statewide

Source of Funds: CFDA #93.323, FAIN #NU50CK000522

In the event that the Federal Funds become no longer available, General Funds will not be requested to support this program.

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
Page 3 of 3

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lori A. Shibinette". The signature is fluid and cursive, with the first name "Lori" being the most prominent.

Lori A. Shibinette  
Commissioner



**AMENDMENT #1 to  
COOPERATIVE PROJECT AGREEMENT**

between the

**STATE OF NEW HAMPSHIRE, Department of Health and Human Services  
and the**

**University of New Hampshire of the UNIVERSITY SYSTEM OF NEW HAMPSHIRE**

The Cooperative Project Agreement, approved by the State of New Hampshire Governor on December 30, 2020, for the Project titled "COVID-19 Sample Testing," Campus Project Director, Marc Sedam, is and all subsequent properly approved amendments are hereby modified by mutual consent of both parties for the reason(s) described below:

**Purpose of Amendment (Choose all applicable items):**

- Extend the Project Agreement and Project Period end date, at no additional cost to the State.
- Provide additional funding from the State for expansion of the Scope of Work under the Cooperative Project Agreement.
- Other:

**Therefore, the Cooperative Project Agreement is and/or its subsequent properly approved amendments are amended as follows (Complete only the applicable items):**

- Article A. is revised to replace the State Department name of \_\_\_ with \_\_\_ and/or USNH campus from \_\_\_ to \_\_\_.
- Article B. is revised to replace the Project End Date of December 30, 2020 with the revised Project End Date of June 30, 2021, and Exhibit A, article B is revised to replace the Project Period of December 14, 2020 - December 30, 2020 with December 14, 2020 – June 30, 2021
- Article C. is amended to expand Exhibit A by including the proposal titled, "\_\_\_," dated \_\_\_.
- Article D. is amended to change the State Project Administrator to **Lisa Morris**.
- Article E. is amended to change the State Project Director to \_\_\_ and/or the Campus Project Director to \_\_\_.
- Article F. is amended to add funds in the amount of **\$1,620,000** and will read:  

Total State funds in the amount of **\$2,182,500** have been allotted and are available for payment of allowable costs incurred under this Project Agreement. State will not reimburse Campus for costs exceeding the amount specified in this paragraph.
- Article F. is amended to change the cost share requirement and will read:  

Campus will cost-share \_\_\_% of total costs during the amended term of this Project Agreement.

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Campus Authorized Official

2/4/2021  
Date

- Article F. is amended to change the source of Federal funds paid to Campus and will read:

Federal funds paid to Campus under this Project Agreement as amended are from Grant/Contract/Cooperative Agreement No. from under CFDA# 93.323. Federal regulations required to be passed through to Campus as part of this Project Agreement, and in accordance with the Master Agreement for Cooperative Projects between the State of New Hampshire and the University System of New Hampshire dated November 13, 2002, are attached to this document as revised Exhibit B, the content of which is incorporated herein as a part of this Project Agreement.

Article G. is exercised to amend Article(s) of the Master Agreement for Cooperative Projects between the State of New Hampshire and the University System of New Hampshire dated November 13, 2002, as follows:

Article is amended in its entirety to read as follows:  
Article is amended in its entirety to read as follows:

Article H. is amended such that:

- State has chosen not to take possession of equipment purchased under this Project Agreement.
- State has chosen to take possession of equipment purchased under this Project Agreement and will issue instructions for the disposition of such equipment within 90 days of the Project Agreement's end-date. Any expenses incurred by Campus in carrying out State's requested disposition will be fully reimbursed by State.
- Exhibit A is amended as attached.
- Exhibit B is amended as attached.

All other terms and conditions of the Cooperative Project Agreement remain unchanged.

This Amendment, all previous Amendments, the Cooperative Project Agreement, and the Master Agreement constitute the entire agreement between State and Campus regarding the Cooperative Project Agreement, and supersede and replace any previously existing arrangements, oral and written; further changes herein must be made by written amendment and executed for the parties by their authorized officials.

This Amendment and all obligations of the parties hereunder shall become effective on the date of Governor approval of this Amendment to the Cooperative Project Agreement.

Campus Authorized Official



Date 2/4/2021

IN WITNESS WHEREOF, the following parties agree to this Amendment # 1 to the Cooperative Project Agreement.

By An Authorized Official of:  
University of New Hampshire  
Name: Karen M. Jensen  
Title: Manager, Sponsored Programs Administration

Signature and Date: Karen Jensen 2/4/2021

By An Authorized Official of: the New Hampshire Office of the Attorney General  
Name: Catherine Pinos  
Title: Attorney

Signature and Date: Catherine Pinos 2/12/2021

By An Authorized Official of:  
NH DHHS, Division of Public Health Services  
Name: Lisa Morris  
Title: Director

Signature and Date: Lisa M. Morris 2/2021

By An Authorized Official of: the New Hampshire Governor & Executive Council  
Name:  
Title:

Signature and Date:

DS  
kj  
Campus Authorized Official \_\_\_\_\_  
Date 2/4/2021

**EXHIBIT A – Amendment # 1**

- A. **Project Title:** COVID-19 Sample Testing
- B. **Project Period:** December 14, 2020 through June 30, 2021. The Department reserves the right to extend contracted services for up to additional six (6) months contingent upon available funding, agreement between the parties and appropriate State approval.
- C. **Objectives:** See Exhibit A-1 Scope of Services
- D. **Scope of Work:** See Exhibit A-1 Scope of Services, Standard Exhibit I Business Associate Agreement, and Exhibit K DHHS Informational Security Requirements. Please note Exhibits C through H and Exhibit J are reserved. Modifications to Exhibit A-1 Scope of Services are as follows:

- 1. Modify Exhibit A-1, Scope of Services, Section 1.4 through 1.4.1.3, to read:
  - 1.4 Provide test collection supplies to the entities listed in Section 1.2, for surveillance and outbreak testing, as specified by the Department, in quantities specified by the Department, by Contractor provided courier service or overnight delivery service, supplies shall include:
    - 1.4.1 Anterior nares swabs;
    - 1.4.2 Transport tubes; and
    - 1.4.3. Instructions for collection of specimens.
- 2. Modify Exhibit A-1, Scope of Services, Section 1.6.1, to read:
  - 1.6.1. Perform up to 6,000 tests per week six, (6) days per week (Monday through Saturday), . The number of tests per day may vary as agreed upon by both parties.

E. **Deliverables Schedule:** See Exhibit A-1 Scope of Services

F. **Budget and Invoicing Instructions:** See Exhibit B-1. Modifications to Exhibit B-1 Payment Terms are as follows:

- 1. Modify Exhibit B, Methods and Conditions Precedent to Payment, Section 3, to read:
  - 3. Payment for services billed to the State of New Hampshire in accordance with Paragraph 2 of Exhibit B, Scope of Services, shall be on a Fixed Price Level of Effort in the fulfillment of this Agreement for actual expenditures incurred in the fulfillment of this Agreement, as specified below:

|               |      |
|---------------|------|
| Rate Per Test | \$45 |
|---------------|------|

  
 Campus Authorized Official \_\_\_\_\_  
 Date 2/4/2021



Lori A. Skibbinette  
Commissioner

Lisa M. Merritt  
Director

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF PUBLIC HEALTH SERVICES

29 HAZEN DRIVE, CONCORD, NH 03301  
603-271-4301 1-800-852-3345 Ext. 4501  
Fax: 603-271-4827 TDD Access: 1-800-735-2964  
www.dhhs.nh.gov

December 31, 2020

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

**INFORMATIONAL ITEM**

Pursuant to RSA 4:45, RSA 21-P:43, and Section 4 of Executive Order 2020-04 as extended by Executive Orders 2020-05, 2020-08, 2020-09, 2020-10, 2020-14, 2020-15, 2020-16, 2020-17, 2020-18, 2020-20, 2020-21, 2020-23, and 2020-24, Governor Sununu has authorized the Department of Health and Human Services, Division of Public Health Services, to enter into a **Retroactive, Sole Source** cooperative project agreement with University of New Hampshire (VC# 177867), Durham, NH, in the amount of \$562,500, for laboratory services to assist in the testing of the COVID-19 samples from long-term care facilities, with the option to renew for up to one (1) additional year, effective retroactive to December 14, 2020, through December 30, 2020. 100% Other Funds (Governor's Office for Emergency Relief and Recovery).

Funds are available in the following account for State Fiscal Year 2021, with the authority to adjust budget line items within the price limitation through the Budget Office, if needed and justified.

05-95-95-950010-19290000 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS  
DEPT OF, HHS: COMMISSIONER'S OFFICE, OFFICE OF THE COMMISSIONER, DHHS  
COVID RELIEF - GOFERR FUNDS

| State Fiscal Year | Class / Account | Class Title          | Job Number | Total Amount |
|-------------------|-----------------|----------------------|------------|--------------|
| 2021              | 103-502507      | Contracts for Op Svc | 95010799   | \$562,500    |
|                   |                 |                      | Total      | \$562,500    |

**EXPLANATION**

This cooperative project agreement is **Retroactive** because the Department needed the University of New Hampshire to immediately begin using its laboratory to conduct COVID-19 tests, due to the State's increased testing needs. This cooperative project agreement is **Sole Source** because the Department, in the interest of the public's health and safety, determined the University of New Hampshire had the capacity to quickly respond to the COVID-19 pandemic. The Department reached out to the University of New Hampshire to assist the New Hampshire Public Health Laboratory in processing the high number of COVID-19 tests.

The purpose of this cooperative project agreement is for University of New Hampshire to provide laboratory services to assist in the testing of the COVID-19 samples from long-term care facilities. The Department anticipates an increase in the number of individuals being tested for

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
Page 2 of 2

**COVID-19.** In order to keep up with the demand of COVID-19 outbreak testing in long-term care facilities, the Department needs additional laboratory support.

The University of New Hampshire is providing laboratory testing on COVID-19 samples that are received from long-term care facilities and completing pre-testing, testing, and post-testing functions. The University of New Hampshire is providing test collection supplies to the facilities, which include the swabs, tubes, and mail packaging materials. Once the samples are collected, the University of New Hampshire tests the samples in its laboratory and sends all COVID-19 test results to the Department; positive results must be faxed to the Department the same day. Results will be communicated to the long-term care facility within seventy-two hours from sample testing.

The number of individuals served through this agreement, will depend on the trajectory of COVID-19. Through this agreement, University of New Hampshire may perform up to 6,000 COVID-19 test per week.

As referenced in Exhibit A, Project Period, of the attached cooperative project agreement, the parties have the option to extend the agreement for up one (1) additional year, contingent upon satisfactory delivery of services, available funding, agreement of the parties and appropriate State approval.

Area served: Statewide

Source of Funds: 100% Other Funds (Governor's Office for Emergency Relief and Recovery).

In the event that the Other Funds become no longer available, General Funds will not be requested to support this program.

Respectfully submitted,

  
Lori A. Shabinette  
Commissioner

**COOPERATIVE PROJECT AGREEMENT**

between the

**STATE OF NEW HAMPSHIRE, Department of Health and Human Services**

and the

**University of New Hampshire of the UNIVERSITY SYSTEM OF NEW HAMPSHIRE**

A. This Cooperative Project Agreement (hereinafter "Project Agreement") is entered into by the State of New Hampshire, Department of Health and Human Services, (hereinafter "State"), and the University System of New Hampshire, acting through University of New Hampshire, (hereinafter "Campus"), for the purpose of undertaking a project of mutual interest. This Cooperative Project shall be carried out under the terms and conditions of the Master Agreement for Cooperative Projects between the State of New Hampshire and the University System of New Hampshire dated November 13, 2002, except as may be modified herein.

B. This Project Agreement and all obligations of the parties hereunder shall become effective on the date the Governor and Executive Council of the State of New Hampshire approve this Project Agreement ("Effective date") and shall end on December 30, 2020. If the provision of services by Campus precedes the Effective date, all services performed by Campus shall be performed at the sole risk of Campus and in the event that this Project Agreement does not become effective, State shall be under no obligation to pay Campus for costs incurred or services performed; however, if this Project Agreement becomes effective, all costs incurred prior to the Effective date that would otherwise be allowable shall be paid under the terms of this Project Agreement.

C. The work to be performed under the terms of this Project Agreement is described in the proposal identified below and attached to this document as Exhibit A, the content of which is incorporated herein as a part of this Project Agreement.

Project Title: **COVID-19 Sample Testing**

D. The Following Individuals are designated as Project Administrators. These Project Administrators shall be responsible for the business aspects of this Project Agreement and all invoices, payments, project amendments and related correspondence shall be directed to the individuals so designated.

**State Project Administrator**

Name: TBD  
Address: TBD  
Phone: TBD

**Campus Project Administrator**

Name: Cheryl Moore  
Address: University of New Hampshire  
Sponsored Programs Administration  
51 College Rd. Rm 116  
Durham, NH 03824  
Phone: 603-862-4848

E. The Following Individuals are designated as Project Directors. These Project Directors shall be responsible for the technical leadership and conduct of the project. All progress reports, completion reports and related correspondence shall be directed to the individuals so designated.

**State Project Director**

Name: Lisa Morris, Director  
Address: 29 Hazen Drive  
Concord, NH 03301  
Phone: (603) 271-4612

**Campus Project Director**

Name: Marc Sedam  
Address: UNH Innovation, 21 Madbury Road  
Ste 101, Durham, NH 03824  
Phone: 603-862-4130

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F. Total State funds in the amount of \$562,500 have been allotted and are available for payment of allowable costs incurred under this Project Agreement. State will not reimburse Campus for costs exceeding the amount specified in this paragraph.

Check if applicable

Campus will cost-share % of total costs during the term of this Project Agreement.

Federal funds paid to Campus under this Project Agreement are from Grant/Contract/Cooperative Agreement No. from CARES Act Coronavirus Relief Fund under CFDA# 21.019. Federal regulations required to be passed through to Campus as part of this Project Agreement, and in accordance with the Master Agreement for Cooperative Projects between the State of New Hampshire and the University System of New Hampshire dated November 13, 2002, are attached to this document as Exhibit B, the content of which is incorporated herein as a part of this Project Agreement:

G. Check if applicable

Article(s) 15 of the Master Agreement for Cooperative Projects between the State of New Hampshire and the University System of New Hampshire dated November 13, 2002 is/are hereby amended to read:

Under State law, specifically RSA 21-P:41 and RSA 21-P:53, entities and emergency management workers engaged in emergency management activities are immune from suit. See N.H. Atty. Gen. Op. No. 2020-01. The Department of Health and Human Services hereby acknowledges that UNH is authorized to perform the emergency management activities described herein. In addition, the Department agrees to defend, indemnify, and hold UNH harmless pursuant to RSA 99-D:8 for any and all claims arising from or relating to UNH's provisions of the emergency management activities described herein. Neither the terms of this Master Agreement nor those of any Project Agreement shall be deemed a waiver of sovereign immunity by either party.

H.  State has chosen not to take possession of equipment purchased under this Project Agreement.

State has chosen to take possession of equipment purchased under this Project Agreement and will issue instructions for the disposition of such equipment within 90 days of the Project Agreement's end-date. Any expenses incurred by Campus in carrying out State's requested disposition will be fully reimbursed by State.

This Project Agreement and the Master Agreement constitute the entire agreement between State and Campus regarding this Cooperative Project, and supersede and replace any previously existing arrangements, oral or written; all changes herein must be made by written amendment and executed for the parties by their authorized officials.

IN WITNESS WHEREOF, the University System of New Hampshire, acting through the University of New Hampshire and the State of New Hampshire, Department of Health and Human Services have executed this Project Agreement.

By An Authorized Official of:  
University of New Hampshire

By An Authorized Official of: Department of  
Health and Human Services

Name: Karen M. Jensen  
Title: Director, Pre-Award, Sponsored  
Programs Administration

Name: Lisa Morris  
Title: Director

Signature and Date:

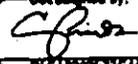
Signature and Date:

DocuSigned by:  
Karen Jensen 12/21/2020  
80CC7BEA7B784M...

DocuSigned by:  
Lisa M. Morris 12/22/2020  
DE380DF86CASA...

DocuSign Envelope ID: 63741E4D-E7F8-418B-94A2-E72CF8DF03F8

By An Authorized Official of: the New  
Hampshire Office of the Attorney General  
Catherine Pinos

Name: Director, Pre-Award  
Title: Attorney  
Signature and Date:  
 12/24/2020

By An Authorized Official of: the New  
Hampshire Governor & Executive Council

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Signature and Date: \_\_\_\_\_

**EXHIBIT A**

- A. **Project Title:** COVID-19 Sample Testing
- B. **Project Period:** December 14, 2020 through December 30, 2020. The Department reserves the right to extend contracted services for up to one (1) additional year contingent upon available funding, agreement between the parties and appropriate State approval.
- C. **Objectives:** See Exhibit A-1 Scope of Services
- D. **Scope of Work:** See Exhibit A-1 Scope of Services, Standard Exhibit I Business Associate Agreement, and Exhibit K DHHS Informational Security Requirements. Please note Exhibits C through H and Exhibit J are reserved.
- E. **Deliverables Schedule:** See Exhibit A-1 Scope of Services
- F. **Budget and Invoicing Instructions:** See Exhibit B-1

Campus Authorized Official   
Date 12/21/2020

### EXHIBIT B

This Project Agreement is funded under a Grant/Contract/Cooperative Agreement to State from the Federal sponsor specified in Project Agreement article F. All applicable requirements, regulations, provisions, terms and conditions of this Federal Grant/Contract/Cooperative Agreement are hereby adopted in full force and effect to the relationship between State and Campus, except that wherever such requirements, regulations, provisions and terms and conditions differ for INSTITUTIONS OF HIGHER EDUCATION, the appropriate requirements should be substituted (e.g., OMB Circulars A-21 and A-110, rather than OMB Circulars A-87 and A-102). References to Contractor or Recipient in the Federal language will be taken to mean Campus; references to the Government or Federal Awarding Agency will be taken to mean Government/Federal Awarding Agency or State or both, as appropriate.

Special Federal provisions are listed here:  None or

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New Hampshire Department of Health and Human Services  
COVID-19 Sample Testing



EXHIBIT A-2

**Scope of Services**

**1. Statement of Work**

- 1.1. For the purposes of this agreement, all references to days shall mean calendar days.
- 1.2. The Contractor shall complete COVID-19 surveillance and outbreak laboratory testing of specimens, for the following:
  - 1.2.1. Assisted living facilities;
  - 1.2.2. Long term care facilities; and
  - 1.2.3. Other facilities or entities, as approved by the Department.
- 1.3. The Contractor shall complete COVID-19 testing for the entities listed in Section 1.2, per CMS QSO-20-38-NH, which includes the following:
  - 1.3.1. Surveillance testing for staff.
  - 1.3.2. Outbreak testing for staff and residents.
- 1.4. The Contractor shall conduct COVID-19 pre-testing, testing, and post-testing functions, as approved by the Department, the Contractor shall:
  - 1.4.1. Provide test collection supplies to the entities listed in Section 1.2, for surveillance and outbreak testing, as specified by the Department, in quantities specified by the Department, by Department provided courier service or overnight delivery service, which supplies shall include:
    - 1.4.1.1. Anterior nares swabs;
    - 1.4.1.2. Transport tubes;
    - 1.4.1.3. Provide a dedicated printer, as agreed upon; and
    - 1.4.1.4. Instructions for collection of specimens.
  - 1.4.2. Receive all specimens.
  - 1.4.3. Perform the RT-PCR diagnostic Sars CoV-2 test. The Contractor shall:
    - 1.4.3.1. Report all results (positive and negative) electronically through the Division of Public Health Service's "ELR" system. Positive results shall also be sent to the Division of Public Health Services via fax at 603-271- 0545, or through another suitable electronic information system, within the same day the test results are available.

**New Hampshire Department of Health and Human Services  
COVID-19 Sample Testing**



**EXHIBIT A-2**

- 1.4.3.2. Notify the ordering medical provider or facility via email that all positive results are available in the Contractor's secure portal within twenty-four (24) hours from testing.
- 1.4.3.3. All negative results are available in the Contractor's secure portal.
- 1.4.3.4. If Contractor experiences delays communicating results, the Contractor must notify the Department immediately after it becomes aware of the delay.
- 1.5. The Department shall ensure that each entity listed in Section 1.2 has its own Medical Director who is a licensed medical provider and will serve as the ordering provider for each COVID-19 test, unless otherwise approved by the Department. If any entity listed in Section 1.2 does not have its own Medical Director, Dr. Jonathan Ballard of the NH Division of Public Health, or another licensed medical provider designated by the Department, shall serve as the ordering provider for said entity. The Contractor shall not be required to perform any testing for an entity that does not have the required ordering provider.
- 1.6. The Contractor agrees to provide the pre-testing, testing and post-testing functions set forth above for the following testing cycles and estimated test volumes to:
  - 1.6.1. Perform up to 6,000 tests per week, five (5) days per week (Monday through Friday) from the effective date until December 30, 2020; provided, however, that the Department understands that the Contractor will begin by performing 2,000 tests per week and increase capacity as soon as possible to reach 6,000 tests per week.
- 1.7. The Contractor shall provide a single point of contact and designated back up contact for all communications and directives to and from the Department, and shall notify the Department within twenty-four (24) hours if such point of contact must be changed.
- 1.8. The Contractor shall immediately notify the Department's COVID Coordinating Office of test system failures, corrected reports, delays in reporting test results or any other out-of-the-ordinary issues related to testing performed pursuant to this Agreement, such as incidents of cross-contamination.
- 1.9. Subject matter experts and quality assurance representatives from the Contractor shall participate in weekly calls with subject matter experts from the Division of Public Health Services to provide updates and discuss operational and technical issues.
- 1.10. The Department shall provide courier services to pick up specimens at each of the assisted living or other designated facilities or entities or provide boxes and packaging for the return mailing of specimens that is effective in preventing incidents of specimen vial breakage.

New Hampshire Department of Health and Human Services  
COVID-19 Sample Testing



**EXHIBIT A-2**

**2. Exhibits Incorporated**

- 2.1. The Contractor shall use and disclose Protected Health Information in compliance with the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) (45 CFR Parts 160 and 164) under the Health Insurance Portability and Accountability Act (HIPAA) of 1996.
- 2.2. The Contractor shall comply with all Exhibits I and K, which are attached hereto and incorporated by reference herein.

**3. Confidentiality**

- 3.1. The Contractor's Use and Responsibilities for Confidential Information are as follows.
  - 3.1.1. The Contractor agrees to use, disclose, maintain, or transmit Confidential Data from designated entities as required, specifically authorized, or permitted under the Contract or this Agreement. Further, the Contractor, including but not limited to all its directors, officers, employees, and agents, agrees not to use, disclose, maintain, or transmit PHI in any manner that would constitute a violation of the Privacy and Security Rules. The Contractor shall provide Confidential Information as required by the Contract, RSA 141-C:7, RSA 141-C:9, RSA 141-C:10 and in a form required by Administrative Rule He-P 301.03 and the "New Hampshire Local Implementation Guide for Electronic Laboratory Reporting using HL7 2.5.1," Version 4.0 (5/23/2016), found at <https://www.dhhs.nh.gov/dphs/bphsi/documents/elrguide.pdf>.
  - 3.1.2. The Contractor shall transmit the Confidential Information to the Division of Public Health Services by means of a secure file transport protocol (sFTP) provided by the Department and agreed to by the parties and approved by the Department's Information Security Officer.
    - 3.1.2.1. Any individual seeking credentials to access the sFTP site shall sign and return to the Department a "Data Use and Confidentiality Agreement" (Attachment A) when requesting sFTP account.
  - 3.1.3. The Contractor shall transmit the Confidential Information to the Division of Public Health Services as required by statute, and as stated in the Contract "Statement of Work" sections 1.3.4.1 and 1.3.4.2, namely:
    - 3.1.3.1. All test results, including but not limited to positive and negative results, shall be reported through the ECR<sup>03</sup> as outlined in New Hampshire Local Implementation Guide for

**New Hampshire Department of Health and Human Services  
COVID-19 Sample Testing**



**EXHIBIT A-2**

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ELR Using HL 7.2.5.1, Version 4.0, 5/23/2016 found at <https://www.dhhs.nh.gov/dphs/bphsi/documents/elrguide.pdf>.

3.1.3.2. Test results shall be provided within twenty-four (24) hours of the test being completed through the methods set forth in this Exhibit B-1.

- 3.2. As necessary, the Contractor agrees to comply with any request to correct or complete the data once transmitted to the Division of Public Health Services.
- 3.3. The Contractor agrees that the data submitted shall be the "minimum necessary" to carry out the stated use of the data, as defined in the HIPAA Privacy Rule and in accordance with all applicable confidentiality laws.
- 3.4. The Contractor and the Department agree to negotiate an amendment to this Agreement as needed to address a Contract amendment, or any changes in policy issues, fiscal issues, information security, and other specific safeguards required for maintaining confidentiality of the data.

**4. Reporting Requirements**

- 4.1. The Contractor shall submit daily reports to ensure all testing completed is traced, which include, but are not limited to:
  - 4.1.1. Each facility residents and staff from whom a specimen was obtained, including the following:
    - 4.1.1.1. Full name.
    - 4.1.1.2. Name of the testing site.
    - 4.1.1.3. Result of COVID-19 testing on these specimens, if available.
    - 4.1.1.4. Information on when specimens were collected, received, and reported
  - 4.1.2. Information on when results were communicated to the appropriate individual through the Contractors portal (ordering medical provider/facility).
- 4.2. All reports required under this Section 5 shall be available in the Contractors portal or sent via secure email to the designated DHHS representative

**5. Performance Measures**

- 5.1. The Contractor shall actively and regularly collaborate with the Department to enhance contract management, improve results, and adjust program delivery and policy to ensure successful outcomes.
- 5.2. The Contractor may be required to provide other key data and metrics to the Department, including client-level demographic, performance, and service data.

**New Hampshire Department of Health and Human Services  
COVID-19 Sample Testing**



**EXHIBIT A-2**

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**6. Records**

- 6.1. The Contractor shall keep and maintain for 5 years detailed records of their activities related to Department-funded programs and services and have records available for Department review, as requested.
- 6.2. The Contractor shall keep records that include, but are not limited to:
  - 6.2.1. Books, records, documents and other electronic or physical data evidencing and reflecting all costs and other expenses incurred by the Contractor in the performance of the Contract, and all income received or collected by the Contractor.
  - 6.2.2. All records must be maintained in accordance with accounting procedures and practices, which sufficiently and properly reflect all such costs and expenses, and which are acceptable to the Department, and to include, without limitation, all ledgers, books, records, and original evidence of costs such as purchase requisitions and orders, vouchers, requisitions for materials, inventories, valuations of in-kind contributions, labor time cards, payrolls, and other records requested or required by the Department.
  - 6.2.3. Statistical, enrollment, attendance or visit records for each recipient of services, which records shall include all records of application and eligibility (including all forms required to determine eligibility for each such recipient), records regarding the provision of services and all invoices submitted to the Department to obtain payment for such services.
- 6.3. During the term of this Contract and the period for retention hereunder, the Department, the United States Department of Health and Human Services, and any of their designated representatives shall have access to all reports and records maintained pursuant to the Contract for purposes of audit, examination, excerpts and transcripts. Upon the purchase by the Department of the maximum number of units provided for in the Contract and upon payment of the price limitation hereunder, the Contract and all the obligations of the parties hereunder (except such obligations as, by the terms of the Contract are to be performed after the end of the term of this Contract and/or survive the termination of the Contract) shall terminate, provided however, that if, upon review of the Final Expenditure Report the Department shall disallow any expenses claimed by the Contractor as costs hereunder the Department shall retain the right, at its discretion, to deduct the amount of such expenses as are disallowed or to recover such sums from the Contractor.

New Hampshire Department of Health and Human Services  
COVID-19 Sample Testing



EXHIBIT B-1

Payment Terms

1. This Agreement is funded by the CARES Act Coronavirus Relief Fund, CFDA #21.019.
2. For the purposes of this Agreement:
  - 2.1. The Department has identified the Contractor as a Contractor, in accordance with 2 CFR 200.330.
3. Payment for services billed to the State of New Hampshire in accordance with Paragraph 2 of Exhibit B, Scope of Services, shall be on a cost reimbursement basis for actual expenditures incurred in the fulfillment of this Agreement, as specified below, and subject to amendment pursuant to the mutual agreement of the Parties:

|               |         |
|---------------|---------|
| Rate Per Test | \$31.25 |
|---------------|---------|

4. The Contractor shall submit an invoice in a form satisfactory to the Department by the fifteenth (15th) working day of the following month, which identifies and requests reimbursement for authorized expenses incurred in the prior month. The Contractor shall ensure the invoice is completed, dated and returned to the Department in order to initiate payment.
5. In lieu of hard copies, all invoices may be assigned an electronic signature and emailed to Beth.kelly@DHHS.NH.GOV, or invoices may be mailed to:
 

Financial Manager  
Department of Health and Human Services  
129 Pleasant Street  
Concord, NH 03301
6. The Department shall make payment to the Contractor within thirty (30) days of receipt of each invoice, subsequent to approval of the submitted invoice and if sufficient funds are available.
7. The final invoice shall be due to the Department no later than January 15, 2021.
8. The Contractor must provide the services in Exhibit B, Scope of Services, in compliance with funding requirements.
9. The Contractor agrees that funding under this Agreement may be withheld, in whole or in part in the event of non-compliance with the terms and conditions of Exhibit A-1, Scope of Services.
10. Notwithstanding anything to the contrary herein, the Contractor agrees that funding under this agreement may be withheld, in whole or in part, in the event of non-compliance with any Federal or State law, rule or regulation applicable to the services provided, or if the said services or products have not been satisfactorily completed in accordance with the terms and conditions of this

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COVID-19 Sample Testing**



**EXHIBIT B-1**

agreement.

11. Notwithstanding the CPA Agreement, changes limited to adjusting amounts within the price limitation and adjusting encumbrances between State Fiscal Years and budget class lines through the Budget Office may be made by written agreement of both parties, without obtaining approval of the Governor and Executive Council, if needed and justified.
12. Audits
  - 12.1. The Contractor is required to submit an annual audit to the Department if any of the following conditions exist:
    - 12.1.1. Condition A - The Contractor expended \$750,000 or more in federal funds received as a subrecipient pursuant to 2 CFR Part 200, during the most recently completed fiscal year.
    - 12.1.2. Condition B - The Contractor is subject to audit pursuant to the requirements of NH RSA 7:28, III-b, pertaining to charitable organizations receiving support of \$1,000,000 or more.
    - 12.1.3. Condition C - The Contractor is a public company and required by Security and Exchange Commission (SEC) regulations to submit an annual financial audit.
  - 12.2. If Condition A exists, the Contractor shall submit an annual single audit performed by an independent Certified Public Accountant (CPA) to the Department within 120 days after the close of the Contractor's fiscal year, conducted in accordance with the requirements of 2 CFR Part 200, Subpart F of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards.
  - 12.3. If Condition B or Condition C exists, the Contractor shall submit an annual financial audit performed by an independent CPA within 120 days after the close of the Contractor's fiscal year.
  - 12.4. In addition to, and not in any way in limitation of obligations of the Contract, it is understood and agreed by the Contractor that the Contractor shall be held liable for any state or federal audit exceptions and shall return to the Department all payments made under the Contract to which exception has been taken, or which have been disallowed because of such an exception.

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STANDARD EXHIBIT I

The Contractor identified as "University of New Hampshire" in Section A 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 Department of Health and Human Services.

Project Title:  
Project Period:

BUSINESS ASSOCIATE AGREEMENT

(1) Definitions:

- a. "Breach" shall have the same meaning as the term "Breach" in section 164.402 of Title 45, Code of Federal Regulations.
- b. "Breach Notification Rule" shall mean the provisions of the Notification in the Case of Breach of Unsecured Protected Health Information at 45 CFR Part 164, Subpart D, and amendments thereto.
- c. "Business Associate" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- d. "Covered Entity" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- e. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR Section 164.501.
- f. "Data Aggregation" shall have the same meaning as the term "data aggregation" in 45 CFR Section 164.501.
- g. "Health Care Operations" shall have the same meaning as the term "health care operations" in 45 CFR Section 164.501.
- h. "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.
- i. "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.
- j. "Individual" shall have the same meaning as the term "individual" in 45 CFR Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.502(g).

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- k. "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.
- l. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR Section 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- m. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR Section 164.103.
- n. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- o. "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.
- p. "Unsecured Protected Health Information" shall have the same meaning given such term in section 164.402 of Title 45, Code of Federal Regulations.
- q. 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, and its directors, officers, employees and agents, shall 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 (including this Exhibit) 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 45 CFR 164.410, 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. If Covered Entity does not object to

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such disclosure within five (5) business days of Business Associate's notification, then Business Associate may choose to disclose this information or object as Business Associate deems appropriate.

- 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 reasonable security safeguards.

(3) Obligations and Activities of Business Associate.

- a. The Business Associate shall notify the NH DHHS Information Security via the email address provided in Exhibit K- Information Security Requirements of this Contract, of any Incidents or Breaches immediately after the Business Associate has determined that the aforementioned has occurred and that Confidential Data may have been exposed or compromised.
- b. The Business Associate shall promptly perform a risk assessment when it becomes aware of any of the above situations. The risk assessment shall include, but not be limited to, the following information, to the extent it is known by the Business Associate:
- The nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
  - The unauthorized person who used the protected health information or to whom the disclosure was made;
  - Whether the protected health information was actually acquired or viewed
  - The extent to which the risk to the protected health information has been mitigated.

The Business Associate shall complete the risk assessment without unreasonable delay and in no case later than two (2) business days of discovery of the breach and after completion, immediately report the findings of the risk assessment in writing to the Covered Entity.

- c. The Business Associate shall comply with all applicable sections of the Privacy, Security, and Breach Notification Rule.
- d. 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.
- e. 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(l) 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 the Agreement for the purpose of use and disclosure of protected health information.

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- f. 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 this Exhibit.
- g. 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.
- h. 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.
- i. 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.
- j. 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.
- k. 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.
- l. 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 this Exhibit, 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**

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- 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 Paragraph #14 of the Master 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 I. 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 codified at 45 CFR Parts 160 and 164 and as amended from time to time. A reference in the Agreement, as amended to include this Exhibit I, 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, including this Exhibit, 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 under the Agreement.
- d. Interpretation. The parties agree that any ambiguity in the Agreement or this Exhibit 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 I 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 I are declared severable.
- f. Survival. Provisions in this Exhibit I regarding the use and disclosure of PHI, return or destruction of PHI, extensions of the protections of this Exhibit in section (3)(l), and the defense

New Hampshire Department of Health and Human Services Exhibit I



and indemnification provisions of section (3) and Paragraph #14 of the Master Agreement shall survive the termination of the Agreement.

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

Department of Health and Human Services

The State

*Lisa M. Morris*

Signature of Authorized Representative

Lisa M. Morris

Authorized Representative

Director, Division of Public Health Svcs.

Title of Authorized Representative

1/5/2021

Date

University of New Hampshire

*Karen Jensen*

Signature of Authorized Representative

Karen Jensen

Authorized Representative

Director, Pre-Award

Title of Authorized Representative

1/5/2021

Date

New Hampshire Department of Health and Human  
Services Exhibit K  
DHHS Information Security Requirements



A. Definitions

The following terms may be reflected and have the described meaning in this document:

1. "Breach" means the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic. With regard to Protected Health Information, "Breach" shall have the same meaning as the term "Breach" in section 164.402 of Title 45, Code of Federal Regulations.
2. "Computer Security Incident" shall have the same meaning "Computer Security Incident" in section two (2) of NIST Publication 800-61, Computer Security Incident Handling Guide, National Institute of Standards and Technology, U.S. Department of Commerce.
3. "Confidential Information" or "Confidential Data" means all confidential information disclosed by one party to the other such as all medical, health, financial, public assistance benefits and personal information including without limitation, Substance Abuse Treatment Records, Case Records, Protected Health Information and Personally Identifiable Information.

Confidential Information also includes any and all information owned or managed by the State of NH - created, received from or on behalf of the Department of Health and Human Services (DHHS) or accessed in the course of performing contracted services - of which collection, disclosure, protection, and disposition is governed by state or federal law or regulation. This information includes, but is not limited to Protected Health Information (PHI), Personal Information (PI), Personal Financial Information (PFI), Federal Tax Information (FTI), Social Security Numbers (SSN), Payment Card Industry (PCI), and or other sensitive and confidential information.

4. "End User" means any person or entity (e.g., contractor, contractor's employee, business associate, subcontractor, other downstream user, etc.) that receives DHHS data or derivative data in accordance with the terms of this Contract.
5. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder.
6. "Incident" means an act that potentially violates an explicit or implied security policy, which includes attempts (either failed or successful) to gain unauthorized access to a system or its data, unwanted disruption or denial of service, the unauthorized use of a system for the processing or storage of data; and changes to system hardware, firmware, or software characteristics without the owner's knowledge, instruction, or consent. Incidents include the loss of data through theft or device misplacement, loss or misplacement of hardcopy documents, and misrouting of physical or electronic

**New Hampshire Department of Health and Human  
Services Exhibit K  
DHHS Information Security Requirements**



mail, all of which may have the potential to put the data at risk of unauthorized access, use, disclosure, modification or destruction.

7. "Open Wireless Network" means any network or segment of a network that is not designated by the State of New Hampshire's Department of Information Technology or delegate as a protected network (designed, tested, and approved, by means of the State, to transmit) will be considered an open network and not adequately secure for the transmission of unencrypted PI, PFI, PHI or confidential DHHS data.
8. "Personal Information" (or "PI") means information which can be used to distinguish or trace an individual's identity, such as their name, social security number, personal information as defined in New Hampshire RSA 359-C: 19, biometric records, etc., alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc.
9. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.
10. "Protected Health Information" (or "PHI") has the same meaning as provided in the definition of "Protected Health Information" in the HIPAA Privacy Rule at 45 C.F.R. § 160.103.
11. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 164, Subpart C, and amendments thereto.
12. "Unsecured Protected Health Information" means Protected Health Information that is not secured by a technology standard that renders Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.

**I. RESPONSIBILITIES OF DHHS AND THE CONTRACTOR**

**A. Business Use and Disclosure of Confidential Information.**

1. The Contractor must not use, disclose, maintain or transmit Confidential Information except as reasonably necessary as outlined under this Contract. Further, Contractor, including but not limited to all its directors, officers, employees and agents, must not use, disclose, maintain or transmit PHI in any manner that would constitute a violation of the Privacy and Security Rule.
2. The Contractor must not disclose any Confidential Information in response to a

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request for disclosure on the basis that it is required by law, in response to a subpoena, etc., without first notifying DHHS so that DHHS has an opportunity to consent or object to the disclosure.

3. If DHHS notifies the Contractor that DHHS 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 Contractor must be bound by such additional restrictions and must not disclose PHI in violation of such additional restrictions and must abide by any additional security safeguards.
4. The Contractor agrees that DHHS Data or derivative data disclosed to an End User must only be used pursuant to the terms of this Contract.
5. The Contractor agrees DHHS Data obtained under this Contract shall not be used for any other purposes that are not indicated in this Contract.
6. The Contractor agrees to grant access to the data to the authorized representatives of DHHS for the purpose of inspecting to confirm compliance with the terms of this Contract.

**II. METHODS OF SECURE TRANSMISSION OF DATA**

1. **Application Encryption.** If End User is transmitting DHHS data containing Confidential Data between applications, the Contractor attests the applications have been evaluated by an expert knowledgeable in cyber security and that said application's encryption capabilities ensure secure transmission via the internet.
2. **Computer Disks and Portable Storage Devices.** End User may not use computer disks or portable storage devices, such as a thumb drive, as a method of transmitting DHHS data.
3. **Encrypted Email.** End User may only employ email to transmit Confidential Data if email is encrypted and being sent to and being received by email addresses of persons authorized to receive such information.
4. **Encrypted Web Site.** If End User is employing the Web to transmit Confidential Data, the secure socket layers (SSL) must be used and the web site must be secure. SSL encrypts data transmitted via a Web site.
5. **File Hosting Services, also known as File Sharing Sites.** End User may not use file hosting services, such as Dropbox or Google Cloud Storage, to transmit Confidential Data.
6. **Ground Mail Service.** End User may only transmit Confidential Data via *certified* ground mail within the continental U.S. and when sent to a named individual.
7. **Laptops and PDA.** If End User is employing portable devices to transmit Confidential Data said devices must be encrypted and password-protected.
8. **Open Wireless Networks.** End User may not transmit Confidential Data via an open

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wireless network. End User must employ a virtual private network (VPN) when remotely transmitting via an open wireless network.

9. Remote User Communication. If End User is employing remote communication to access or transmit Confidential Data, a virtual private network (VPN) must be installed on the End User's mobile device(s) or laptop from which information will be transmitted or accessed.
10. SSH File Transfer Protocol (SFTP), also known as Secure File Transfer Protocol. If End User is employing an SFTP to transmit Confidential Data, End User will structure the Folder and access privileges to prevent inappropriate disclosure of information. SFTP folders and sub-folders used for transmitting Confidential Data will be coded for 24-hour auto-deletion cycle (i.e. Confidential Data will be deleted every 24 hours).
11. Wireless Devices. If End User is transmitting Confidential Data via wireless devices, all data must be encrypted to prevent inappropriate disclosure of information.

**III. RETENTION AND DISPOSITION OF IDENTIFIABLE RECORDS**

The Contractor will only retain the data and any derivative of the data for the duration of this Contract. After such time, the Contractor will have 30 days to destroy the data and any derivative in whatever form it may exist, unless, otherwise required by law or permitted under this Contract. To this end, the parties must:

**A. Retention**

1. The Contractor agrees it will not store, transfer or process data collected in connection with the services rendered under this Contract outside of the United States. This physical location requirement shall also apply in the implementation of cloud computing, cloud service or cloud storage capabilities, and includes backup data and Disaster Recovery locations.
2. The Contractor agrees to ensure proper security monitoring capabilities are in place to detect potential security events that can impact State of NH systems and/or Department confidential information for contractor provided systems.
3. The Contractor agrees to provide security awareness and education for its End Users in support of protecting Department confidential information.
4. The Contractor agrees to retain all electronic and hard copies of Confidential Data in a secure location and identified in section IV. A.2
5. The Contractor agrees Confidential Data stored in a Cloud must be in a FedRAMP/HITECH compliant solution and comply with all applicable statutes and regulations regarding the privacy and security. All servers and devices must have currently-supported and hardened operating systems, the latest anti-viral, anti-hacker, anti-spam, anti-spyware, and anti-malware utilities. The environment, as a

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whole, must have aggressive intrusion-detection and firewall protection.

6. The Contractor agrees to and ensures its complete cooperation with the State's Chief Information Officer in the detection of any security vulnerability of the hosting infrastructure.

**B. Disposition**

1. If the Contractor will maintain any Confidential Information on its systems (or its sub-contractor systems), the Contractor will maintain a documented process for securely disposing of such data upon request or contract termination; and will obtain written certification for any State of New Hampshire data destroyed by the Contractor or any subcontractors as a part of ongoing, emergency, and or disaster recovery operations. When no longer in use, electronic media containing State of New Hampshire data shall be rendered unrecoverable via a secure wipe program in accordance with industry-accepted standards for secure deletion and media sanitization, or otherwise physically destroying the media (for example, degaussing) as described in NIST Special Publication 800-88, Rev 1, Guidelines for Media Sanitization, National Institute of Standards and Technology, U. S. Department of Commerce. The Contractor will document and certify in writing at time of the data destruction, and will provide written certification to the Department upon request. The written certification will include all details necessary to demonstrate data has been properly destroyed and validated. Where applicable, regulatory, and professional standards for retention requirements will be jointly evaluated by the State and Contractor prior to destruction.
2. Unless otherwise specified, within thirty (30) days of the termination of this Contract, Contractor agrees to destroy all hard copies of Confidential Data using a secure method such as shredding.
3. Unless otherwise specified, within thirty (30) days of the termination of this Contract, Contractor agrees to completely destroy all electronic Confidential Data by means of data erasure, also known as secure data wiping.

**IV. PROCEDURES FOR SECURITY**

- A. Contractor agrees to safeguard the DHHS Data received under this Contract, and any derivative data or files, as follows:**

1. The Contractor will maintain proper security controls to protect Department confidential information collected, processed, managed, and/or stored in the delivery of contracted services.
2. The Contractor will maintain policies and procedures to protect Department confidential information throughout the information lifecycle, where applicable, (from creation, transformation, use, storage and secure destruction) regardless of the media used to store the data (i.e., tape, disk, paper, etc.).

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3. The Contractor will maintain appropriate authentication and access controls to contractor systems that collect, transmit, or store Department confidential information where applicable.
4. The Contractor will ensure proper security monitoring capabilities are in place to detect potential security events that can impact State of NH systems and/or Department confidential information for contractor provided systems.
5. The Contractor will provide regular security awareness and education for its End Users in support of protecting Department confidential information.
6. If the Contractor will be sub-contracting any core functions of the engagement supporting the services for State of New Hampshire, the Contractor will maintain a program of an internal process or processes that defines specific security expectations, and monitoring compliance to security requirements that at a minimum match those for the Contractor, including breach notification requirements.
7. The Contractor will work with the Department to sign and comply with all applicable State of New Hampshire and Department system access and authorization policies and procedures, systems access forms, and computer use agreements as part of obtaining and maintaining access to any Department system(s). Agreements will be completed and signed by the Contractor and any applicable sub-contractors prior to system access being authorized.
8. If the Department determines the Contractor is a Business Associate pursuant to 45 CFR 160.103, the Contractor will execute a HIPAA Business Associate Agreement (BAA) with the Department and is responsible for maintaining compliance with the agreement.
9. The Contractor will work with the Department at its request to complete a System Management Survey. The purpose of the survey is to enable the Department and Contractor to monitor for any changes in risks, threats, and vulnerabilities that may occur over the life of the Contractor engagement. The survey will be completed annually, or an alternate time frame at the Departments discretion with agreement by the Contractor, or the Department may request the survey be completed when the scope of the engagement between the Department and the Contractor changes.
10. The Contractor will not store, knowingly or unknowingly, any State of New Hampshire or Department data offshore or outside the boundaries of the United States unless prior express written consent is obtained from the Information Security Office leadership member within the Department.
11. Data Security Breach Liability. In the event of any security breach Contractor shall make efforts to investigate the causes of the breach, promptly take measures to prevent future breach and minimize any damage or loss resulting from the breach. The State shall recover from the Contractor all costs of response and recovery from

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the breach, including but not limited to: credit monitoring services, mailing costs and costs associated with website and telephone call center services necessary due to the breach.

12. Contractor must comply with all applicable statutes and regulations regarding the privacy and security of Confidential Information, and must in all other respects maintain the privacy and security of PI and PHI at a level and scope that is not less than the level and scope of requirements applicable to federal agencies, including, but not limited to, provisions of the Privacy Act of 1974 (5 U.S.C. § 552a), DHHS Privacy Act Regulations (45 C.F.R. §5b), HIPAA Privacy and Security Rules (45 C.F.R. Parts 160 and 164) that govern protections for individually identifiable health information and as applicable under State law.
13. Contractor agrees to establish and maintain appropriate administrative, technical, and physical safeguards to protect the confidentiality of the Confidential Data and to prevent unauthorized use or access to it. The safeguards must provide a level and scope of security that is not less than the level and scope of security requirements established by the State of New Hampshire, Department of Information Technology. Refer to Vendor Resources/Procurement at <https://www.nh.gov/doi/vendor/index.htm> for the Department of Information Technology policies, guidelines, standards, and procurement information relating to vendors.
14. Contractor agrees to maintain a documented breach notification and incident response process.
15. Contractor must restrict access to the Confidential Data obtained under this Contract to only those authorized End Users who need such DHHS Data to perform their official duties in connection with purposes identified in this Contract.
16. The Contractor must ensure that all End Users:
  - a. Comply with such safeguards as referenced in Section IV A. above, implemented to protect Confidential Information that is furnished by DHHS under this Contract from loss, theft or inadvertent disclosure.
  - b. Safeguard this information at all times.
  - c. Ensure that laptops and other electronic devices/media containing PHI, PI, or PFI are encrypted and password-protected.
  - d. Send emails containing Confidential Information only if encrypted and being sent to and being received by email addresses of persons authorized to receive such information.

**New Hampshire Department of Health and Human  
Services Exhibit K  
DHHS Information Security Requirements**



- e. Limit disclosure of the Confidential Information to the extent permitted by law.
- f. Confidential Information received under this Contract and individually identifiable data derived from DHHS Data, must be stored in an area that is physically and technologically secure from access by unauthorized persons during duty hours as well as non-duty hours (e.g., door locks, card keys, biometric identifiers, etc.).
- g. Only authorized End Users may transmit the Confidential Data, including any derivative files containing personally identifiable information, and in all cases, such data must be encrypted at all times when in transit, at rest, or when stored on portable media as required in section IV above.
- h. In all other instances Confidential Data must be maintained, used and disclosed using appropriate safeguards, as determined by a risk-based assessment of the circumstances involved.
- i. Understand that their user credentials (user name and password) must not be shared with anyone. End Users will keep their credential information secure. This applies to credentials used to access the site directly or indirectly through a third party application.

Contractor is responsible for oversight and compliance of their End Users. DHHS reserves the right to conduct onsite inspections to monitor compliance with this Contract, including the privacy and security requirements provided in herein, HIPAA, and other applicable laws and Federal regulations until such time the Confidential Data is disposed of in accordance with this Contract.

**V. LOSS REPORTING**

The Contractor must notify the NH DHHS Information Security via the email address provided in this Exhibit, of any Security Incidents and Breaches immediately after the Contractor has determined that the aforementioned has occurred and that Confidential Data may have been exposed or compromised.

The Contractor must further handle and report Incidents and Breaches involving PHI in accordance with the agency's documented Incident Handling and Breach Notification procedures and in accordance with 42 C.F.R. §§ 431.300 - 306. In addition to, and notwithstanding, Contractor's compliance with all applicable obligations and procedures, Contractor's procedures must also address how the Contractor will:

1. Identify Incidents;
2. Determine if personally identifiable information is involved in Incidents;
3. Report suspected or confirmed Incidents as required in this Exhibit or P-37;
4. Identify and convene a core response group to determine the risk level of Incidents and determine risk-based responses to Incidents; and
5. Determine whether Breach notification is required, and, if so, identify appropriate

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Breach notification methods, timing, source, and contents from among different options, and bear costs associated with the Breach notice as well as any mitigation measures.

Incidents and/or Breaches that implicate PI must be addressed and reported, as applicable, in accordance with NH RSA 359-C:20.

**VI. PERSONS TO CONTACT**

**A. DHHS contact for Data Management or Data Exchange issues:**

DHHSInformationSecurityOffice@dhhs.nh.gov

**B. DHHS contacts for Privacy issues:**

DHHSPrivacyOfficer@dhhs.nh.gov

**C. DHHS contact for Information Security issues:**

DHHSInformationSecurityOffice@dhhs.nh.gov

**D. DHHS contact for Breach notifications:**

DHHSInformationSecurityOffice@dhhs.nh.gov

DHHSPrivacy.Officer@dhhs.nh.gov

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