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**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**OFFICE OF THE COMMISSIONER**

129 PLEASANT STREET, CONCORD, NH 03301-3857  
 603-271-9200 1-800-852-3345 Ext. 9200

Fax: 603-271-4912 TDD Access: 1-800-735-2964 www.dhhs.nh.gov

Lori A. Shibaette  
 Commissioner

Lori A. Weaver  
 Deputy Commissioner

October 7, 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, Office of the Commissioner, to enter into a **Retroactive** amendment to an existing agreement with an unspecified number of hospitals and other healthcare organizations and to retroactively make unencumbered payments to participating healthcare organizations that provided personnel at State-run COVID-19 vaccine sites, by decreasing the shared price limitation by \$5,000,000 from \$10,000,000 to \$5,000,000 and extending the completion date from June 1, 2021, to June 30, 2021, effective retroactive to June 1, 2021, upon Governor and Council approval. 100% Federal Funds.

The original request was approved by the Governor on March 8, 2021, and presented to the Executive Council on April 7, 2021 (item #E), and most recently amended with Governor approval on April 11, 2021, and presented to the Executive Council on May 19, 2021 (item #A).

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.

**05-95-095-950010-1919 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SERVICES, HHS: OFFICE OF THE COMMISSIONER, COMMISSIONERS OFFICE, COVID19 FEMA DHHS**

State Fiscal Year	Class / Account	Class Title	Job Number	Current Budget	Increased (Decreased) Amount	Revised Budget
2021	103-502664	Contracts for Oper Svc	95010690	\$10,000,000	\$0	\$10,000,000
2022	103-502664	Contracts for Oper Svc	95010690	\$0	(\$5,000,000)	(\$5,000,000)
			<b>Total</b>	<b>\$10,000,000</b>	<b>(\$5,000,000)</b>	<b>\$5,000,000</b>

**EXPLANATION**

This request is **Retroactive** because hospitals and other healthcare organizations continued to assist the State with vaccination efforts at fixed vaccination sites through June 2021. The State originally anticipated the need for staff from hospitals and other healthcare organizations at vaccine sites through May 2021. However, due to ongoing staffing gaps, the State continued to utilize these organizations through June 2021 and the closing of the fixed vaccination sites across the State. The Department did not receive all invoices until September 2021, which prevented the Department from bringing this request forward at an earlier date.

The purpose of this request is to reduce the shared price limitation among all hospitals and healthcare organizations based on actual costs incurred, and to amend the Emergency Management Service Agreement with healthcare organizations that provided personnel at State-run COVID-19 vaccine sites through June 2021. The Department is requesting authority to make unencumbered payments to reimburse healthcare organizations for these associated personnel costs.

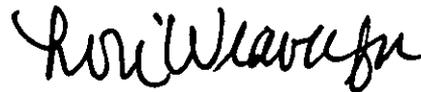
Should the Governor and Council not authorize this request, the Department will be unable to reimburse healthcare organizations for personnel costs associated with deploying staff to support State-run vaccination sites.

Area served: Statewide

Source of Funds: CFDA # 97.036; FAIN #4516DRNH00000001

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

Respectfully submitted,



Lori A. Shabinette  
Commissioner

**State of New Hampshire  
Department of Health and Human Services  
Amendment**

This Amendment is to the Terms of Emergency Management Services Agreement ("EMSA") between the State of New Hampshire, Department of Health and Human Services ("State" or "Department") and \_\_\_\_\_ ("Healthcare Organization").

WHEREAS, pursuant to an Agreement (the "Agreement") approved by the Governor on March 8, 2021, and presented to the Executive Council on April 7, 2021, (Informational Item E) and as amended with Governor approval on April 11, 2021, and presented to the Executive Council on May 19, 2021 (Informational Item #A), the Healthcare Organization agreed to perform certain services based upon the terms and conditions and in consideration of certain sums specified in the Agreement; and

WHEREAS, the parties agree to extend the term of the Agreement, increase the price limitation, or modify the scope of services to support continued delivery of these services; and

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

1. Modify Terms of Emergency Management Services Agreement, second paragraph to read:

WHEREAS, the State is engaging in emergency management activities pursuant to RSA 508:17-a (II-a), RSA 21-P:41, and RSA 21-P:43 and implementing New Hampshire Coronavirus Disease 2019 Vaccination Plan;

2. Modify Terms of Emergency Management Services Agreement, fifth paragraph to read:

WHEREAS, the original ESMA was approved 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.

3. Modify Terms of Emergency Management Services Agreement, Section 1 Reimbursable Services, subsection 1.2 to read:

**1. REIMBURSABLE SERVICES**

1.2 The State shall reimburse the Healthcare Organization for actual personnel expenditures in accordance with Section 2, Fee Schedule and Payment conditions, for employees who assist the State with vaccination efforts between January 15, 2021, through June 30, 2021, provided that such personnel expenditures are incurred while at a state-run, fixed vaccine site or another state-approved point of dispensing vaccine site, and while working under the direction of the State as an emergency management worker in compliance with RSA 508:17-a (II-a), RSA 21-P:41, and RSA 21-P:43.

4. Modify Terms of Emergency Management Services Agreement, Section 2 Fee Schedule and Payment Conditions, subsection 2.1 and 2.5 to read:

2.1. Funding for this EMSA is a shared price limitation of \$5,000,000 across all participating Healthcare Organizations from January 15, 2021, through June 30, 2021.

2.5. The final Form shall be due to the State no later than November 15, 2021.

All terms and conditions of the Agreement and prior amendments not modified by this Amendment remain in full force and effect. This Amendment shall be retroactively effective to June 1, 2021.

IN WITNESS WHEREOF, the parties have set their hands as of the date written below,

State of New Hampshire  
Department of Health and Human Services

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name:  
Title:

Healthcare Organization

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name:  
Title:

The preceding Amendment, having been reviewed by this office, is approved as to form, substance, and execution.

OFFICE OF THE ATTORNEY GENERAL

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name:  
Title:

A

MAC



Lori A. Shibleette  
Commissioner

Lori A. Weaver  
Deputy Commissioner

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE OF THE COMMISSIONER

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April 12, 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, and 2021-05, Governor Sununu authorized the Department of Health and Human Services, Office of the Commissioner, to amend the attached Emergency Management Services Agreement to be entered into with an unspecified number of hospitals and other healthcare organizations and to **Retroactively** make unencumbered payments to participating hospitals and other healthcare organizations that provide personnel at State-run COVID-19 vaccine sites, with no change to the shared price limitation of \$10,000,000 and no change to the agreement completion date of June 1, 2021, effective retroactive to January 15, 2021. 100% Other Funds (FEMA Public Assistance).

The original request was approved by the Governor on March 8, 2021, and presented to the Executive Council on April 7, 2021 (item #E).

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.

**05-95-095-950010-1919 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SERVICES, HHS: OFFICE OF THE COMMISSIONER, COMMISSIONERS OFFICE, COVID19 FEMA DHHS**

State Fiscal Year	Class / Account	Class Title	Job Number	Total Amount
2021	103-502664	Contracts for Oper Svc	95010690	\$10,000,000
			<b>Total</b>	<b>\$10,000,000</b>

**EXPLANATION**

This amendment is **Retroactive** because hospitals and other healthcare organizations began providing services to the State in January 2021 to assist with vaccination efforts at fixed vaccination sites.

The original request was to enter into the Emergency Management Service Agreement and make unencumbered payments with hospitals. The purpose of this item is amend and enter into the Emergency Management Service Agreement with other healthcare organizations,

including primary care centers and visiting nurse associations, that provide paid personnel at State-run COVID-19 vaccine sites. The Department also requested authority to make unencumbered payments to reimburse participating healthcare organizations for these associated personnel costs.

Given the large number of potential hospitals and other healthcare organizations needed to support ongoing vaccination efforts, this requested action will result in a more streamlined and efficient process that will prevent delays in the delivery of COVID-19 vaccines.

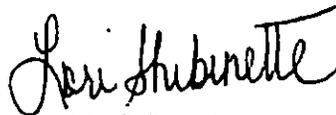
The population served includes residents statewide. The exact number of residents of the State of New Hampshire that will be served will depend on the trajectory of the COVID-19 pandemic.

Area served: Statewide

Source of Funds: CFDA # 97.036; FAIN #4516DRNH00000001

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. Shibinette  
Commissioner



**TERMS OF EMERGENCY MANAGEMENT SERVICES AGREEMENT**  
**COVID-19 VACCINATION AID**

This document sets forth the terms of this Emergency Management Services Agreement ("EMSA"), dated this \_\_\_\_\_ day of \_\_\_\_\_ 2021, and is entered into between the State of New Hampshire, Department of Health and Human Services, Office of the Commissioner (hereinafter referred to as the "DHHS") and Department of Safety, Homeland Security and Emergency Management (hereinafter referred to as the "DOS"), herein collectively referred to as the "State", and \_\_\_\_\_ (Healthcare Organization); with a principal place of business of \_\_\_\_\_, (hereinafter referred to as the "Healthcare Organization" or "NAME") for the provision of aid in the administration of the New Hampshire Coronavirus Disease 2019 Vaccination Plan. This EMSA is retroactively effective to January 15, 2021, upon the signatures of the parties and the completion date is June 1, 2021, unless terminated earlier in accordance with Section 9 below.

WHEREAS, the State is engaging in emergency management activities pursuant to RSA 21-P:34, et seq. and implementing New Hampshire's Coronavirus Disease 2019 Vaccination Plan;

WHEREAS, Healthcare Organizations are providing personnel to serve as emergency management workers to assist the State with implementing New Hampshire's Coronavirus Disease 2019 Vaccination Plan;

WHEREAS, the State seeks to enter into an EMSA for the purpose of reimbursing Healthcare Organizations for personnel costs related to assisting the State vaccinating qualifying New Hampshire residents against COVID-19 in accordance with New Hampshire's Coronavirus Disease 2019 Vaccination Plan; and

WHEREAS this EMSA was approved 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, and any subsequent extensions.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and conditions set forth herein, the Governor hereby requests that the Healthcare Organization, pursuant to RSA 21-P:41, conduct emergency management services under the direction of the State pursuant to the terms of this EMSA. The parties agree as follows:

**1. REIMBURSABLE SERVICES**

- 1.1 The Healthcare Organization shall provide personnel to assist with vaccinating individuals against COVID-19, as directed by the State and in accordance with all policies and procedures put forth by the State.
- 1.2 The State shall reimburse the Healthcare Organization for actual personnel expenditures in accordance with Section 2, Fee Schedule and Payment conditions, for employees who assist the State with vaccination efforts between January 15, 2021, through June 1, 2021, provided that such personnel expenditures are incurred while at a state-run fixed vaccine site or another state-approved point of dispensing vaccine site, and while working under the direction of the State as an emergency management worker in compliance with RSA 21-P:35, et seq.
- 1.3 The State shall only reimburse for personnel expenditures incurred for hours worked at vaccine sites and shall not reimburse expenses related to travel time to or from the vaccine sites.



## 2. FEE SCHEDULE AND PAYMENT CONDITIONS

- 2.1 Funding for this EMSA is a shared price limitation of \$10,000,000 across all participating Healthcare Organizations from January 15, 2021, through June 1, 2021.
- 2.2 Payment for services billed to the State in accordance with Section 1, Scope of Services, shall be on a cost reimbursement basis for hours worked by staff at vaccine sites in the fulfillment of this Agreement, based on each staff's hourly rate, not to exceed an hourly rate of \$250 per hour.
- 2.3 The Healthcare Organization shall complete the online Vaccination Reimbursement Request Form (Form) located on the DOS's website ([https://prd.blogs.nh.gov/dos/hsem/?page\\_id=11123](https://prd.blogs.nh.gov/dos/hsem/?page_id=11123)) by the fifteenth (15th) calendar day of the following month. The completion of this online Form shall serve as a formal invoice submission by the Healthcare Organization to the State for actual personnel expenditures incurred.
- 2.4 The DHHS shall make payment to the Healthcare Organization within thirty (30) days of receipt of each Form, subsequent to approval of the submitted Form by the DOS and sufficient funds being available, subject to Paragraph 5 Conditional Nature of this EMSA.
- 2.5 The final Form shall be due to the State no later than July 11, 2021.

## 3. CONFIDENTIALITY

- 3.1 Any and all confidential information obtained or received by the Healthcare Organization shall be kept confidential and shall not be disclosed to anyone for any reason, unless required by law. "Confidential Information" means all information owned, managed, created, or received from the Individuals served under this EMSA, the DHHS, the DOS, any other agency of the State, or any medical provider, that is protected by Federal or State information security, privacy or confidentiality laws or rules. Confidential Information includes, but is not limited to, Derivative Data, protected health information (PHI); personally identifiable information (PII), federal tax information (FTI), Social Security Administration information (SSA) and criminal justice information services (CJIS) and any other sensitive confidential information provided under the EMSA. This covenant shall survive the termination of the EMSA.
- 3.2 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, and in accordance with the attached Exhibit A, Business Associate Agreement, which has been executed by the parties.

## 4. ADDITIONAL TERMS

- 4.1 Impacts Resulting from Court Orders or Legislative Changes

4.1.1 The Healthcare Organization agrees that, to the extent future state or federal legislation or court orders may have an impact on the Services described herein, the State has the right to modify Service priorities and expenditure requirements under this EMSA so as to achieve compliance therewith.

## 5. CONDITIONAL NATURE OF EMSA

- 5.1 The Healthcare Organization acknowledges that no funds will be paid to the Healthcare Organization once the price limitation is reached.
- 5.2 Notwithstanding any provision of this EMSA to the contrary, all obligations of continuance of payments, in whole or in part under this EMSA, are contingent upon the continued appropriation or availability of funds, including any subsequent changes to the appropriation



or availability, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds.

**6. PERSONNEL**

6.1 The Healthcare Organization warrants that all personnel engaged in the Services shall be qualified to perform the Services and shall be properly licensed and otherwise authorized to do so under all applicable laws.

**7. COMPLIANCE WITH LAWS AND REGULATIONS**

7.1 In connection with the performance of the Services, the Healthcare Organization shall comply with all statutes, laws, regulations and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Healthcare Organization, including but not limited to, the Health Insurance Portability and Accountability Act, HIPAA; Pub. L. 104-191, 110 Stat. 1936 (1996), the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160 and 164, and civil rights and equal opportunity laws.

7.2 During the term of this EMSA, the Healthcare Organization shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

7.3 The Healthcare Organization agrees to permit the State or United States access to any of the Healthcare Organization's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this EMSA.

**8. ASSIGNMENT/DELEGATION/SUBCONTRACTS**

8.1 The Healthcare Organization shall not assign, or otherwise transfer any interest in this EMSA without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State.

8.2 None of the Services shall be subcontracted by the Healthcare Organization without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

**9. RIGHT OF TERMINATION/EVENT OF DEFAULT**

9.1 This EMSA may be terminated by either party for any reason by providing a thirty (30) day written notice to the other party.

**10. CHOICE OF LAW AND FORUM**

10.1 This EMSA shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire. Any actions arising out of this EMSA shall be brought and maintained in a New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

**11. HEALTHCARE ORGANIZATION'S RELATION TO THE STATE**

11.1 In the performance of this EMSA the Healthcare Organization is neither an agent nor an employee of the State. Neither the Healthcare Organization nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, worker's compensation or other emoluments provided by the State to its employees.

**12. AMENDMENT**

**New Hampshire Department of Health and Human Services  
EMSA - COVID-19 Vaccination Aid**



12.1 This EMSA may be amended, waived, or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver, or discharge by the Governor of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule, or policy.

**13. ENTIRE EMSA**

13.1 This EMSA, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire EMSA and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

**HEALTHCARE ORGANIZATION**

\_\_\_\_\_  
Print Name:  
Print Title:  
Healthcare Organization  
Duly Authorized

\_\_\_\_\_  
Date

**NH DEPARTMENT OF HEALTH AND HUMAN SERVICES**

\_\_\_\_\_  
Lori Weaver, Deputy Commissioner  
NH Department of Health of Human Services

\_\_\_\_\_  
Date

**NH DEPARTMENT OF SAFETY**

\_\_\_\_\_  
Jennifer Harper, Director  
NH Department of Safety

\_\_\_\_\_  
Date

The preceding EMSA, having been reviewed by this office, is approved as to form, substance, and execution.

**OFFICE OF THE ATTORNEY GENERAL**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name:  
Title:

**New Hampshire Department of Health and Human Services  
EMSA - COVID-19 Vaccination Aid**





Exhibit A

**HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**  
**BUSINESS ASSOCIATE AGREEMENT**

The Hospital identified in 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 applicable to business associates. As defined herein, "Business Associate" shall mean the Contractor and subcontractors and agents of the Contractor that receive, use or have access to Protected Health Information under this Agreement and "Covered Entity" shall mean the State of New Hampshire, Department of Health and Human Services.

(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. "**Business Associate**" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- c. "**Covered Entity**" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- d. "**Designated Record Set**" shall have the same meaning as the term "designated record set" in 45 CFR Section 164.501.
- e. "**Data Aggregation**" shall have the same meaning as the term "data aggregation" in 45 CFR Section 164.501.
- f. "**Health Care Operations**" shall have the same meaning as the term "health care operations" in 45 CFR Section 164.501.
- g. "**HITECH Act**" means the Health Information Technology for Economic and Clinical Health Act, Title XIII, Subtitle D, Part 1 & 2 of the American Recovery and Reinvestment Act of 2009.
- h. "**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160, 162 and 164 and amendments thereto.
- i. "**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 164.501(g).
- j. "**Privacy Rule**" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.
- k. "**Protected Health Information**" shall have the same meaning as the term "protected health information" in 45 CFR Section 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.



Exhibit A

- I. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR Section 164.103.
- m. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- n. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C, and amendments thereto.
- o. "Unsecured Protected Health Information" means protected health information that is not secured by a technology standard that renders protected health information unusable, 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.
- p. Other Definitions - All terms not otherwise defined herein shall have the meaning established under 45 C.F.R. Parts 160, 162 and 164, as amended from time to time, and the HITECH Act.

**(2) Business Associate 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 the Agreement. Further, Business Associate, including but not limited to all 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 to disclose PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from the third party that such PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party; and (ii) an agreement from such third party to notify Business Associate, in accordance with the HIPAA Privacy, Security, and Breach Notification Rules 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 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



Exhibit A

Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all remedies.

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

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

- a. The Business Associate shall notify the Covered Entity's Privacy Officer immediately after the Business Associate becomes aware of any use or disclosure of protected health information not provided for by the Agreement including breaches of unsecured protected health information and/or any security incident that may have an impact on the protected health information of the Covered Entity.
- b. The Business Associate shall immediately perform a risk assessment when it becomes aware of any of the above situations. The risk assessment shall include, but not be limited to:
  - o The nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
  - o The unauthorized person used the protected health information or to whom the disclosure was made;
  - o Whether the protected health information was actually acquired or viewed
  - o The extent to which the risk to the protected health information has been mitigated.

The Business Associate shall complete the risk assessment within 48 hours of the breach and immediately report the findings of the risk assessment in writing to the Covered Entity.

- c. The Business Associate shall comply with all 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 (I). 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



Exhibit A

- pursuant to this Agreement.
- 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 the Agreement.
  - 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 the Agreement, to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business



Exhibit A

Associate maintains such PHI. If Covered Entity, in its sole discretion, requires that the Business Associate destroy any or all PHI, the Business Associate shall certify to Covered Entity that the PHI has been destroyed.

**(4) Obligations of Covered Entity**

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

**(5) Termination for Cause**

In addition to Paragraph 10 of the standard terms and conditions (P-37) of this Agreement the Covered Entity may immediately terminate the Agreement upon Covered Entity's knowledge of a breach by Business Associate of the Business Associate Agreement set forth herein as Exhibit A. 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, amended from time to time. A reference in the Agreement, as amended to include this Exhibit A, to a Section in the Privacy and Security Rule means the Section as in effect or as amended.
- b. Amendment. Covered Entity and Business Associate agree to take such action as is necessary to amend the Agreement, from time to time as is necessary for Covered Entity to comply with the changes in the requirements of HIPAA, the Privacy and Security Rule, and applicable federal and state law.
- c. Data Ownership. The Business Associate acknowledges that it has no ownership rights with respect to the PHI provided by or created on behalf of Covered Entity.
- d. Interpretation. The parties agree that any ambiguity in the Agreement shall be resolved to permit Covered Entity to comply with HIPAA, the Privacy and Security Rule.



Exhibit A

- e. **Segregation.** If any term or condition of this Exhibit A 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 A are declared severable.
- f. **Survival.** Provisions in this Exhibit A regarding the use and disclosure of PHI, return or destruction of PHI, extensions of the protections of the Agreement in section (3) I, shall survive the termination of the Agreement.

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

Department of Health and Human Services  
The State

Name of the Contractor

Signature of Authorized Representative

Signature of Authorized Representative

Name of Authorized Representative

Name of Authorized Representative

Title of Authorized Representative

Title of Authorized Representative

Date

Date



Lori A. Stibbinette  
Commissioner

Leri A. Weaver  
Deputy Commissioner

MODIFIED PM 2:42 RCVD

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**OFFICE OF THE COMMISSIONER**

129 PLEASANT STREET, CONCORD, NH 03301-3857  
603-271-9200 1-800-852-3345 Ext. 9200  
Fax: 603-271-4912 TDD Access: 1-800-735-2964 www.dhhs.nh.gov

March 9, 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, Office of the Commissioner, to enter into the attached Emergency Management Services Agreement with an unspecified number of Hospitals and to Retroactively make unencumbered payments to participating Hospitals that provide personnel at fixed vaccine sites to assist the State with administering COVID-19 vaccinations, not to exceed a shared price limitation of \$10,000,000 across all participating Hospitals, effective retroactive to January 15, 2021, approval through June 1, 2021. 100% Other Funds (FEMA Public Assistance).

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.

**05-95-095-950010-1919 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SERVICES, HHS: OFFICE OF THE COMMISSIONER, COMMISSIONERS OFFICE, COVID19 FEMA DHHS**

State Fiscal Year	Class / Account	Class Title	Job Number	Total Amount
2021	103-502664	Contracts for Oper Svc	95010690	\$10,000,000
			<b>Total</b>	<b>\$10,000,000</b>

**EXPLANATION**

This item is Retroactive because Hospitals began providing services to the Department in January 2021 to assist with the State's vaccination efforts at fixed vaccination sites. The purpose of this item is to reimburse the Hospitals for personnel costs related to assisting the State with vaccinating qualifying New Hampshire residents against COVID-19 in accordance with New Hampshire's COVID-19 Disease 2019 Vaccination Plan.

The Department requested authority to make unencumbered payments to participating Hospitals statewide, in accordance with the attached Emergency Management Directive that has been reviewed and approved by the Attorney General's Office. Given the large number of

E mac

potential Hospitals needed to support ongoing vaccination efforts, this requested action will result in a more streamlined and efficient process that will prevent delays in the delivery of COVID-19 vaccines.

The population served includes residents statewide. The exact number of residents of the State of New Hampshire that will be served will depend on the trajectory of the COVID-19 pandemic.

Area served: Statewide

Source of Funds: CFDA # 97.036; FAIN #4516DRNH00000001

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. Shibinette  
Commissioner



**TERMS OF EMERGENCY MANAGEMENT SERVICES AGREEMENT**  
**COVID-19 VACCINATION AID**

This document sets forth the terms of this Emergency Management Services Agreement ("EMSA"), dated this \_\_\_\_\_ day of \_\_\_\_\_ 2021, and is entered into between the State of New Hampshire, Department of Health and Human Services, Office of the Commissioner (hereinafter referred to as the "DHHS") and Department of Safety, Homeland Security and Emergency Management (hereinafter referred to as the "DOS"), herein collectively referred to as the "State", and \_\_\_\_\_ (Hospital), with a principal place of business of \_\_\_\_\_, (hereinafter referred to as the "Hospital") for the provision of aid in the administration of the New Hampshire Coronavirus Disease 2019 Vaccination Plan. This EMSA is retroactively effective to January 15, 2021, upon the signatures of the parties and the completion date is June 1, 2021, unless terminated earlier in accordance with Section 9 below.

WHEREAS, the State is engaging in emergency management activities pursuant to RSA 21-P34, et seq. and implementing New Hampshire's Coronavirus Disease 2019 Vaccination Plan;

WHEREAS, Hospitals are providing personnel to serve as emergency management workers to assist the State with implementing New Hampshire's Coronavirus Disease 2019 Vaccination Plan;

WHEREAS, the State seeks to enter into an EMSA for the purpose of reimbursing Hospitals for personnel costs related to assisting the State vaccinating qualifying New Hampshire residents against COVID-19 in accordance with New Hampshire's Coronavirus Disease 2019 Vaccination Plan; and

WHEREAS this EMSA was approved 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, and any subsequent extensions.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and conditions set forth herein, the Governor hereby directs that the Hospital, pursuant to RSA 21-P:44, conduct emergency management services under the direction of the State pursuant to the terms of this EMSA, adopted pursuant to RSA 21-P:43. The parties agree as follows:

**1. REIMBURSABLE SERVICES**

- 1.1 The Hospital shall provide personnel to assist with vaccinating individuals against COVID-19, as directed by the State and in accordance with all policies and procedures put forth by the State.
- 1.2 The State shall reimburse the Hospital for actual personnel expenditures in accordance with Section 2, Fee Schedule and Payment conditions, for employees who assist the State with vaccination efforts between January 15, 2021, through June 1, 2021, provided that such personnel expenditures are incurred while at a state-run fixed vaccine site or another state-approved point of dispensing vaccine site, and while working under the direction of the State as an emergency management worker in compliance with RSA 21-P:35, et seq.
- 1.3 The State shall only reimburse for personnel expenditures incurred for hours worked at vaccine sites and shall not reimburse expenses related to travel time to or from the vaccine sites.

**2. FEE SCHEDULE AND PAYMENT CONDITIONS**

- 2.1 Funding for this EMSA is a shared price limitation of \$10,000,000 across all participating

**New Hampshire Department of Health and Human Services  
EMSA - COVID-19 Vaccination Aid**



Hospitals from January 15, 2021, through June 1, 2021.

- 2.2 Payment for services billed to the State in accordance with Section 1, Scope of Services, shall be on a cost reimbursement basis for hours worked by staff at vaccine sites in the fulfillment of this Agreement, based on each staff's hourly rate, not to exceed an hourly rate of \$250 per hour.
- 2.3 The Hospital shall complete the online Vaccination Reimbursement Request Form (Form) located on the DOS's website ([https://prd.blogs.nh.gov/dos/hsem/?page\\_id=11123](https://prd.blogs.nh.gov/dos/hsem/?page_id=11123)) by the fifteenth (15th) calendar day of the following month. The completion of this online Form shall serve as a formal invoice submission by the Hospital to the State for actual personnel expenditures incurred.
- 2.4 The DHHS shall make payment to the Hospital within thirty (30) days of receipt of each Form, subsequent to approval of the submitted Form by the DOS and sufficient funds being available, subject to Paragraph 5 Conditional Nature of this EMSA.
- 2.5 The final Form shall be due to the State no later than July 11, 2021.

**3. CONFIDENTIALITY**

- 3.1 Any and all confidential information obtained or received by the Hospital shall be kept confidential and shall not be disclosed to anyone for any reason, unless required by law. "Confidential Information" means all information owned, managed, created, or received from the Individuals served under this EMSA, the DHHS, the DOS, any other agency of the State, or any medical provider, that is protected by Federal or State information security, privacy or confidentiality laws or rules. Confidential Information includes, but is not limited to, Derivative Data, protected health information (PHI), personally identifiable information (PII), federal tax information (FTI), Social Security Administration information (SSA) and criminal justice information services (CJIS) and any other sensitive confidential information provided under the EMSA. This covenant shall survive the termination of the EMSA.
- 3.2 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, and in accordance with the attached Exhibit A, Business Associate Agreement, which has been executed by the parties.

**4. ADDITIONAL TERMS**

- 4.1 Impacts Resulting from Court Orders or Legislative Changes
  - 4.1.1 The Hospital agrees that, to the extent future state or federal legislation or court orders may have an impact on the Services described herein, the State has the right to modify Service priorities and expenditure requirements under this EMSA so as to achieve compliance therewith.

**5. CONDITIONAL NATURE OF EMSA**

- 5.1 The Hospital acknowledges that no funds will be paid to the Hospital once the price limitation is reached.
- 5.2 Notwithstanding any provision of this EMSA to the contrary, all obligations of continuance of payments, in whole or in part under this EMSA, are contingent upon the continued appropriation or availability of funds, including any subsequent changes to the appropriation or availability, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds.

**6. PERSONNEL**



- 6.1 The Hospital warrants that all personnel engaged in the Services shall be qualified to perform the Services and shall be properly licensed and otherwise authorized to do so under all applicable laws.

**7. COMPLIANCE WITH LAWS AND REGULATIONS**

- 7.1 In connection with the performance of the Services, the Hospital shall comply with all statutes, laws, regulations and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Hospital, including but not limited to, the Health Insurance Portability and Accountability Act, HIPAA; Pub. L. 104-191, 110 Stat. 1936 (1996), the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160 and 164, and civil rights and equal opportunity laws.
- 7.2 During the term of this EMSA, the Hospital shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.
- 7.3 The Hospital agrees to permit the State or United States access to any of the Hospital's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this EMSA.

**8. ASSIGNMENT/DELEGATION/SUBCONTRACTS**

- 8.1 The Hospital shall not assign, or otherwise transfer any interest in this EMSA without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State.
- 8.2 None of the Services shall be subcontracted by the Hospital without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

**9. RIGHT OF TERMINATION/EVENT OF DEFAULT**

- 9.1 This EMSA may be terminated by either party for any reason by providing a thirty (30) day written notice to the other party.

**10. CHOICE OF LAW AND FORUM**

- 10.1 This EMSA shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire. Any actions arising out of this EMSA shall be brought and maintained in a New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

**11. HOSPITAL'S RELATION TO THE STATE**

- 11.1 In the performance of this EMSA the Hospital is neither an agent nor an employee of the State. Neither the Hospital nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, worker's compensation or other emoluments provided by the State to its employees.

**12. AMENDMENT**

- 12.1 This EMSA may be amended, waived, or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver, or discharge by the Governor of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule, or policy.

**13. ENTIRE EMSA**

**New Hampshire Department of Health and Human Services  
EMSA - COVID-19 Vaccination Aid**



13.1 This EMSA, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire EMSA and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

**HOSPITAL**

\_\_\_\_\_  
Print Name:  
Print Title:  
Hospital  
Duly Authorized

\_\_\_\_\_  
Date

**NH DEPARTMENT OF HEALTH AND HUMAN SERVICES**

\_\_\_\_\_  
Lori Weaver, Deputy Commissioner  
NH Department of Health of Human Services

\_\_\_\_\_  
Date

**NH DEPARTMENT OF SAFETY**

\_\_\_\_\_  
Jennifer Harper, Director  
NH Department of Safety

\_\_\_\_\_  
Date

The preceding EMSA, having been reviewed by this office, is approved as to form, substance, and execution.

**OFFICE OF THE ATTORNEY GENERAL**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name:  
Title:



Exhibit A

**HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**  
**BUSINESS ASSOCIATE AGREEMENT**

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

(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. **"Business Associate"** has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- c. **"Covered Entity"** has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- d. **"Designated Record Set"** shall have the same meaning as the term "designated record set" in 45 CFR Section 164.501.
- e. **"Data Aggregation"** shall have the same meaning as the term "data aggregation" in 45 CFR Section 164.501.
- f. **"Health Care Operations"** shall have the same meaning as the term "health care operations" in 45 CFR Section 164.501.
- g. **"HITECH Act"** means the Health Information Technology for Economic and Clinical Health Act, Title XIII, Subtitle D, Part 1 & 2 of the American Recovery and Reinvestment Act of 2009.
- h. **"HIPAA"** means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160, 162 and 164 and amendments thereto.
- i. **"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 164.501(g).
- j. **"Privacy Rule"** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.
- k. **"Protected Health Information"** shall have the same meaning as the term "protected health information" in 45 CFR Section 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.



Exhibit A

- l. "Required by Law" shall have the same meaning as the term "required by law" in 45CFR Section 164.103.
- m. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- n. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C, and amendments thereto.
- o. "Unsecured Protected Health Information" means protected health information that is not secured by a technology standard that renders protected health information unusable, 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.
- p. Other Definitions - All terms not otherwise defined herein shall have the meaning established under 45 C.F.R. Parts 160, 162 and 164, as amended from time to time, and the HITECH Act.

**(2) Business Associate 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, Business Associate, including but not limited to all 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 to disclose PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from the third party that such PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party; and (ii) an agreement from such third party to notify Business Associate, in accordance with the HIPAA Privacy, Security, and Breach Notification Rules 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



Exhibit A

Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all remedies.

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

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

- a. The Business Associate shall notify the Covered Entity's Privacy Officer immediately after the Business Associate becomes aware of any use or disclosure of protected health information not provided for by the Agreement including breaches of unsecured protected health information and/or any security incident that may have an impact on the protected health information of the Covered Entity.
- b. The Business Associate shall immediately perform a risk assessment when it becomes aware of any of the above situations. The risk assessment shall include, but not be limited to:
  - o The nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
  - o The unauthorized person used the protected health information or to whom the disclosure was made;
  - o Whether the protected health information was actually acquired or viewed
  - o The extent to which the risk to the protected health information has been mitigated.

The Business Associate shall complete the risk assessment within 48 hours of the breach and immediately report the findings of the risk assessment in writing to the Covered Entity.

- c. The Business Associate shall comply with all 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 (I). 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



Exhibit A

pursuant to this Agreement, with rights of enforcement and indemnification from such business associates who shall be governed by standard Paragraph #13 of the standard contract provisions (P-37) of this Agreement for the purpose of use and disclosure of protected health information.

- 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 the Agreement.
- 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 the Agreement, to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business



Exhibit A

Associate maintains such PHI. If Covered Entity, in its sole discretion, requires that the Business Associate destroy any or all PHI, the Business Associate shall certify to Covered Entity that the PHI has been destroyed.

(4) **Obligations of Covered Entity**

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

(5) **Termination for Cause**

In addition to Paragraph 10 of the standard terms and conditions (P-37) of this Agreement the Covered Entity may immediately terminate the Agreement upon Covered Entity's knowledge of a breach by Business Associate of the Business Associate Agreement set forth herein as Exhibit 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, 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, from time to time as is necessary for Covered Entity to comply with the changes in the requirements of HIPAA, the Privacy and Security Rule, and applicable federal and state law.
- c. **Data Ownership.** The Business Associate acknowledges that it has no ownership rights with respect to the PHI provided by or created on behalf of Covered Entity.
- d. **Interpretation.** The parties agree that any ambiguity in the Agreement shall be resolved to permit Covered Entity to comply with HIPAA, the Privacy and Security Rule.



Exhibit A

- 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 the Agreement in section (3) I, the defense and indemnification provisions of section (3) e and Paragraph 13 of the standard terms and conditions (P-37), 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

\_\_\_\_\_  
Name of the Contractor

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Signature of Authorized Representative

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Name of Authorized Representative

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Name of Authorized Representative

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Title of Authorized Representative

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Title of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date