



STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF LONG TERM SUPPORTS AND SERVICES

Lori A. Shibinette
 Commissioner

Nancy L. Rollins
 Interim Director

105 PLEASANT STREET, CONCORD, NH 03301
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November 29, 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 Long Term Supports and Services, to enter into a **Retroactive** amendment to an existing contract with the Contractor listed in **bold** below as a result of the acquisition of Nashua Adult Day Health, LLC (VC# 325980) by Adult Day Health, Inc. (VC# TBD) on November 8, 2021, with no change to the price limitation of \$1,508,940 and no change to the contract completion date of June 30, 2022, effective retroactive to November 8, 2021, upon Governor and Council approval. 56.65% Federal Funds. 43.35% General Funds.

The original contracts were approved by Governor and Council on June 24, 2020, item #46D, with a corresponding request approved by the Governor on June 17, 2020, and presented to the Executive Council on June 24, 2020, informational item #O.

Contractor Name	Vendor Code	Area Served	Current Amount
Easter Seals New Hampshire, Inc.	177204	Manchester, NH and Rochester, NH	\$411,120
Area Agency of Greater Nashua, Inc.	155784	Nashua, NH	\$162,240
VNA at HCS, Inc.	177274	Keene, NH	\$274,080
Memorial Elder Health Services	315314	No. Conway, NH	\$85,740
Adult Day Health, Inc. (formerly Nashua Adult Day Health, LLC)	TBD	Nashua, NH	\$575,760
		Total:	\$1,508,940

Funds are available in the following accounts for State Fiscal Year 2022, 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.

See attached fiscal details.

EXPLANATION

This request is **Retroactive** to align with the date that Adult Day Health, Inc. acquired Nashua Adult Day Health, LLC, and to ensure the continued provision of adult day program services, pursuant to the Older Americans Act, Title III Services and the Social Services Block Grant Programs, Title XX. The purpose of this request is to change the Contractor name and enable Adult Day Health, Inc. to assume responsibility for all contract services.

Approximately 300 individuals will be served July 1, 2020 to June 30, 2022.

The Contractors provide adult day services that are licensed by the Department's Bureau of Health Facilities to eligible adults 18-59 years of age with physical disabilities and/or chronic illnesses, and frail adults sixty (60) years of age and older. The services are provided at community-based sites during the day and will assist individuals with continuing to reside in their communities and homes. Services include supervision; assistance with daily activities; nursing care; rehabilitation services; meals; and recreational, social, cognitive and physical stimulation. Services also include monitoring of the individual's condition, referrals, and connections to other services and resources, as appropriate. In addition, these adult day services provide respite and support to caregiving families in order to maintain the care of the individual in the community.

The Department monitors these services using the following performance measures:

- The number of applications and service requests received and processed.
- The number and percent of applicants found eligible for each service.
- The number and percent of individual plans of care in which the plan contains evidence of person-centered planning.
- The number and percentage of days that individuals did not receive a planned service(s) due to the service(s) not being available.

Should the Governor and Executive Council not authorize this request, individuals in need of adult day care services may not be served, and the lack of these services may jeopardize family caregivers' ability to continue supporting these individuals at home.

Areas Served: Statewide.

Source of Federal Funds: Assistance Listing Number # 93.044, FAIN #2001 NHOASS-01; Assistance Listing Number #93.667, FAIN #2001 NHSOSR; and Assistance Listing Number #93.044, FAIN #2001 NHSSC3-00.

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. Shibinette
Commissioner

Fiscal Details

05-95-48-481010-7872 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVCS, HHS: ELDERLY - ADULT SERVICES, GRANTS TO LOCALS, ADMIN ON AGING SVCS GRANTS, 50% FEDERAL, 50% GENERAL

Nashua Adult Day Health, LLC

Class/Account	Class Title	SFY	Modified Budget
540-500382	SS Contracts	2021	\$83,760.00
540-500382	SS Contracts	2022	\$83,760.00
		Subtotal	\$167,520.00

Memorial Elder Health Services

Class/Account	Class Title	SFY	Modified Budget
540-500382	SS Contracts	2021	\$12,480.00
540-500382	SS Contracts	2022	\$12,480.00
		Subtotal	\$24,960.00

VNA at HCS, Inc.

Class/Account	Class Title	SFY	Modified Budget
540-500382	SS Contracts	2021	\$39,840.00
540-500382	SS Contracts	2022	\$39,840.00
		Subtotal	\$79,680.00

Area Agency of Greater Nashua, Inc.

Class/Account	Class Title	SFY	Modified Budget
540-500382	SS Contracts	2021	\$23,640.00
540-500382	SS Contracts	2022	\$23,640.00
		Subtotal	\$47,280.00

Easter Seals New Hampshire, Inc -Manchester

Class/Account	Class Title	SFY	Modified Budget
540-500382	SS Contracts	2021	\$38,280.00
540-500382	SS Contracts	2022	\$38,280.00
			\$76,560.00

Fiscal Details

Easter Seals New Hampshire, Inc - Rochester

Class/Account	Class Title	SFY	Modified Budget
540-500382	SS Contracts	2021	\$21,540.00
540-500382	SS Contracts	2022	\$21,540.00
			\$43,080.00

05-95-48-481010-7872 Summary for All Vendors

Class/Account	Class Title	SFY	Modified Budget
540-500382	SS Contracts	2021	\$219,540.00
540-500382	SS Contracts	2022	\$219,540.00
		<i>Subtotal</i>	\$439,080.00

05-95-48-481010-9255 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVS, HHS: ELDERLY AND ADULT SERVICES, GRANTS TO LOCALS, SOCIAL SERVICE BLOCK GRANT (60% Federal Funds; 40% General Funds)

Nashua Adult Day Health, LLC

Class/Account	Class Title	SFY	Modified Budget
566-500918	Contracts for Prog Svcs	2021	\$165,960.00
566-500918	Contracts for Prog Svcs	2022	\$165,960.00
		<i>Subtotal</i>	\$331,920.00

Memorial Elder Health Services

Class/Account	Class Title	SFY	Modified Budget
566-500918	Contracts for Prog Svcs	2021	\$24,720.00
566-500918	Contracts for Prog Svcs	2022	\$24,720.00
		<i>Subtotal</i>	\$49,440.00

VNA at HCS, Inc.

Class/Account	Class Title	SFY	Modified Budget
566-500918	Contracts for Prog Svcs	2021	\$79,020.00
566-500918	Contracts for Prog Svcs	2022	\$79,020.00
		<i>Subtotal</i>	\$158,040.00

Fiscal Details

Area Agency of Greater Nashua, Inc.

Class/Account	Class Title	SFY	Modified Budget
566-500918	Contracts for Prog Svcs	2021	\$46,740.00
566-500918	Contracts for Prog Svcs	2022	\$46,740.00
		Subtotal	\$93,480.00

Easter Seals New Hampshire, Inc - Manchester

Class/Account	Class Title	SFY	Modified Budget
566-500918	Contracts for Prog Svcs	2021	\$75,840.00
566-500918	Contracts for Prog Svcs	2022	\$75,840.00
		Subtotal	\$151,680.00

Easter Seals New Hampshire, Inc - Rochester

Class/Account	Class Title	SFY	Modified Budget
566-500918	Contracts for Prog Svcs	2021	\$42,660.00
566-500918	Contracts for Prog Svcs	2022	\$42,660.00
		Subtotal	\$85,320.00

05-95-48-481010-9265 Summary for All Vendors			
Class/Account	Class Title	SFY	Modified Budget
566-500918	Contracts for Prog Svcs	2021	\$434,940.00
566-500918	Contracts for Prog Svcs	2022	\$434,940.00
		Subtotal	\$869,880.00

05-95-48-481010-1917 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVCS, HHS: ELDERLY - ADULT SERVICES, GRANTS TO LOCALS, CARES ACT TITLE III GRANTS, 100% FEDERAL

Nashua Adult Day Health, LLC

Class/Account	Class Title	SFY	Modified Budget
102-500731	Contracts for Prog Svcs	2021	\$76,320.00
102-500731	Contracts for Prog Svcs	2022	\$0.00
		Subtotal	\$76,320.00

Fiscal Details

Memorial Elder Health Services

Class/Account	Class Title	SFY	Modified Budget
102-500731	Contracts for Prog Svcs	2021	\$11,340.00
102-500731	Contracts for Prog Svcs	2022	\$0.00
		<i>Subtotal</i>	<i>\$11,340.00</i>

VNA at HCS, Inc.

Class/Account	Class Title	SFY	Modified Budget
102-500731	Contracts for Prog Svcs	2021	\$36,360.00
102-500731	Contracts for Prog Svcs	2022	\$0.00
		<i>Subtotal</i>	<i>\$36,360.00</i>

Area Agency of Greater Nashua, Inc.

Class/Account	Class Title	SFY	Modified Budget
102-500731	Contracts for Prog Svcs	2021	\$21,480.00
102-500731	Contracts for Prog Svcs	2022	\$0.00
		<i>Subtotal</i>	<i>\$21,480.00</i>

Easter Seals New Hampshire, Inc - Manchester

Class/Account	Class Title	SFY	Modified Budget
102-500731	Contracts for Prog Svcs	2021	\$34,860.00
102-500731	Contracts for Prog Svcs	2022	\$0.00
			<i>\$34,860.00</i>

Easter Seals New Hampshire, Inc - Rochester

Class/Account	Class Title	SFY	Modified Budget
102-500731	Contracts for Prog Svcs	2021	\$19,620.00
102-500731	Contracts for Prog Svcs	2022	\$0.00
			<i>\$19,620.00</i>

05:95:48:48:10:19:17 Summary for All Vendors

Class/Account	Class Title	SFY	Modified Budget
102-500731	Contracts for Prog Svcs	2021	\$199,980.00
102-500731	Contracts for Prog Svcs	2022	\$0.00
		<i>Subtotal</i>	<i>\$199,980.00</i>

Fiscal Details

Summary by Vendor by Year
Nashua Adult Day Health, LLC

	SFY	Modified Budget
	2021	\$326,040.00
	2022	\$249,720.00
	<i>Subtotal</i>	<i>\$575,760.00</i>

Memorial Elder Health Services

	SFY	Modified Budget
	2021	\$48,540.00
	2022	\$37,200.00
	<i>Subtotal</i>	<i>\$85,740.00</i>

VNA at HCS, Inc.

	SFY	Modified Budget
	2021	\$155,220.00
	2022	\$118,860.00
	<i>Subtotal</i>	<i>\$274,080.00</i>

Area Agency of Greater Nashua, Inc.

	SFY	Modified Budget
	2021	\$91,860.00
	2022	\$70,380.00
	<i>Subtotal</i>	<i>\$162,240.00</i>

Easter Seals New Hampshire, Inc - Manchester

	SFY	Modified Budget
	2021	\$148,980.00
	2022	\$114,120.00
	<i>Subtotal</i>	<i>\$263,100.00</i>

Easter Seals New Hampshire, Inc - Rochester

	SFY	Modified Budget
	2021	\$83,820.00
	2022	\$64,200.00
	<i>Subtotal</i>	<i>\$148,020.00</i>

Grand Total SFY21	2021	\$854,460.00
Grand Total SFY22	2022	\$654,480.00
Total Contract		\$1,508,940.00

**State of New Hampshire
Department of Health and Human Services
Amendment #1**

This Amendment to the Adult Day Care Services contract is by and between the State of New Hampshire, Department of Health and Human Services ("State" or "Department") and Adult Day Health, Inc. ("the Contractor").

WHEREAS, pursuant to an agreement (the "Contract") approved by Governor and Council on June 24, 2020, item #46D, with a corresponding request approved by the Governor on June 17, 2020, and presented to the Executive Council on June 24, 2020, informational item #O, Nashua Adult Day Health, LLC agreed to perform certain services based upon the terms and conditions specified in the Contract and in consideration of certain sums specified; and

WHEREAS, on November 8, 2021, Adult Day Health, Inc. acquired Nashua Adult Day Health, LLC and assumed the delivery of all Contract services and funding; and

WHEREAS, pursuant to Form P-37, General Provisions, Paragraph 17, the Contract may be amended upon written agreement of the parties and approval from the Governor and Executive Council; and

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

1. All references in the Contract and amendments to Nashua Adult Day Health, LLC including Form P-37 General Provisions, Block 1.3, Contractor name, are replaced with:
Adult Day Health, Inc.

All terms and conditions of the Contract not modified by this Amendment remain in full force and effect. This Amendment shall be effective retroactive to November 8, 2021, upon Governor and Council approval.

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

12/1/2021

Date

DocuSigned by:

Christine Santaniello

AD+MCS1002DF420...

Name: Christine Santaniello

Title: Associate Commissioner

Adult Day Health, Inc.

11/23/2021

Date

DocuSigned by:

Kyle Worth

AD+MCS1002DF420...

Name: Kyle Worth

Title: Program Director

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

OFFICE OF THE ATTORNEY GENERAL

12/1/2021

Date

DocuSigned by:

J. Christopher Marshall

DSB0458E8004403

Name: J. Christopher Marshall

Title: Assistant Attorney General

I hereby certify that the foregoing Amendment was approved by the Governor and Executive Council of the State of New Hampshire at the Meeting on: _____ (date of meeting)

OFFICE OF THE SECRETARY OF STATE

Date

Name:

Title:

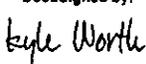
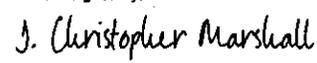
Subject: Adult Day Care Services (RFA-2021-DLTSS-02-ADULT-05-A01)

Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

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

GENERAL PROVISIONS**1. IDENTIFICATION.**

1.1 State Agency Name New Hampshire Department of Health and Human Services		1.2 State Agency Address 129 Pleasant Street Concord, NH 03301-3857	
1.3 Contractor Name Adult Day Health, Inc.		1.4 Contractor Address 313 Congress Street, 5th Floor, Boston, MA 02210	
1.5 Contractor Phone Number (617) 790-4800	1.6 Account Number 05-95-48-481010-7872-540-500382; 05-95-48-481010-9255-566500918; 05-95-48-481010-1917-102-500731	1.7 Completion Date June 30, 2022	1.8 Price Limitation \$575,760
1.9 Contracting Officer for State Agency Nathan D. White, Director		1.10 State Agency Telephone Number (603) 271-9631	
1.11 Contractor Signature DocuSigned by:  Date: 11/23/2021		1.12 Name and Title of Contractor Signatory kyle worth Program Director	
1.13 State Agency Signature DocuSigned by:  Date: 12/1/2021		1.14 Name and Title of State Agency Signatory Christine Santaniello Associate Commissioner	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: 12/1/2021			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: _____			

Contractor Initials 
Date 11/23/2021

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.17, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete

compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

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

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

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

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

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

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

Contractor Initials DS
KW
Date 11/23/2021

8. EVENT OF DEFAULT/REMEDIES.

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

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

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

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

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

9. TERMINATION.

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and

submit to the State a Transition Plan for services under the Agreement.

10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

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

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

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

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement 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. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor 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.

13. INDEMNIFICATION. Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omissions of the

Contractor Initials EW
Date 11/23/2021

Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

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

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the property.

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

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

15. WORKERS' COMPENSATION.

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

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

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

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

18. CHOICE OF LAW AND FORUM. This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

19. CONFLICTING TERMS. In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

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

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

22. SPECIAL PROVISIONS. Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

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

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



New Hampshire Department of Health and Human Services

Exhibit I

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.

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Exhibit I
 Health Insurance Portability Act
 Business Associate Agreement
 Page 1 of 6

Contractor Initials

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 Date _____



New Hampshire Department of Health and Human Services

Exhibit I

- l. "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 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

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Date



New Hampshire Department of Health and Human Services

Exhibit I

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



New Hampshire Department of Health and Human Services

Exhibit I

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 Associate

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New Hampshire Department of Health and Human Services

Exhibit I

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.

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New Hampshire Department of Health and Human Services

Exhibit I

- 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) l, 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

Adult Day Health, Inc.

The State

Name of the Contractor

Christine Santaniello

Kyle Worth

Signature of Authorized Representative

Signature of Authorized Representative

Christine Santaniello

Kyle worth

Name of Authorized Representative

Name of Authorized Representative

Associate Commissioner

Program Director

Title of Authorized Representative

Title of Authorized Representative

12/1/2021

11/23/2021

Date

Date

DS
KW

State of New Hampshire

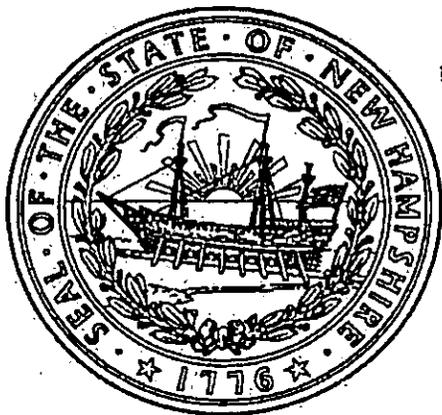
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that ADULT DAY HEALTH, INC. is a Delaware Profit Corporation registered to transact business in New Hampshire on June 06, 2018. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 796496

Certificate Number: 0005470592



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 22nd day of November A.D. 2021.

A handwritten signature in black ink, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State

CERTIFICATE OF AUTHORITY

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

1. I am a duly elected Clerk/Secretary/Officer of Adult Day Health, Inc.
(Corporation/LLC Name)

2. The attached is a true copy of a written consent signed by the Board of Directors on November 23, 2021 which unanimously approved the following vote:

VOTED: That Kyle Worth is duly authorized on behalf of Adult Day Health, Inc. to enter into contracts or agreements with the State of New Hampshire and any of its agencies or departments and further is authorized to execute any and all documents, agreements and other instruments, and any amendments, revisions, or modifications thereto, which may in his/her judgment be desirable or necessary to effect the purpose of this vote.

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

Dated: 11/23/21

Jennifer Neville

Signature of Elected Officer
Name: Jennifer Neville
Title: Assistant Secretary

Record of Signing

For Sevita
Name Jennifer Neville
Title Associate General Counsel, Corporate

Jennifer Neville

Signed on 2021-11-24 19:35:26 GMT

Secured by Concord™
DocumentID: YzK1MmYsOTEINz
SigningID: NzowYWE0NTctYz
Signing date: 11/24/2021
IP Address: 208.87.236.201
Email: jennifer.neville@sevitahealth.com



**UNANIMOUS WRITTEN CONSENT IN LIEU OF MEETING OF
THE BOARD OF DIRECTORS OF**

ADULT DAY HEALTH, INC.

November 23, 2021

The undersigned, being all members of the board of directors (the "Board") of Adult Day Health, Inc., (the "Company"), in lieu of holding a special meeting, do hereby take the following actions and adopt the following resolutions by unanimous written consent.

RESOLVED: That Kyle Worth, Regional Director of the Company, is duly authorized on behalf of the Company to enter into contracts or agreements with the State of New Hampshire and any of its agencies or departments and further is authorized to execute any and all documents, agreements and other instruments, and any amendments, revisions, or modifications thereto, which may in his/her judgement be desirable or necessary to effect the purpose of this vote.

The undersigned in adopting the foregoing resolutions by signing their written consent hereto, do confirm, ratify and approve the acts stated in the aforesaid resolutions and direct that this written consent, which may be executed in counterparts, be filed with the minutes and proceedings of the Company. Without otherwise limiting the generality of the foregoing, the resolutions hereinabove set forth shall be as effective as if adopted by unanimous vote of the undersigned at a meeting called pursuant to notice, all as required by applicable law and the applicable operating agreement of the Company, at which meeting each of the undersigned was present in person.

William McKinney

Brett Cohen

Brett I. Cohen

Peter Gladitsch

Peter E. Gladitsch

Record of Signing

For The MENTOR Network
Name Brett Cohen
Title Chief Operating Officer

Brett Cohen

Signed on 2021-11-23 16:45:01 GMT

Secured by Concord™
DocumentID: ZmFIMDISNjUtOW
SigningID: MzlhYmQ0ZjMtMD
Signing date: 11/23/2021
IP Address: 90.230.8.88
Email: brett.cohen@sevitahealth.com

For The MENTOR Network
Name Peter Gladitsch
Title

Peter Gladitsch

Signed on 2021-11-23 18:21:16 GMT

Secured by Concord™
DocumentID: ZmFIMDISNjUtOW
SigningID: ZDY0ODI4YmEIZD
Signing date: 11/23/2021
IP Address: 208.87.236.201
Email: peter.gladitsch@sevitahealth.com



AGENCY CUSTOMER ID: _____

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page ____ of ____

AGENCY RSC Insurance Brokerage, Inc.		NAMED INSURED Adult Day Health, Inc. c/o National Mentor, LLC 6600 France Ave So #500 Edina MN 55435	
POLICY NUMBER see attached		EFFECTIVE DATE: 10/1/2021	
CARRIER AIG Affiliate: As Noted in Addendum	NAIC CODE 23841		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** Certificate of Liability (03/16)

HOLDER: State of NH Department of Health and Human Services

ADDRESS: 129 Pleasant St Concord NH 03301-3857

WC/EL Policy Numbers: State(s) - Insurer

046912891: CA - AIG/AIU Ins Co

046912893 (WC): AL, AR, AZ, CO, CT, DE, FL, GA, IA, ID, IL, IN, KS, KY, LA, MD, ME, MI, MN, MO, MS, NC, NE, NH, NJ, NV, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, VT, WV- AIG/AIU Ins Co

046912893 (Employers Liability): ND/OH - AIG/AIU Inc Co

046912894: WI - AIG/ AUI Ins Co

065885815: New York - AIG/AIU Ins Co



Lori A. Shibiotta
Commissioner

Deborah D. Scheetz
Director

46D mac

STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF LONG TERM SUPPORTS AND SERVICES

105 PLEASANT STREET, CONCORD, NH 03301
603-271-5034 1-800-852-3345 Ext. 5034
Fax: 603-271-5166 TDD Access: 1-800-735-2964
www.dhhs.nh.gov

June 15, 2020

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 Long Term Supports and Services, to enter into contracts with the Contractors listed below in an amount not to exceed \$1,308,960 for adult day program services, with the option to renew for up to two (2) additional years, effective upon Governor and Council approval through June 30, 2022. 56.65% Federal Funds. 43.35% General Funds.

Vendor Name	Vendor Code	Area Served	Contract Amount
Easter Seals New Hampshire, Inc.	177204	Manchester, NH and Rochester, NH	\$356,640.00
Area Agency of Greater Nashua, Inc.	155784	Nashua, NH	\$140,760.00
VNA at HCS, Inc.	177274	Keene, NH	\$237,720.00
Memorial Elder Health Services	TBD	No. Conway, NH	\$74,400.00
Nashua Adult Day Health, LLC	TBD	Nashua	\$499,440.00
		Total:	\$1,308,960.00

Funds are available in the following accounts for State Fiscal Year 2021, and 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.

See attached fiscal details.

EXPLANATION

The purpose of this request is to provide adult day program services pursuant to the Older Americans Act, Title III Services and the Social Services Block Grant Programs, Title XX. The Contractors will provide adult day program services for individuals who reside in independent living settings and who meet the eligibility criteria.

Approximately 300 individuals will be served from July 1, 2020, to June 30, 2022.

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

The Contractors will provide adult day services that are licensed by the Department's Bureau of Health Facilities to eligible adults 18-59 years of age with physical disabilities and/or chronic illnesses, and frail adults sixty (60) years of age and older. The services will be provided at community-based sites during the day and will assist individuals with continuing to reside in their communities and homes. Services include supervision; assistance with daily activities; nursing care; rehabilitation services; meals; and recreational, social, cognitive and physical stimulation. Services also include monitoring of the individual's condition, referrals, and connections to other services and resources, as appropriate. In addition, these adult day services provide respite and support to caregiving families in order to maintain the care of the individual in the community.

The Department will monitor contracted services using the following performance measures:

- The number of applications and service requests received and processed.
- The number and percent of applicants found eligible for each service.
- The number and percent of individual plans of care in which the plan contains evidence of person-centered planning.
- The number and percentage of days that individuals did not receive a planned service(s) due to the service(s) not being available.

The Department selected the Contractors through a competitive bid process using a Request for Applications (RFA) that was posted on the Department's website from 2/20/2020 through 4/9/2020. The Department received five (5) responses that were reviewed and scored by a team of qualified individuals. The Scoring Sheet is attached.

The Department requested that the Governor approve the addition of \$199,980 to the contracts listed in the table in the Requested Action Section to provide emergency federal COVID-19 funding to the Contractors to better support older, isolated, and frail adults, and adults 18-59 years of age with physical disabilities and/or chronic illnesses, who have become increasingly isolated during the COVID-19 pandemic. See the corresponding informational item on the 6/24/20 G&C agenda.

As referenced in Exhibit A, Revisions to Standard Contract Provisions, Subsection 1.2 of the attached contracts, the parties have the option to extend the agreements for up to two (2) additional years contingent upon satisfactory delivery of services, available funding, agreement of the parties, and Governor and Council approval.

Should the Governor and Executive Council not authorize this request, individuals in need of adult day care services may not be served, and the lack of these services may jeopardize family caregivers' ability to continue to support these individuals at home.

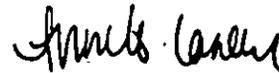
His Excellency, Governor Christopher T. Sununu
and the Honorable Council
Page 3 of 3

Areas served: Statewide.

Source of Funds: 62.40% Federal Funds (CFDA # #93.044, FAIN #2001NHOASS-01, CFDA #93.667, FAIN #2001NHSOSR, and CFDA #93.044, FAIN #2001NHSSC3-00), and 37.60% General Funds

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

Respectfully submitted,



Ann H. Landry

Associate Commissioner

Fiscal Details

05-95-48-481010-7872 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVCS, HHS: ELDERLY - ADULT SERVICES, GRANTS TO LOCALS, ADMIN ON AGING SVCS GRANTS, 50% FEDERAL, 50% GENERAL

Nashua Adult Day Health, LLC

Class/Account	Class Title	SFY	Modified Budget
540-500382	SS Contracts	2021	\$83,760.00
540-500382	SS Contracts	2022	\$83,760.00
		<i>Subtotal</i>	<i>\$167,520.00</i>

Memorial Elder Health Services

Class/Account	Class Title	SFY	Modified Budget
540-500382	SS Contracts	2021	\$12,480.00
540-500382	SS Contracts	2022	\$12,480.00
		<i>Subtotal</i>	<i>\$24,960.00</i>

VNA at HCS, Inc.

Class/Account	Class Title	SFY	Modified Budget
540-500382	SS Contracts	2021	\$39,840.00
540-500382	SS Contracts	2022	\$39,840.00
		<i>Subtotal</i>	<i>\$79,680.00</i>

Area Agency of Greater Nashua, Inc.

Class/Account	Class Title	SFY	Modified Budget
540-500382	SS Contracts	2021	\$23,640.00
540-500382	SS Contracts	2022	\$23,640.00
		<i>Subtotal</i>	<i>\$47,280.00</i>

Easter Seals New Hampshire, Inc -Manchester

Class/Account	Class Title	SFY	Modified Budget
540-500382	SS Contracts	2021	\$38,280.00
540-500382	SS Contracts	2022	\$38,280.00
			<i>\$76,560.00</i>

Fiscal Details

Easter Seals New Hampshire, Inc - Rochester

Class/Account	Class Title	SFY	Modified Budget
540-500382	SS Contracts	2021	\$21,540.00
540-500382	SS Contracts	2022	\$21,540.00
			\$43,080.00

05-95-48-481010-7872 Summary for All Vendors			
Class/Account	Class Title	SFY	Modified Budget
540-500382	SS Contracts	2021	\$219,540.00
540-500382	SS Contracts	2022	\$219,540.00
		<i>Subtotal</i>	\$439,080.00

05-95-48-481010-9255 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVS, HHS: ELDERLY AND ADULT SERVICES, GRANTS TO LOCALS, SOCIAL SERVICE BLOCK GRANT (60% Federal Funds; 40% General Funds)

Nashua Adult Day Health, LLC

Class/Account	Class Title	SFY	Modified Budget
566-500918	Contracts for Prog Svcs	2021	\$165,960.00
566-500918	Contracts for Prog Svcs	2022	\$165,960.00
		<i>Subtotal</i>	\$331,920.00

Memorial Elder Health Services

Class/Account	Class Title	SFY	Modified Budget
566-500918	Contracts for Prog Svcs	2021	\$24,720.00
566-500918	Contracts for Prog Svcs	2022	\$24,720.00
		<i>Subtotal</i>	\$49,440.00

VNA at HCS, Inc.

Class/Account	Class Title	SFY	Modified Budget
566-500918	Contracts for Prog Svcs	2021	\$79,020.00
566-500918	Contracts for Prog Svcs	2022	\$79,020.00
		<i>Subtotal</i>	\$158,040.00

Fiscal Details

Area Agency of Greater Nashua, Inc.

Class/Account	Class Title	SFY	Modified Budget
566-500918	Contracts for Prog Svcs	2021	\$46,740.00
566-500918	Contracts for Prog Svcs	2022	\$46,740.00
		Subtotal	\$93,480.00

Easter Seals New Hampshire, Inc - Manchester

Class/Account	Class Title	SFY	Modified Budget
566-500918	Contracts for Prog Svcs	2021	\$75,840.00
566-500918	Contracts for Prog Svcs	2022	\$75,840.00
		Subtotal	\$151,680.00

Easter Seals New Hampshire, Inc - Rochester

Class/Account	Class Title	SFY	Modified Budget
566-500918	Contracts for Prog Svcs	2021	\$42,660.00
566-500918	Contracts for Prog Svcs	2022	\$42,660.00
		Subtotal	\$85,320.00

05-95-48-481010-9255 Summary for All Vendors			
Class/Account	Class Title	SFY	Modified Budget
566-500918	Contracts for Prog Svcs	2021	\$434,940.00
566-500918	Contracts for Prog Svcs	2022	\$434,940.00
		Subtotal	\$869,880.00

05-95-48-481010-1917 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVCS, HHS: ELDERLY - ADULT SERVICES, GRANTS TO LOCALS, CARES ACT TITLE III GRANTS,
100% FEDERAL

Nashua Adult Day Health, LLC

Class/Account	Class Title	SFY	Modified Budget
102-500731	Contracts for Prog Svcs	2021	\$76,320.00
102-500731	Contracts for Prog Svcs	2022	\$0.00
		Subtotal	\$76,320.00

Fiscal Details

Memorial Elder Health Services

Class/Account	Class Title	SFY	Modified Budget
102-500731	Contracts for Prog Svcs	2021	\$11,340.00
102-500731	Contracts for Prog Svcs	2022	\$0.00
		<i>Subtotal</i>	<i>\$11,340.00</i>

VNA at HCS, Inc.

Class/Account	Class Title	SFY	Modified Budget
102-500731	Contracts for Prog Svcs	2021	\$36,360.00
102-500731	Contracts for Prog Svcs	2022	\$0.00
		<i>Subtotal</i>	<i>\$36,360.00</i>

Area Agency of Greater Nashua, Inc.

Class/Account	Class Title	SFY	Modified Budget
102-500731	Contracts for Prog Svcs	2021	\$21,480.00
102-500731	Contracts for Prog Svcs	2022	\$0.00
		<i>Subtotal</i>	<i>\$21,480.00</i>

Easter Seals New Hampshire, Inc - Manchester

Class/Account	Class Title	SFY	Modified Budget
102-500731	Contracts for Prog Svcs	2021	\$34,860.00
102-500731	Contracts for Prog Svcs	2022	\$0.00
			<i>\$34,860.00</i>

Easter Seals New Hampshire, Inc - Rochester

Class/Account	Class Title	SFY	Modified Budget
102-500731	Contracts for Prog Svcs	2021	\$19,620.00
102-500731	Contracts for Prog Svcs	2022	\$0.00
			<i>\$19,620.00</i>

05:95:48:48:10:19:17 Summary for All Vendors

Class/Account	Class Title	SFY	Modified Budget
102-500731	Contracts for Prog Svcs	2021	\$199,980.00
102-500731	Contracts for Prog Svcs	2022	\$0.00
		<i>Subtotal</i>	<i>\$199,980.00</i>

Fiscal Details

Summary by Vendor by Year
Nashua Adult Day Health, LLC

		SFY	Modified Budget
		2021	\$326,040.00
		2022	\$249,720.00
		<i>Subtotal</i>	<i>\$575,760.00</i>

Memorial Elder Health Services

		SFY	Modified Budget
		2021	\$48,540.00
		2022	\$37,200.00
		<i>Subtotal</i>	<i>\$85,740.00</i>

VNA at HCS, Inc.

		SFY	Modified Budget
		2021	\$155,220.00
		2022	\$118,860.00
		<i>Subtotal</i>	<i>\$274,080.00</i>

Area Agency of Greater Nashua, Inc.

		SFY	Modified Budget
		2021	\$91,860.00
		2022	\$70,380.00
		<i>Subtotal</i>	<i>\$162,240.00</i>

Easter Seals New Hampshire, Inc - Manchester

		SFY	Modified Budget
		2021	\$148,980.00
		2022	\$114,120.00
		<i>Subtotal</i>	<i>\$263,100.00</i>

Easter Seals New Hampshire, Inc - Rochester

		SFY	Modified Budget
		2021	\$83,820.00
		2022	\$64,200.00
		<i>Subtotal</i>	<i>\$148,020.00</i>

Grand Total SFY21	2021	\$854,460.00
Grand Total SFY22	2022	\$654,480.00
Total Contract		\$1,508,940.00



New Hampshire Department of Health and Human Services
Office of Business Operations
Contracts & Procurement Unit
Summary Scoring Sheet

Adult Day Care Services

RFA-2021-DLTSS-02-ADULT

RFA Name

RFA Number

Reviewer Names

Bidder Name

1. EASTER SEALS NEW HAMPSHIRE, INC.
2. Gateways Community Services
3. HOME HEALTHCARE, HOSPICE AND COMMUNITY SERVICES, INC.
4. Memorial Elder Health Services
5. NASHUA ADULT DAY HEALTH, LLC

Pass	Fall
Pass	

1. Thom O'Connor, Administrator I
2. Jean Couch, Supervisor VII
3. Tracey Tarr, Administrator II

Subject: Adult Day Program Services (REA-2021-DLTSS-02-ADULT-05)

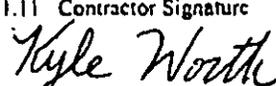
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

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

GENERAL PROVISIONS

I. IDENTIFICATION.

1.1 State Agency Name New Hampshire Department of Health and Human Services		1.2 State Agency Address 129 Pleasant Street Concord, NH 03301-3857	
1.3 Contractor Name Nashua Adult Day Health, LLC		1.4 Contractor Address 32 Daniel Webster Highway U10 Merrimack, NH 03054	
1.5 Contractor Phone Number (603) 568-9237	1.6 Account Number 05-95-48-481010-7872- 540-500382; 05-95-48- 481010-9255-566500918; 05-95-48-481010-1917- 102-500731	1.7 Completion Date June 30, 2022	1.8 Price Limitation \$575,760
1.9 Contracting Officer for State Agency Nathan D. White, Director		1.10 State Agency Telephone Number (603) 271-9631	
1.11 Contractor Signature  Date: 6-8-2020		1.12 Name and Title of Contractor Signatory Kyle Worth Member + Executive Director	
1.13 State Agency Signature  Date: 6-8-2020		1.14 Name and Title of State Agency Signatory Christa Egan, Associate Commissioner	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By: <u>Catherine Pinos</u> On: <u>06/10/20</u>			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: _____			

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.17, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including, without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete

compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

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

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

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

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

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

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

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

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

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

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

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

9. TERMINATION.

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and

submit to the State a Transition Plan for services under the Agreement.

10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

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

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

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

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement 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. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor; or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor 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.

13. INDEMNIFICATION. Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the

Contractor Initials KW
Date 6-8-2020

Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

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

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the property.

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

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

15. WORKERS' COMPENSATION.

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

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

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

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

18. **CHOICE OF LAW AND FORUM.** This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

19. **CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

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

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

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

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

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

New Hampshire Department of Health and Human Services
Adult Day Program Services



EXHIBIT B

Scope of Services

1. Statement of Work

- 1.1. The Contractor shall provide services under this Agreement for individuals who are not already receiving the same or similar services through one of the Department's Medicaid Waiver Programs, or who are not eligible for other New Hampshire Medicaid services, or who are not receiving the same or similar services through the Veterans' Administration.
- 1.2. For the purposes of this agreement, all references to days shall mean calendar days.
- 1.3. For the purposes of this agreement, all references to business hours shall mean Monday through Friday from (8:00 am to 5:00 pm), excluding state and federal holidays.
- 1.4. The Contractor shall provide Adult Day Program Services in Merrimack, New Hampshire.
- 1.5. The Contractor shall be licensed as an adult day program in accordance with RSA 151:21 (f) and as governed by New Hampshire Code of Administrative Rules Part He-P 818, Adult Day Programs.
- 1.6. The Contractor shall provide services in accordance with New Hampshire Administrative Rule He-E 501, The Social Services Block Grant (Title XX) and New Hampshire Administrative Rule He-E 502, The Older American Act Services: Title III B Supportive Services, governing Adult Day Program Services.
- 1.7. The Contractor shall provide services and administration of the program in accordance with the applicable federal and state laws, NH Administrative Rules He-E 501 and He-E 502, policies and regulations adopted by the Department currently in effect, and as they may be adopted or amended during the contract period.
- 1.8. The Contractor shall provide services in a supervised setting for fewer than twelve (12) hours a day to individuals 18 years of age and older, based on an individual's needs, which may include, but are not limited to:
 - 1.8.1. Assistance with activities of daily living.
 - 1.8.2. Nursing care and rehabilitation services.
 - 1.8.3. Recreational, social, cognitive and physical stimulation activities.
 - 1.8.4. Monitoring of the individual's condition
 - 1.8.5. Counseling, as appropriate, on nutrition, hygiene or other related matters.
 - 1.8.6. Referrals to other services and resources as necessary.
 - 1.8.7. Assistance and support to caregiving families

New Hampshire Department of Health and Human Services
Adult Day Program Services



EXHIBIT B

- 1.9. The State reserves the right to require services to be concurrently provided in facilities and in an alternative setting. The Contractor may:
- 1.9.1. Provide adult day program services in an alternative setting approved by the Department, during a declaration of emergency or disaster issued by the Governor. The Contractor shall:
 - 1.9.1.1. Comply with all laws, rules, and guidance in accordance with the State of New Hampshire and the federal Older American Act Services.
 - 1.9.1.2. Comply with guidelines from the Centers for Disease Control and Prevention (CDC) and the Department, as directed by the Department during emergencies.
 - 1.9.1.3. Obtain Department consent for modifications due to suspended in-facility services.
 - 1.9.1.4. Provide services in accordance with guidance from the Department that include, but are not limited to:
 - 1.9.1.4.1. Continuation of certain services, telephonically or via video chat, to individuals currently receiving services.
 - 1.9.1.4.2. Completion of the Dally Care Connection form issued by the Department for each remote contact with a participant.
- 1.10. The Contractor shall provide services to individuals referred by:
- 1.10.1. The Adult Protection Program.
 - 1.10.2. Direct application to the Contractor for services.
 - 1.10.3. NH ServiceLink Resource Centers and other community agencies.
 - 1.10.4. Self-referral.
- 1.11. The Contractor shall conduct an expedited intake for individuals referred by the Adult Protection Program in accordance with the NH Administrative Rules He-E 501 and 502, which include, but are not limited to:
- 1.11.1. Waiving application, determination and redetermination requirements.
 - 1.11.2. Utilizing information provided by Adult Protective Program staff to provide appropriate services.
 - 1.11.3. Reporting suspected abuse, neglect, self-neglect and/or exploitation of incapacitated adults as required by RSA 161-F: 46 of the Adult Protection law.
 - 1.11.4. Making a good-falth effort to ensure the provision of services.

New Hampshire Department of Health and Human Services
Adult Day Program Services



EXHIBIT B

- 1.11.5. Informing the referring Adult Protective Program staff of any changes to the referred individual's situation, or other concerns.
- 1.12. The Contractor shall determine eligibility for services, and complete an intake and an application for services for individuals who apply directly to the Contractor, in accordance with NH Administrative Rules He-E 501 and 502.
- 1.13. The Contractor shall provide written notice of eligibility to each individual who applies to the Contractor for services no later than forty-five (45) days from the date eligibility is determined, which includes, but is not limited to:
 - 1.13.1. Services to be provided including frequency; and
 - 1.13.2. Beginning and end dates for the period of eligibility; or
 - 1.13.3. If the individual is determined to not be eligible for service(s), the notice shall include, but is not limited to:
 - 1.13.3.1. The reason(s) for the denial;
 - 1.13.3.2. A statement regarding the right of the individual or his or her authorized representative to request an informal resolution or appeal of the eligibility determination decision; and
 - 1.13.3.3. Contact information for requesting an administrative hearing, as described in New Hampshire Administrative Rule He-E 501.11.
- 1.14. The Contractors shall use the Department's Form 3000 application when determining eligibility pursuant to NH Administrative Rule He-E 501 (Title XX).
- 1.15. The Contractor shall submit its policies and procedures for client eligibility determination and redetermination to the Department for review and approval, within 30 days of the start of each State Fiscal Year. The Contractor shall:
 - 1.15.1. Terminate services when:
 - 1.15.1.1. The individual or his or her authorized representative requests that the services be terminated.
 - 1.15.1.2. The individual no longer meets the eligibility requirements for services.
 - 1.15.1.3. Funding by the State for the service(s) is no longer available.
 - 1.15.1.4. The individual did not reapply for services as required by program rules.
 - 1.15.1.5. The individual is admitted to a nursing home or residential care facility.
 - 1.15.2. Request a service authorization from the Department for each individual determined eligible for services.

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1.15.3. Submit a completed Form 3502 "Contract Service Authorization-New Authorization," in accordance with NH Administrative rule He-E 501.15, for each client determined eligible for services. The completed Form 3502 may include more than one services and shall be submitted to:

Bureau of Data Management
129 Pleasant Street
Concord, NH 03301

1.15.4. Assess each individual's needs and develop a written service plan; maintain written progress notes; and monitor and adjust the service plans to meet the individual's needs, in accordance with NH Administrative Rules He-E 501 and He-E 502.

1.15.5. Incorporate the following Guiding Principles for Person-Centered Planning Philosophy into agency functions, policies, and staff-client interactions when providing services::

1.15.5.1. Individuals and families are invited, welcomed, and supported as full participants in service planning and decision-making.

1.15.5.2. Individual's wishes, values, and beliefs are considered and respected.

1.15.5.3. Individual is listened to; needs and concerns are addressed.

1.15.5.4. Individual receives the information he/she needs to make informed decisions.

1.15.5.5. Planning is responsive to the individual. His or her preferences drive the planning process, though the decision making process may need to be accelerated to respond to emergencies.

1.15.5.6. Services are designed, scheduled, and delivered to best meet the needs and preferences of the individual.

1.15.5.7. The system is committed to excellence and quality improvement.

1.15.5.8. Individual rights are affirmed and protected.

1.15.5.9. Individuals are protected from exploitation, abuse, and neglect.

1.15.5.10. The service system is accessible, responsive, and accountable to the individual.

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EXHIBIT B

- 1.15.6. Maintain a level of staffing necessary to perform and provide the functions, requirements, roles, and duties in a timely fashion for the number of clients identified in this Agreement.
- 1.15.7. Develop and submit its written Staffing Contingency Plan to the Department within 30 days of contract approval date, which includes, but is not limited to:
 - 1.15.7.1. The process for replacing personnel in the event of loss of personnel during contract period.
 - 1.15.7.2. A description of how additional staff resources will be allocated to support contract services in the event of inability to meet any performance standard.
 - 1.15.7.3. A description of time frames necessary for obtaining staff replacements.
 - 1.15.7.4. An explanation of capabilities to provide, in a timely manner, staff replacements and/or additions with comparable experience.
 - 1.15.7.5. A description of the method for training new staff members performing contract services.
- 1.15.8. Verify each staff member and each volunteer completes appropriate orientation and training; has the required education; and has the appropriate experience to fulfill the responsibilities of their respective position. The Contractor shall maintain all relevant documents, including, but not limited to:
 - 1.15.8.1. Current personnel records.
 - 1.15.8.2. Training records.
 - 1.15.8.3. Licenses.
 - 1.15.8.4. Certifications.
- 1.16. The Contractor shall maintain a system for tracking, resolving, and reporting client complaints relative to services, processes, procedures, and staff. The Contractor shall provide a written record of all complaints to the Department, upon request, ensuring the information includes, but is not limited to:
 - 1.16.1. Individual's name.
 - 1.16.2. Type of service.
 - 1.16.3. Date of complaint.
 - 1.16.4. A description of the complaint.
 - 1.16.5. Resolution to the complaint.
 - 1.16.6. Notice of right to appeal.

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- 1.17. The Contractor shall complete a criminal background check for each staff member or volunteer who interacts with or provides hands-on care to individuals in compliance with the requirements of NH Administrative Rule He-P 818, Adult Day Programs.
 - 1.18. The Contractor shall not commence delivery of services prior to the receipt by the Department of documentation required in Subsection 1.17, above.
 - 1.19. The Contractor shall develop a survey, to be approved by the Department, and conduct a survey of individuals receiving services, via telephone, mail, e-mail, or face-to-face.
 - 1.20. The Contractor shall maintain a wait list in accordance with NH Administrative Rules He-E 501 and He-E 502 when funding or resources are not available to provide the requested services.
 - 1.21. The Contractor shall maintain a plan that addresses the present and future needs of clients receiving services, in accordance with NH Administrative Rule He-E 501.10, in the event that:
 - 1.21.1. Service(s) are terminated or planned to be terminated prior to the termination date of the contract;
 - 1.21.2. The Contractor terminates a service or services for any reason; or
 - 1.21.3. The Contractor cannot carry out all or a portion of the services terms or conditions outlined in the contract or sub-contracts.
- 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, and in accordance with the attached Exhibit I, Business Associate Agreement, which has been executed by the parties.
 - 2.2. The Contractor shall manage all confidential data related to this Agreement in accordance with the terms of Exhibit K, DHHS Information Security Requirements.
 - 2.3. The Contractor shall comply with all Exhibits D through K, which are attached hereto and incorporated by reference herein.
- 3. Reporting Requirements**
- 3.1. The Contractor shall submit quarterly reports on the provision of Adult Day Care services to the Department, on a pre-defined electronic form supplied by the Department. The Contractor shall:
 - 3.1.1. Submit reports to the Department no later than the 15th day of the month following the end of each quarter.
 - 3.1.2. Ensure each report includes, but is not limited to:

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EXHIBIT B

- 3.1.2.1. Total expenses.
- 3.1.2.2. Revenue.
- 3.1.2.3. Actual Units served, sorted by funding source.
- 3.1.2.4. Number of unduplicated clients served, sorted by funding source.
- 3.1.2.5. Number of Title III and Title XX clients served with funds not provided by the Department.
- 3.1.2.6. Unmet need/waiting list.
- 3.1.2.7. Length of time clients are on a waiting list.
- 3.1.2.8. A narrative description of activities during the previous quarter, which shall include, but is not limited to:
 - 3.1.2.8.1. Quality improvement activities initiated in response to each complaint.
 - 3.1.2.8.2. An explanation for each instance in which an individual did not receive planned services.
- 3.2. The Contractor shall report suspected abuse, neglect, self-neglect, and/or exploitation of incapacitated adults as required by RSA 161-F:46 of the Adult Protection law.
- 3.3. The Contractor shall provide written notice of the inability to meet any contract service obligations, including but not limited to reducing hours of operations; changing services area; or closing and/or opening a site at least ninety (90) days prior to the event. The Contractor shall:
 - 3.3.1. Mail written notices to:
 - Bureau Director
 - Bureau of Elderly and Adult Services
 - 105 Pleasant Street
 - Concord, NH 03301
 - 3.3.2. Ensure written notifications include:
 - 3.3.2.1. Reason(s) for the inability to deliver services;
 - 3.3.2.2. How service recipients and the community will be impacted;
 - 3.3.2.3. How service recipients and the community will be notified; and
 - 3.3.2.4. A plan to transition clients into other services or refer the clients to other agencies.

4. Performance Measures

Nashua Day Adult Health, LLC
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4.1. The Department will monitor Contractor performance by evaluating the following performance measures:

4.1.1. Eligibility

- 4.1.1.1. The number of applications and service requests and
- 4.1.1.2. The number and percent of applicants found eligible for each service.
- 4.1.1.3. The number and percent of applicants found ineligible for each service.
- 4.1.1.4. The number and percent of individual plans of care in which the plan contains evidence of person-centered planning.
- 4.1.1.5. The number and percent of individuals who have experienced a safety-related incident or accident, which occurs during times of face-to-face contact.
- 4.1.1.6. The number and percent of individuals for whom a report to Adult Protective Services was made.

4.1.2. Service Delivery

- 4.1.2.1. The number of open cases at the end of each reporting period, and
- 4.1.2.2. The number and percentage of days that individuals did not receive a planned service(s) due to the service(s) not being available due to inadequate staffing or other related provider issue or due to lack of transportation, etc.
- 4.1.2.3. The number and percent of individuals completing the survey

4.2. The Contractor shall actively and regularly collaborate with the Department to enhance contract management, improve results, and adjust program delivery and policy based on successful outcomes.

4.3. The Contractor may be required to provide other key data and metrics to the Department, including client-level demographic, performance, and service data.

4.4. Where applicable, the Contractor shall collect and share data with the Department in a format specified by the Department.

5. Additional Terms

5.1. Impacts Resulting from Court Orders or Legislative Changes

5.1.1. The Contractor 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

New Hampshire Department of Health and Human Services
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EXHIBIT B

and expenditure requirements under this Agreement so as to achieve compliance therewith.

5.2. Culturally and Linguistically Appropriate Services (CLAS)

5.2.1. The Contractor shall submit and comply with a detailed description of the language assistance services they will provide to persons with limited English proficiency and/or hearing impairment to ensure meaningful access to their programs and/or services within ten (10) days of the contract effective date.

5.3. Credits and Copyright Ownership

5.3.1. All documents, notices, press releases, research reports and other materials prepared during or resulting from the performance of the services of the Contract shall include the following statement, "The preparation of this (report, document etc.) was financed under a Contract with the State of New Hampshire, Department of Health and Human Services, with funds provided in part by the State of New Hampshire and/or such other funding sources as were available or required, e.g., the United States Department of Health and Human Services."

5.3.2. All materials produced or purchased under the contract shall have prior approval from the Department before printing, production, distribution or use.

5.3.3. The Department shall retain copyright ownership for any and all original materials produced, including, but not limited to:

5.3.3.1. Brochures.

5.3.3.2. Resource directories.

5.3.3.3. Protocols or guidelines.

5.3.3.4. Posters.

5.3.3.5. Reports.

5.3.4. The Contractor shall not reproduce any materials produced under the contract without prior written approval from the Department.

5.4. Operation of Facilities: Compliance with Laws and Regulations

5.4.1. In the operation of any facilities for providing services, the Contractor shall comply with all laws, orders and regulations of federal, state, county and municipal authorities and with any direction of any Public Officer or officers pursuant to laws which shall impose an order or duty upon the contractor with respect to the operation of the facility or the provision of the services at such facility. If any governmental license or permit shall be required for the operation of the said facility or the performance of the said services, the Contractor will procure said

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EXHIBIT B

license or permit, and will at all times comply with the terms and conditions of each such license or permit. In connection with the foregoing requirements, the Contractor hereby covenants and agrees that, during the term of this Contract the facilities shall comply with all rules, orders, regulations, and requirements of the State Office of the Fire Marshal and the local fire protection agency, and shall be in conformance with local building and zoning codes, by-laws and regulations.

5.5. Eligibility Determinations

- 5.5.1. If the Contractor is permitted to determine the eligibility of individuals such eligibility determination shall be made in accordance with applicable federal and state laws, regulations, orders, guidelines, policies and procedures.
- 5.5.2. Eligibility determinations shall be made on forms provided by the Department for that purpose and shall be made and remade at such times as are prescribed by the Department.
- 5.5.3. In addition to the determination forms required by the Department, the Contractor shall maintain a data file on each recipient of services hereunder, which file shall include all information necessary to support an eligibility determination and such other information as the Department requests. The Contractor shall furnish the Department with all forms and documentation regarding eligibility determinations that the Department may request or require.
- 5.5.4. The Contractor understands that all applicants for services hereunder, as well as individuals declared ineligible have a right to a fair hearing regarding that determination. The Contractor hereby covenants and agrees that all applicants for services shall be permitted to fill out an application form and that each applicant or re-applicant shall be informed of his/her right to a fair hearing in accordance with Department regulations.

6. Records

- 6.1. The Contractor shall keep records that include, but are not limited to:
 - 6.1.1. 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.
 - 6.1.2. All records shall 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

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EXHIBIT B

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.

6.1.3. 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.

6.1.4. Medical records on each patient/recipient of services.

6.2. 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.

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Adult Day Program Services



EXHIBIT C

Payment Terms

1. This Agreement is funded by:
 - 1.1. 62.40% Federal Funds by the:
 - 1.1.1. United States Department of Health and Human Services, Elderly and Adult Services, Grants to Locals, Administration on Aging Services Grants (CFDA:#93.044), FAIN #2001NHOASS-01, as awarded on September 1, 2019. 14.55% Federal funds
 - 1.1.2. United States Department of Health and Human Services, Elderly and Adult Services, Grants to Locals, Social Services Block Grant (CFDA:#93.667), FAIN #2001NHSOSR, as awarded on September 1, 2019. 34.60% Federal Funds
 - 1.1.3. United States Department of Health and Human Services, Elderly and Adult Services, Grants to Locals, CARES Act Title III Grants (CFDA:#93.044), FAIN #2001NHSSC3-00, as awarded on April 20, 2020. 13.25% Federal funds
 - 1.2. 37.60% General funds.
2. For the purposes of this Agreement:
 - 2.1. The Department has identified the Contractor as a (Subrecipient or Contractor), in accordance with 2 CFR 200.330.
 - 2.2. The Department has identified this Contract as NON-R&D, in accordance with 2 CFR §200.87.
3. Payment in accordance with the rates and units specified in Exhibit C-1, Rate Sheet.
4. The Contractor shall submit an invoice in a form satisfactory to the State 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 dhhs.beasinvoices@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 State shall make payment to the Contractor within thirty (30) days of receipt of each invoice, subsequent to approval of the submitted invoice and if

Nashua Adult Day Health, LLC

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sufficient funds are available, subject to Paragraph 4 of the General Provisions Form Number P-37 of this Agreement.

7. The final invoice shall be due to the State no later than forty (40) days after the contract completion date specified in Form P-37, General Provisions Block 1.7 Completion Date.
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 B, 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 agreement.
11. Notwithstanding Paragraph 17 of the General Provisions Form P-37, changes limited to 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.

Nashua Adult Day Health, LLC

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EXHIBIT C

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- 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. Any Contractor that receives an amount equal to or greater than \$250,000 from the Department during a single fiscal year, regardless of the funding source, may be required, at a minimum, to submit annual financial audits performed by an independent CPA if the Department's risk assessment determination indicates the Contractor is high-risk.
 - 12.5. 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.

Exhibit C-1 Rate Sheet

Nashua Adult Day Health, LLC				
7/1/2020 through 06/30/2021 Service Units				
Adult In-Home Care	Service Unit Type	Total # of Units of Service anticipated to be delivered.	Rate per Service Unit	Total Amount of Funding
Title XX AGDC	Per Day/Per Person	2,766	\$60.00	\$ 165,960.00
Title III B AGDC	Per Day/Per Person	1,398	\$60.00	\$ 83,760.00
Title III B AGDC COVID	Per Day/Per Person	1,274	\$60.00	\$ 76,320.00
7/1/2021 through 06/30/2022 Service Units				
Adult In-Home Care	Service Unit Type	Total # of Units of Service anticipated to be delivered.	Rate per Service Unit	Total Amount of Funding
Title XX AGDC	Per Day/Per Person	2,766	\$90.00	\$ 165,960.00
Title III B AGDC	Per Day/Per Person	1,398	\$60.00	\$ 83,760.00

New Hampshire Department of Health and Human Services
Exhibit D



CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The Vendor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

ALTERNATIVE I - FOR GRANTEES OTHER THAN INDIVIDUALS

**US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS
US DEPARTMENT OF EDUCATION - CONTRACTORS
US DEPARTMENT OF AGRICULTURE - CONTRACTORS**

This certification is required by the regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.). The January 31, 1989 regulations were amended and published as Part II of the May 25, 1990 Federal Register (pages 21681-21691), and require certification by grantees (and by inference, sub-grantees and sub-contractors), prior to award, that they will maintain a drug-free workplace. Section 3017.630(c) of the regulation provides that a grantee (and by inference, sub-grantees and sub-contractors) that is a State may elect to make one certification to the Department in each federal fiscal year in lieu of certificates for each grant during the federal fiscal year covered by the certification. The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment. Contractors using this form should send it to:

Commissioner
NH Department of Health and Human Services
129 Pleasant Street,
Concord, NH 03301-8505

1. The grantee certifies that it will or will continue to provide a drug-free workplace by:
 - 1.1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - 1.2. Establishing an ongoing drug-free awareness program to inform employees about
 - 1.2.1. The dangers of drug abuse in the workplace;
 - 1.2.2. The grantee's policy of maintaining a drug-free workplace;
 - 1.2.3. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - 1.2.4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - 1.3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
 - 1.4. Notifying the employees in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will
 - 1.4.1. Abide by the terms of the statement; and
 - 1.4.2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
 - 1.5. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph 1.4.2 from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency

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New Hampshire Department of Health and Human Services
Exhibit D

- has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- 1.6. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 1.4.2, with respect to any employee who is so convicted
 - 1.6.1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - 1.6.2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
 - 1.7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1.1, 1.2, 1.3, 1.4, 1.5, and 1.6.
2. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant.

Place of Performance (street address, city, county, state, zip code) (list each location)

Check if there are workplaces on file that are not identified here.

Vendor Name:

6-8-2020
Date

Kyle Worth
Name: Kyle Worth
Title: Member + Executive Director



New Hampshire Department of Health and Human Services
Exhibit E

CERTIFICATION REGARDING LOBBYING

The Vendor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. 1352, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS
US DEPARTMENT OF EDUCATION - CONTRACTORS
US DEPARTMENT OF AGRICULTURE - CONTRACTORS

- Programs (Indicate applicable program covered):
- *Temporary Assistance In Needy Families under Title IV-A
 - *Child Support Enforcement Program under Title IV-D
 - *Social Services Block Grant Program under Title XX
 - *Medicaid Program under Title XIX
 - *Community Services Block Grant under Title VI
 - *Child Care Development Block Grant under Title IV

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement (and by specific mention sub-grantee or sub-contractor).
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement (and by specific mention sub-grantee or sub-contractor), the undersigned shall complete and submit Standard Form LLL, (Disclosure Form to Report Lobbying, in accordance with its instructions, attached and identified as Standard Exhibit E-1.)
3. The undersigned shall require that the language of this certification be included in the award document for sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Vendor Name:

6-8-2020
Date

Kyle Worth
Name: Kyle Worth
Title: Member + Executive Director

New Hampshire Department of Health and Human Services
Exhibit F



**CERTIFICATION REGARDING DEBARMENT, SUSPENSION
AND OTHER RESPONSIBILITY MATTERS**

The Vendor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Executive Office of the President, Executive Order 12549 and 45 CFR Part 76 regarding Debarment, Suspension, and Other Responsibility Matters, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal (contract), the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the NH Department of Health and Human Services' (DHHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when DHHS determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, DHHS may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the DHHS agency to whom this proposal (contract) is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549: 45 CFR Part 76. See the attached definitions.
6. The prospective primary participant agrees by submitting this proposal (contract) that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by DHHS.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," provided by DHHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or involuntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (of excluded parties).
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and



New Hampshire Department of Health and Human Services
Exhibit F

information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

- 10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, DHHS may terminate this transaction for cause or default.

PRIMARY COVERED TRANSACTIONS

- 11. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - 11.1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - 11.2. have not within a three-year period preceding this proposal (contract) been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or a contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - 11.3. are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (11)(b) of this certification; and
 - 11.4. have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- 12. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal (contract).

LOWER TIER COVERED TRANSACTIONS

- 13. By signing and submitting this lower tier proposal (contract), the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:
 - 13.1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
 - 13.2. where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal (contract).
- 14. The prospective lower tier participant further agrees by submitting this proposal (contract) that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Vendor Name:

6-8-2020
Date

Kyle Worth
Name: Kyle Worth
Title: Member + Executive Director



New Hampshire Department of Health and Human Services
Exhibit G

**CERTIFICATION OF COMPLIANCE WITH REQUIREMENTS PERTAINING TO
FEDERAL NONDISCRIMINATION, EQUAL TREATMENT OF FAITH-BASED ORGANIZATIONS AND
WHISTLEBLOWER PROTECTIONS**

The Vendor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

Vendor will comply, and will require any subgrantees or subcontractors to comply, with any applicable federal nondiscrimination requirements, which may include:

- the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. Section 3789d) which prohibits recipients of federal funding under this statute from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex. The Act requires certain recipients to produce an Equal Employment Opportunity Plan;
- the Juvenile Justice Delinquency Prevention Act of 2002 (42 U.S.C. Section 5672(b)) which adopts by reference, the civil rights obligations of the Safe Streets Act. Recipients of federal funding under this statute are prohibited from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex. The Act includes Equal Employment Opportunity Plan requirements;
- the Civil Rights Act of 1964 (42 U.S.C. Section 2000d, which prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in any program or activity);
- the Rehabilitation Act of 1973 (29 U.S.C. Section 794); which prohibits recipients of Federal financial assistance from discriminating on the basis of disability, in regard to employment and the delivery of services or benefits, in any program or activity;
- the Americans with Disabilities Act of 1990 (42 U.S.C. Sections 12131-34), which prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation;
- the Education Amendments of 1972 (20 U.S.C. Sections 1681, 1683, 1685-86), which prohibits discrimination on the basis of sex in federally assisted education programs;
- the Age Discrimination Act of 1975 (42 U.S.C. Sections 6106-07), which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. It does not include employment discrimination;
- 28 C.F.R. pt. 31 (U.S. Department of Justice Regulations – OJJDP Grant Programs); 28 C.F.R. pt. 42 (U.S. Department of Justice Regulations – Nondiscrimination, Equal Employment Opportunity, Policies and Procedures); Executive Order No. 13279 (equal protection of the laws for faith-based and community organizations); Executive Order No. 13559, which provide fundamental principles and policy-making criteria for partnerships with faith-based and neighborhood organizations;
- 28 C.F.R. pt. 38 (U.S. Department of Justice Regulations – Equal Treatment for Faith-Based Organizations); and Whistleblower protections 41 U.S.C. §4712 and The National Defense Authorization Act (NDAA) for Fiscal Year 2013 (Pub. L. 112-239, enacted January 2, 2013) the Pilot Program for Enhancement of Contract Employee Whistleblower Protections, which protects employees against reprisal for certain whistle blowing activities in connection with federal grants and contracts.

The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment.

Exhibit G

Vendor Initials

KW

Certification of Compliance with requirements pertaining to Federal Nondiscrimination, Equal Treatment of Faith-Based Organizations and Whistleblower Protections



New Hampshire Department of Health and Human Services
Exhibit G

In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, to the applicable contracting agency or division within the Department of Health and Human Services, and to the Department of Health and Human Services Office of the Ombudsman.

The Vendor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this proposal (contract) the Vendor agrees to comply with the provisions indicated above.

Vendor Name:

Kyle Worth

Name: Kyle Worth

Title: Member + Executive Director

6-8-2020

Date

Exhibit G

Vendor Initials KW

Certification of Compliance with requirements pertaining to Prohibition of Discrimination, Equal Treatment of Faith-Based Organizations and Withdrawal of protections

New Hampshire Department of Health and Human Services
Exhibit H



CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, Part C - Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

The Vendor identified in Section 1.3 of the General Provisions agrees, by signature of the Contractor's representative as identified in Section 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this contract, the Vendor agrees to make reasonable efforts to comply with all applicable provisions of Public Law 103-227, Part C, known as the Pro-Children Act of 1994.

Vendor Name:

6-8-2020
Date

Kyle Worth
Name: Kyle Worth
Title: Member + Executive Director

New Hampshire Department of Health and Human Services



Exhibit I

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.

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Exhibit I
 Health Insurance Portability And
 Business Associate Agreement
 Page 1 of 6

Contractor Initials

KW

Date

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New Hampshire Department of Health and Human Services

Exhibit I

- l. "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 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



New Hampshire Department of Health and Human Services

Exhibit I

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 (l). 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

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Contractor Initials KW

Date 6-8-2020



New Hampshire Department of Health and Human Services

Exhibit I

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

3/2014

Contractor initials

KW

Date 6-8-2020

New Hampshire Department of Health and Human Services



Exhibit I

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 164.508 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.

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Contractor Initials

KW

Date 6-8-2020



New Hampshire Department of Health and Human Services

Exhibit I

- e. **Severability.** 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

Christie Tappan
Signature of Authorized Representative

Christie Tappan
Name of Authorized Representative

Associate Commissioner
Title of Authorized Representative

6-8-2020
Date

Nashua Adult Day Health, LLC
Name of the Contractor

Kyle Worth
Signature of Authorized Representative

Kyle Worth
Name of Authorized Representative

Member + Executive Director
Title of Authorized Representative

6-8-2020
Date

New Hampshire Department of Health and Human Services
Exhibit J



CERTIFICATION REGARDING THE FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) COMPLIANCE

The Federal Funding Accountability and Transparency Act (FFATA) requires prime awardees of Individual Federal grants equal to or greater than \$25,000 and awarded on or after October 1, 2010, to report on data related to executive compensation and associated first-tier sub-grants of \$25,000 or more. If the initial award is below \$25,000 but subsequent grant modifications result in a total award equal to or over \$25,000, the award is subject to the FFATA reporting requirements, as of the date of the award.

In accordance with 2 CFR Part 170 (Reporting Subaward and Executive Compensation Information), the Department of Health and Human Services (DHHS) must report the following information for any subaward or contract award subject to the FFATA reporting requirements:

1. Name of entity
2. Amount of award
3. Funding agency
4. NAICS code for contracts / CFDA program number for grants
5. Program source
6. Award title descriptive of the purpose of the funding action
7. Location of the entity
8. Principle place of performance
9. Unique identifier of the entity (DUNS #)
10. Total compensation and names of the top five executives if:
 - 10.1. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$26M annually and
 - 10.2. Compensation information is not already available through reporting to the SEC.

Prime grant recipients must submit FFATA required data by the end of the month, plus 30 days, in which the award or award amendment is made.

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of The Federal Funding Accountability and Transparency Act, Public Law 109-282 and Public Law 110-252, and 2 CFR Part 170 (Reporting Subaward and Executive Compensation Information), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

The below named Contractor agrees to provide needed information as outlined above to the NH Department of Health and Human Services and to comply with all applicable provisions of the Federal Financial Accountability and Transparency Act.

Contractor Name:

6-8-2020
Date

Kyle Worth
Name: Kyle Worth
Title: Member + Executive Director



New Hampshire Department of Health and Human Services
Exhibit J

FORM A

As the Contractor identified in Section 1.3 of the General Provisions, I certify that the responses to the below listed questions are true and accurate.

1. The DUNS number for your entity is: 121832003

2. In your business or organization's preceding completed fiscal year, did your business or organization receive (1) 80 percent or more of your annual gross revenue in U.S. federal contracts, subcontracts, loans, grants, sub-grants, and/or cooperative agreements; and (2) \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements?

NO YES

If the answer to #2 above is NO, stop here

If the answer to #2 above is YES, please answer the following:

3. Does the public have access to information about the compensation of the executives in your business or organization through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?

NO YES

If the answer to #3 above is YES, stop here

If the answer to #3 above is NO, please answer the following:

4. The names and compensation of the five most highly compensated officers in your business or organization are as follows:

Name: _____	Amount: _____

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 there from 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 may 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 Department's 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/doiit/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. The Contractor will notify the State's Privacy Officer and the State's Security Officer of any security breach immediately, at the email addresses provided in Section VI. This includes a confidential information breach, computer security incident, or suspected breach which affects or includes any State of New Hampshire systems that connect to the State of New Hampshire network.
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.

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- 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 State's Privacy Officer and Security Officer of any Security Incidents and Breaches immediately, at the email addresses provided in Section VI.

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

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5. Determine whether Breach notification is required, and, if so, identify appropriate 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 Privacy Officer:

DHHSPrivacyOfficer@dhhs.nh.gov

B. DHHS Security Officer:

DHHSInformationSecurityOffice@dhhs.nh.gov

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