



Lori A. Shibanette
Commissioner

Lori A. Weaver
Deputy Commissioner

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

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

January 31, 2022

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

REQUESTED ACTION

Authorize the Department of Health and Human Services, Office of the Commissioner, to enter into a **Retroactive, Sole Source** amendment to an existing agreement with OhMD, Inc. (VC# 349194-B001), Burlington VT, to continue to provide secure, HIPAA-compliant text messaging services to coordinate COVID-19 vaccination appointment scheduling and voluntary COVID-19 vaccination information, by increasing the price limitation by \$58,800 from \$56,400 to \$115,200 and by extending the completion date from February 9, 2022 to February 9, 2023, effective retroactive to February 9, 2022 upon Governor and Council approval. 100% Federal Funds.

The original contract was approved by the Governor on August 19, 2021, as presented to the Executive Council on April 7, 2021 (Information Item #C), and most recently amended with Governor and Council approval on September 15, 2021 (Item #16C).

Funds are available in the following account for State Fiscal Years 2022 and 2023, with the authority to adjust budget line items within the price limitation through the Budget Office, if needed and justified.

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

State Fiscal Year	Class / Account	Class Title	Job Number	Current Budget	Increased (Decreased) Amount	Revised Budget
2021	103-502664	Contracts for Oper Svc	95010690	\$22,500	\$0	\$22,500
2022	103-502664	Contracts for Oper Svc	95010690	\$33,900	\$24,500	\$58,400
2023	103-502664	Contracts for Oper Svc	95010690	\$0	\$34,300	\$34,300
			Total	\$56,400	\$58,800	\$115,200

EXPLANATION

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

This request is **Retroactive** because the Department did not have the fully executed amendment documents in time for Governor and Executive Council approval to prevent the current contract from expiring. The Department recently determined the continued need for these services at the State-contracted vaccination sites and for residents who request verification of vaccination status for needs related to workplace, travel, or other requirements. The Division of Public Health Services continues to receive regular inquiries and requires a Health Insurance Portability Accountability Act (HIPAA) compliant solution to facilitate communications with residents seeking information on their vaccination status for personal use.

This request is **Sole Source** because the transition to an alternative vendor would result in significant delays in vaccine recipients receiving replacement CDC COVID-19 vaccination cards or other documents serving as proof of vaccination on a voluntary basis. These delays may result in the inability for vaccine recipients to return to work, school, or receive necessary information for the purposes of domestic and international travel.

The purpose of this request is to continue to provide a HIPAA-compliant texting and telehealth communications platform that allows the State to coordinate dose records and/or appointments for New Hampshire citizens who wish to receive this support. Additionally, the Contractor will continue to provide the use of an electronic form to collect information on all COVID-19 doses, by allowing the individual to voluntarily enter in the missing data, which the Department then enters into the New Hampshire Immunization Information System, which is the official record that provides the proof of the COVID-19 vaccination.

The Department has received 4,682 requests to date for new or replacement CDC COVID-19 vaccination cards, or approximately 40 requests per business day. These individuals may not have initially received, or have since lost or damaged a CDC COVID-19 vaccination card. Currently, requests for CDC COVID-19 vaccination cards or other vaccination records can be processed and sent to vaccine recipients via USPS or other secure means within 24-48 hours.

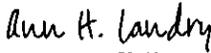
Should the Governor and Council not authorize this request, vaccine recipients will experience significant delays in obtaining replacement CDC COVID-19 vaccination cards and other documents serving as proof of vaccination.

Area served: Statewide

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

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

Respectfully submitted,

DocuSigned by:

24BAB37EDBEB488...

Lori A. Shibinette
Commissioner

**State of New Hampshire
Department of Health and Human Services
Amendment #2**

This Amendment to the OhMD Letter Agreement is by and between the State of New Hampshire, Department of Health and Human Services ("State" or "Department") and OhMD, Inc. ("the Contractor").

WHEREAS, pursuant to an agreement (the "Contract") approved by the Governor on August 19, 2021, as presented to the Executive Council as an Informational Item on April 7, 2021 (Item #C), as amended on September 15, 2021 (Item #16C), the Contractor agreed to perform certain services based upon the terms and conditions specified in the Contract as amended and in consideration of certain sums specified; and

WHEREAS, the Contract may be amended upon written agreement of the parties and approval from the Governor and Executive Council; and

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

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

1. Modify, Section 1 "Term" to read:

Client will have access to the Program for a period of February 9, 2021 through February 9, 2023, with a total price limitation of \$115,200.

DS
GT

All terms and conditions of the Contract not modified by this Amendment remain in full force and effect. This Amendment shall be retroactively effective to February 9, 2022, upon the date of Governor and Executive 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

2/2/2022

Date

DocuSigned by:
Ann H. Landry
24BAB37EDBE8488...

Name: Ann H. Landry

Title:
Associate Commissioner

OhMD, Inc.

2/2/2022

Date

DocuSigned by:
Greg Tavalacci
6F0189365C2D47E...

Name: Greg Tavalacci

Title:
Head of Sales

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

OFFICE OF THE ATTORNEY GENERAL

2/3/2022

Date

DocuSigned by:
Robyn Guarino
748734844941480...

Name: Robyn Guarino

Title:

Attorney

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:

State of New Hampshire

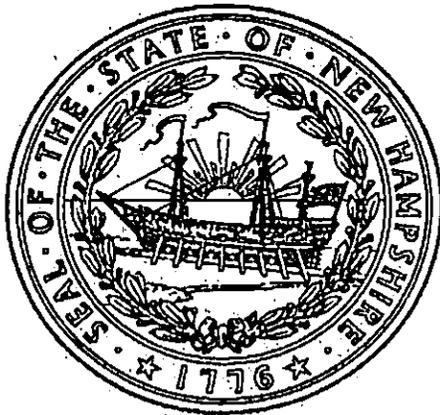
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that OHMD, INC. is a Delaware Profit Corporation registered to transact business in New Hampshire on February 11, 2021. 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: 862590

Certificate Number: 0005427866



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 27th day of August A.D. 2021.

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

William M. Gardner
Secretary of State

CERTIFICATE OF AUTHORITY

I, Ethan Bechtel, 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 OhMD, Inc.
(Corporation/LLC Name)

2. The following is a true copy of a vote taken at a meeting of the Board of Directors/shareholders, duly called and held on February 5, 2021, at which a quorum of the Directors/shareholders were present and voting.
(Date)

VOTED: That Greg Tavalacçi, Head of Sales (may list more than one person)
(Name and Title of Contract Signatory)

is duly authorized on behalf of OhMD, Inc. to enter into contracts or agreements with the State
(Name of Corporation/ LLC)

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

3. I hereby certify that said 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: February 1, 2022

Ethan Bechtel
Signature of Elected Officer
Name: Ethan Bechtel
Title: CEO

Kec mac



Lori A. Shilbette
Commissioner

Lori A. Weaver
Deputy Commissioner

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

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

August 30, 2021

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

REQUESTED ACTION

Authorize the Department of Health and Human Services, Office of the Commissioner, to enter into a **Retroactive** amendment to an existing agreement with OhMD, Inc. (VC# 349194-B001), Burlington VT for text messaging services to coordinate COVID-19 vaccination appointment scheduling, by increasing the price limitation by \$2,400 from \$54,000 to \$56,400 with no change to the contract completion date of 02/09/2022, effective retroactive to August 25, 2021 upon Governor and Council approval. 100% Federal Funds.

The original contract was approved by the Governor on August 19, 2021, as presented to the Executive Council as an Informational Item on April 7, 2021 (Item #C).

Funds are available in the following account for State Fiscal Year 2022, with the authority to adjust budget line items within the price limitation through the Budget Office, if needed and justified.

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

State Fiscal Year	Class / Account	Class Title	Job Number	Current Budget	Increased (Decreased) Amount	Revised Budget
2021	103-502664	Contracts for Oper Svc	95010690	\$22,500	\$0	\$22,500
2022	103-502664	Contracts for Oper Svc	95010690	\$31,500	\$2,400	\$33,900
			Total	\$54,000	\$2,400	\$56,400

EXPLANATION

This request is **Retroactive** because on August 25, 2021, the Department started contacting COVID-19 vaccine recipients who received their first vaccine dose to determine if they had received their second dose. This required an electronic form to be completed, which was not included in the initial scope of services.

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

The purpose of this request is to add the electronic form field into the Health Insurance Portability Accountability Act (HIPAA) compliant texting and telehealth communications platform. This platform allows the State to coordinate first and second vaccination appointments for New Hampshire citizens.

Currently, the Department has verified through the New Hampshire Immunization Information System that approximately 60,000 individuals received a first dose of the vaccine. These individuals may have received their second dose out of state, with a federal partner, or as part of the Federal Pharmacy Partnership Program, and the State needs to verify whether or not they received their second dose. The purpose of the electronic form field is to collect information on second COVID-19 doses, by allowing the individual to enter in the missing data, which the Department then enters into the New Hampshire Immunization Information System, which is the official record that provides the proof of the COVID-19 vaccination.

Should the Governor and Council not authorize this request approximately 60,000 individuals will lack their second COVID-19 vaccine dose information in the Hampshire Immunization Information System record. If the information is lacking, individuals may not be able to provide proper proof of their COVID-19 vaccination and the Department will lack full information of the number of individuals vaccinated against COVID-19.

Area served: Statewide

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

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

Respectfully submitted,

DocuSigned by:
Lori A. Weaver
4C4AB2994125473...

Lori A. Shibinette
Commissioner

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

This Amendment to the OhMD Letter Agreement is by and between the State of New Hampshire, Department of Health and Human Services ("State" or "Department") and OHMD, Inc. ("the Contractor").

WHEREAS, pursuant to an agreement (the "Contract") approved by the Governor on August 19, 2021, as presented to the Executive Council as an Informational Item on April 7, 2021 (Item #C) the Contractor agreed to perform certain services based upon the terms and conditions specified in the Contract and in consideration of certain sums specified; and

WHEREAS, the Contract may be amended upon written agreement of the parties and approval from the Governor and Executive Council; and

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

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

1. Modify Section "Fees" table 1 to add Monthly Custom Electronic Form to collect information on COVID-19 second doses for \$400.00 per month, to read:

OhMD Plan	OhMD Reach		
Monthly Subscription Per Provider	\$ 4,500		
# of Providers	1		
Monthly Custom Electronic Form	\$400		
Monthly Total	\$ 4,900		
Upfront Payment Option	\$ n/a	\$ n/a	Annual Savings

Additional Tools:

- Broadcast Messaging
- eForms (up to 50)
- Live Website Chat

- Telemedicine (Video Visits)
- Review Management (\$)
- EHR Integration
- OhMD Live (Plan)
- Custom Electronic Form

All terms and conditions of the Contract not modified by this Amendment remain in full force and effect. This Amendment shall be retroactively effective to August 25, 2021 upon the date of Governor and Executive 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

8/30/2021

Date

DocuSigned by:
Lori A. Weaver
4C4A92994125473...

Name: Lori A. weaver

Title: Deputy Commissioner

OhMD, Inc.

8/30/2021

Date

DocuSigned by:
Greg Tavoracci
8F0199365C2D47E...

Name: Greg Tavoracci

Title: Head of sales

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

OFFICE OF THE ATTORNEY GENERAL

8/30/2021

Date

DocuSigned by:

08CAB003E32CAAF

Name: Catherine Pinos

Title:

Attorney

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:

MAR15'21 PM 2:38 RCVD



Lori A. Shilbette
Commissioner

Lori A. Weaver
Deputy Commissioner

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

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

February 22, 2021

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

INFORMATIONAL ITEM

Pursuant to RSA 4:45, RSA 21-P:43, and Section 4 of Executive Order 2020-04 as extended by Executive Orders 2020-05, 2020-08, 2020-09, 2020-10, 2020-14, 2020-15, 2020-16, 2020-17, 2020-18, 2020-20, 2020-21, 2020-23, 2020-24, 2020-25, 2021-01, and 2021-02, Governor Sununu has authorized the Department of Health and Human Services, Office of the Commissioner, to enter into a **Retroactive Sole Source** agreement with OHMD, INC. (VC# TBD), Burlington VT, in the amount of \$54,000 for text messaging services to coordinate COVID-19 vaccination appointment scheduling, effective February 9, 2021, through February 9, 2022. 100% Other Funds (FEMA Public Assistance).

Funds are available in the following account 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.

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

State Fiscal Year	Class / Account	Class Title	Job Number	Total Amount
2021	103-502664	Contracts for Oper Svc	95010690	\$22,500
2022	103-502664	Contracts for Oper Svc	95010690	\$31,500
			Total	\$54,000

EXPLANATION

This Agreement is **Sole Source** because the Department, in collaboration with the Department of Safety and Department of Information Technology, determined the Contractor offered a lower price and could begin providing communication services sooner than other potential vendors that were contacted. This Agreement is **Retroactive** because the Department needed the Contractor to immediately begin providing services.

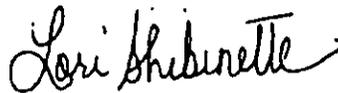
His Excellency, Governor Christopher T. Sununu
and the Honorable Council
Page 2 of 2

The purpose of this Agreement is to obtain a Health Insurance Portability Accountability Act (HIPAA) compliant texting and telehealth communications platform allowing the State to coordinate first and second vaccination appointments for New Hampshire state citizens. The Department will pay the Contractor \$4,500 each month, which provides for the delivery of up to 150,000 SMS text messages per month of up to 153 characters. Any messages sent exceeding the monthly cap will be charged at a rate of three cents per message.

Area served: Statewide

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

Respectfully submitted,



Lori A. Shibinette
Commissioner



Re: Letter Agreement ("Letter Agreement") – OhMD

Dear Deputy Commissioner Weaver:

Thank you again for taking the time to evaluate the OhMD healthcare communication platform (the "Program"). Everyone at OhMD, Inc. ("OhMD" or "we") is excited about the opportunity to work with the New Hampshire Department of Health and Human Services ("Client" or "you") and we are submitting this document for your signature to enroll your organization as a Client of the Program.

The agreement between OhMD and Client (individually, a "Party" and collectively, the "Parties") is regulated by this Letter Agreement, as supplemented by the End User License Agreement ("EULA"), the Terms of Use ("Terms"), the Business Associate Agreement ("BAA") and OhMD's Privacy Policy (all available here: <https://www.ohmd.com/agreements>) (collectively, the Letter Agreement, EULA, Terms, BAA and Privacy Policy may be referred to herein collectively as the "OhMD Agreements"). Client is responsible for obtaining consent to contact other parties through the use of the Program. Subject to the terms and conditions of this Letter Agreement, OhMD shall provide Client with access to the Program during the Term as that word is defined in the EULA. Terms capitalized herein may be defined in this Letter Agreement or in the EULA. The terms of this Letter Agreement are based upon the Parties' acceptance of all of the OhMD Agreements. To the extent there is a conflict in terms of the Letter Agreement and the other OhMD Agreements, the terms of this Letter Agreement shall control.

By signing below, the Parties acknowledge and accepts all of the terms and conditions provided in the OhMD Agreements, except as modified below:

1. **No Right to Indemnification.** Notwithstanding the type of Services OhMD agrees to provide to the Client, OhMD shall not be entitled to any indemnification, contribution or hold harmless from the Client with respect to matters occurring or arising from the Services. OhMD agrees that it shall not assert any claims to indemnification, contribution or hold harmless for such matter.
2. **Governing Law and Venue.** This Agreement between the Parties shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire. Any actions arising out of this Agreement or any other future agreements between the Parties shall be brought and maintained in a New Hampshire State court which shall have exclusive jurisdiction thereof. Notwithstanding the foregoing, nothing contained in this Agreement between the Parties shall be deemed to constitute a waiver of the sovereign immunity of the Client, which immunity is hereby reserved to the Client. This paragraph shall survive the termination of this Agreement.

3. **No Limitation of Time to File Claims.** All references to a limitation of time to file claims in the OhMD Agreements are deleted in their entirety. All claims will be subject to the applicable statute of limitations.
4. **Business Associate Agreement.** The Parties agree to use Exhibit I, Health Insurance Portability and Accountability Act Business Associate Agreement, which is attached hereto and incorporated herein. This Exhibit I supersedes the BAA referenced in this Letter Agreement above.
5. **Limitation of/on Liability.** All references to OhMD's limitation of/on liability or waivers or hold harmless clauses in the End User License Agreement and Terms of Use are deleted in their entirety.
6. **Amendments.** This Agreement and the OhMD Agreements 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.

In addition, the parties agree as follows:

Term

Client will have access to the Program for a period of one year to commence on February 9, (the Initial Term).

Services

Subject to the terms and conditions of this Letter Agreement, Client will have access to the Program to include all features included in the OhMD Reach plan outlined below.

Termination

Notwithstanding anything to the contrary, we may terminate this Letter Agreement, with cause outlined as any attempt to steal, resell, infringe upon any intellectual property and trademarks or misappropriate in anyway, immediately with written notice to the Client. In the event this Letter Agreement expires or is terminated for any reason, all outstanding fees through the effective date of such expiration or termination shall become immediately due and payable. The payment provisions of shall survive the expiration or termination of this Letter Agreement.

The Client may, at its sole discretion immediately terminate the Letter Agreement for any reason, in whole or in part, by written notice to the Contractor that the Client is exercising its option to terminate the Letter Agreement.

Fees

Client shall pay OhMD the Subscription fees outlined below for each month during the Initial Term. The Subscription fee for the first month of the Initial Term shall be due by February 26, 2021 (after which the fees set forth below are subject to change). Client is subject to overage fees of \$.03/message if exceeding the monthly messaging cap (1 message = 153 characters). We reserve the right to charge late fees of up to 1% monthly on balances outstanding beyond sixty (60) days of the payment date. Further, Client acknowledges that OhMD does not accept cash payments. Client acknowledges and agrees that Client shall pay OhMD exclusively by credit card, unless OhMD expressly agrees to waive this restriction in a duly executed amendment to this Letter Agreement. Client hereby authorizes OhMD to send invoices with respect to the Subscription fee to the Client via email to the email address set forth on the signature page herein.

OhMD Plan	OhMD Reach		
Monthly Subscription Per Provider	\$ 4,500		
# of Providers	1		
Monthly Total	\$ 4,500		
Upfront Payment Option	\$ n/a	\$ n/a	Annual Savings

Amendments:

Additional Tools:

- Broadcast Messaging
- eForms (up to 50)
- Live Website Chat
- Telemedicine (Video Visits)
- Review Management (\$)
- EHR Integration
- OhMD Live (Plan)

IN WITNESS WHEREOF, the parties have set their hands as of the date first written above.
OHMD, INC.

By: Greg Tavalacci Head of Sales
(Name, Title)

Signature: *Greg Tavalacci*
DocuSigned by:
#F0189385C2D47E...

By: Lori A. Weaver Deputy Commissioner
Lori Weaver, Deputy Commissioner

Signature: *Lori A. Weaver*
DocuSigned by:
#CAAB29841125473...

Credit Card Info:

Name on card: NH Department of Health and Human Services

Card Number: TBD

Expiration Date: TBD

Security Code: TBD

E-Mail Address: Beth.E.Kelly@dhhs.nh.gov



Addendum to Letter Agreement

The following outlines amendments to the current Letter Agreement:

1. Initial contract limit for monthly SMS is 150,000. One message constitutes 1 message segment, or 153 text characters.
2. Number of monthly messages is subject to change. Client and OhMD can adjust monthly SMS volume as needed using the same cost per message rate of \$.03.

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.

3/2014

Contractor Initials

GT

Date 2/10/2021

New Hampshire Department of Health and Human Services



Exhibit I

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

(2) Business Associate Use and Disclosure of Protected Health Information.

- a. Business Associate shall not use, disclose, maintain or transmit Protected Health Information (PHI) except as reasonably necessary to provide the services outlined under 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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Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all remedies.

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

(3) Obligations and Activities of Business Associate.

- a. The Business Associate shall notify the Covered Entity's Privacy Officer immediately after the Business Associate becomes aware of any use or disclosure of protected health information not provided for by the Agreement including breaches of unsecured protected health information and/or any security incident that may have an impact on the protected health information of the Covered Entity.

- b. The Business Associate shall immediately perform a risk assessment when it becomes aware of any of the above situations. The risk assessment shall include, but not be limited to:

- o The nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
- o The unauthorized person used the protected health information or to whom the disclosure was made;
- o Whether the protected health information was actually acquired or viewed
- o The extent to which the risk to the protected health information has been mitigated.

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

- c. The Business Associate shall comply with all sections of the Privacy, Security, and Breach Notification Rule.

- d. Business Associate shall make available all of its internal policies and procedures, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of Covered Entity to the Secretary for purposes of determining Covered Entity's compliance with HIPAA and the Privacy and Security Rule.

- e. Business Associate shall require all of its business associates that receive, use or have access to PHI under the Agreement, to agree in writing to adhere to the same restrictions and conditions on the use and disclosure of PHI contained herein, including the duty to return or destroy the PHI as provided under Section 3 (I). The Covered Entity shall be considered a direct third party beneficiary of the Contractor's business associate agreements with Contractor's intended business associates, who will be receiving PHI

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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

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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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Contractor Initials

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Date 2/10/2021

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- e. Segregation. If any term or condition of this Exhibit I or the application thereof to any person(s) or circumstance is held invalid, such invalidity shall not affect other terms or conditions which can be given effect without the invalid term or condition; to this end the terms and conditions of this Exhibit I are declared severable.
- f. Survival. Provisions in this Exhibit I regarding the use and disclosure of PHI, return or destruction of PHI, extensions of the protections of the Agreement in section (3) I, the defense and indemnification provisions of section (3) e and Paragraph 13 of the standard terms and conditions (P-37), shall survive the termination of the Agreement.

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

Department of Health and Human Services

The State of

Lori A. Weaver

Signature of Authorized Representative

Lori A. weaver

Name of Authorized Representative
Deputy Commissioner

Title of Authorized Representative

2/11/2021

Date

OhMD, Inc

Name of the Contractor

Greg Tավալacci

Signature of Authorized Representative

Greg Tավալacci

Name of Authorized Representative

Head of Sales

Title of Authorized Representative

2/10/2021

Date

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