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STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
NEW HAMPSHIRE HOSPITAL

Lori A. Shibanette
 Commissioner

Ellen M. Lapointe
 Chief Executive Officer

36 CLINTON STREET, CONCORD, NH 03301
 603-271-5300 1-800-852-3345 Ext. 5300
 Fax: 603-271-5395 TDD Access: 1-800-735-2964
 www.dhhs.nh.gov

May 6, 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, New Hampshire Hospital, to amend an existing contract with CareFusion Solutions, LLC (VC#204306), San Diego, CA to decrease the price limitation by \$141,840 from \$812,160 to \$670,320 and to extend the contract completion date from March 31, 2027 to July 31, 2027, effective upon Governor and Council approval. 34% General Funds. 66% Other Funds (Provider Fees).

The original contract was approved by Governor and Council on October 13, 2021, item #15.

Funds are available in the following account for State Fiscal Years 2022 and 2023, and are anticipated to be available in State Fiscal Years 2024, 2025, 2026, 2027, and 2028 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.

05-95-94-940010-87500000 HHS: New Hampshire Hospital, New Hampshire Hospital, Acute Psychiatric Services

State Fiscal Year	Class / Account	Class Title	Job Number	Current Budget	Increased (Decreased) Amount	Revised Budget
2022	022/500257	Rents/Lease	94057400	\$108,288	(\$108,288)	\$0
2023	022/500257	Rents/Lease	94057400	\$162,432	(\$39,540)	\$122,892
2024	022/500257	Rents/Lease	94057400	\$162,432	(\$28,368)	\$134,064
2025	022/500257	Rents/Lease	94057400	\$162,432	(\$28,368)	\$134,064
2026	022/500257	Rents/Lease	94057400	\$162,432	(\$28,368)	\$134,064
2027	022/500257	Rents/Lease	94057400	\$54,144	\$79,920	\$134,064
2028	022/500257	Rents/Lease	94057400	\$0	\$11,172	\$11,172
			Total	\$812,160	(\$141,840)	\$670,320

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

EXPLANATION

The purpose of this request is three-fold. New Hampshire Hospital seeks to reduce the overall price limitation, modify the implementation timeline, and extend the contract completion date. The price limitation is due to a volume-discount based on the number of units required; the implementation timeline has been adjusted to align with New Hampshire Hospital's needs; and the completion date has been extended an additional four (4) months, as a result of and to align with the updated timeline. Commencement of payment for the lease for all pharmaceutical dispensing machines will occur only after implementation is complete.

Approximately 850 patients at New Hampshire Hospital are served annually.

The Department will continue to receive maintenance, support, integration with the New Hampshire Hospital electronic health records system, and training on the pharmaceutical dispensing machines from the Contractor.

The Department will continue to monitor services by ensuring a 24 hour response time of identified issues.

As referenced in Exhibit A of the original agreement, the parties have the option to extend the agreement for up to four (4) additional years, contingent upon satisfactory delivery of services, available funding, agreement of the parties, and Governor and Council approval. The Department is exercising its option to renew services for four (4) months of the four (4) years available.

Should the Governor and Council not authorize this request, the price limitation will not reflect the volume-discount, potentially leading to New Hampshire Hospital paying more than necessary for the machines and timelines may not be adjusted to align with Hospital needs. Additionally, the Department will be at risk for substantial violations if patients at New Hampshire Hospital are not properly cared for based upon best practices and The Joint Commission requirements.

Area served: New Hampshire Hospital

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

Respectfully submitted,

DocuSigned by:
Ellen Marie Lapointe
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Ellen M. Lapointe, CEO
New Hampshire Hospital



STATE OF NEW HAMPSHIRE
DEPARTMENT OF INFORMATION TECHNOLOGY
27 Hazen Dr., Concord, NH 03301
Fax: 603-271-1516 TDD Access: 1-800-735-2964
www.nh.gov/doit

Denis Goulet
Commissioner

May 6, 2022

Lori A. Shibinette, Commissioner
Department of Health and Human Services
State of New Hampshire
129 Pleasant Street
Concord, NH 03301

Dear Commissioner Shibinette:

This letter represents formal notification that the Department of Information Technology (DoIT) has approved your agency's request to enter into a contract amendment with CareFusion Solutions, LLC of San Diego, CA, and as described below and referenced as DoIT No. 2022-002A.

The purpose of this contract amendment with CareFusion Solutions, LLC is to reduce the price limitation, modify the implementation timeline, and extend the contract completion date.

The price limitation will decrease by \$141,840.00, from \$812,160.00 to \$670,320.00, and extend the expiration date to July 31, 2027, effective upon Governor and Executive Council approval.

A copy of this letter should accompany the Department of Health and Human Services' submission to the Governor and Executive Council for approval.

Sincerely,

Denis Goulet

DG/RA
DoIT #2022-002A

cc: Michael Williams, IT Manager, DoIT



STATE OF NEW HAMPSHIRE

Department of Health and Human Services

New Hampshire Hospital

Pharmaceutical Dispensing Machines

SS-2022-NHH-02-PHARM-01-A01

AMENDMENT #1

INFORMATION TECHNOLOGY

**New Hampshire Department of Health and Human Services
Pharmaceutical Dispensing Machines
New Hampshire Hospital - SS-2022-NHH-02-PHARM-01
AMENDMENT #1**

INTRODUCTION

WHEREAS, pursuant to an Agreement approved by Governor and Council on October 13, 2021, Item #15, (hereinafter referred to as the "Agreement"), CareFusion Solutions, LLC (hereinafter referred to as "Contractor") agreed to supply certain goods and services upon the terms and conditions specified in the Agreement and in consideration of payment by the Department of Health and Human Services, New Hampshire Hospital (hereinafter referred to as the "Department"), certain sums as specified therein;

WHEREAS, pursuant to the Agreement Section 17: Amendment and the provisions of the Agreement, the Agreement may be modified or amended only by a written instrument executed by the parties thereto and approved by the Governor and Executive Council;

WHEREAS, the Contractor and the Department have agreed to amend the Agreement in certain respects;

WHEREAS, the Department and the Contractor agree to extend the Contract end date by four (4) months from March 31, 2027 to July 31, 2027.

WHEREAS, the Department and the Contractor agree to decrease the Contract price by \$141,840 to bring the total contract price to \$670,320;

WHEREAS, the Department and the Vendor seek to clarify the Agreement.

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

The Agreement is hereby amended as follows:

1. Amend Section 1.7 of the State of New Hampshire P-37 General Provisions by extending the Completion Date by four (4) months from 3/31/27 to 7/31/27
2. Amend Section 1.8 of the State of New Hampshire P-37 General Provisions by decreasing the Price Limitation by \$141,840 from \$812,160 to \$670,320
3. Amend Exhibit B, Statement of Work, Exhibit C, Price and Payment Schedule, and Exhibit G, Agency Attachment and Contractor Certificates as described in Table 1 below:

State of NH Contract
Date: 9/1/2022
Contractor's Initials JS
Page

**New Hampshire Department of Health and Human Services
Pharmaceutical Dispensing Machines
New Hampshire Hospital - SS-2022-NHH-02-PHARM-01
AMENDMENT #1**

TABLE 1: AMENDMENT DETAILS	
<p>Exhibit A</p> <p>SPECIAL PROVISIONS</p>	
<p>Section Number 26</p> <p>EXHIBITS/ATTACHMENTS</p>	<p>Modify section 26. EXHIBITS/ATTACHMENTS, by:</p> <p>Replacing b., Exhibit B-2 Implementation Timeline, with b., Exhibit B-2, Amendment 1, Implementation Timeline, which is attached hereto and incorporated herein.</p> <p>Adding e., Exhibit B-3, Amendment 1, Amendment to Agreements, which is attached hereto and incorporated herein.</p>
<p>Exhibit B</p> <p>STATEMENT OF WORK (SOW)</p> <p>BUSINESS AND TECHNICAL REQUIREMENTS AND DELIVERABLES</p>	<p>AMENDED TEXT</p>
<p>Section Number 1</p> <p>STATEMENT OF WORK</p>	<p>Modify to Section 1. Statement of Work, Subsection The Contractor Shall, to read:</p> <p>1. STATEMENT OF WORK</p> <p>The Contractor shall provide the Department with the BD Pyxis™ system products set forth in the Customer Orders attached hereto as Exhibit B-1 (each, a "Customer Order"), which consists of automated medication dispensing machines which integrate with the current New Hampshire Hospital Electronic Medical Records. Each Customer Order sets forth the hardware ("Equipment"), software licenses, and accessories that together constitute the BD Pyxis™ products (collectively, the "Products") and/or related services ("Services") being provided by Contractor to the State pursuant to this Agreement. Additional Customer Orders for Products and Services may be added to this Agreement by way of a mutually agreed upon written amendment executed by the Parties. The BD</p>

**New Hampshire Department of Health and Human Services
 Pharmaceutical Dispensing Machines
 New Hampshire Hospital - SS-2022-NHH-02-PHARM-01
 AMENDMENT #1**

	<p>Pyxis™ system products set forth in the Customer Orders under Exhibit B-1 are as follows:</p> <ul style="list-style-type: none"> • <i>BD Pyxis™ MedStation™ ES</i> • <i>BD Pyxis™ CIISafe™ v9</i> • <i>BD Knowledge Portal for Medication Technologies</i> <p>The Contractor Shall:</p> <ul style="list-style-type: none"> • Deliver the Product(s) under the Customer Orders attached as Exhibit B-1 per the Implementation Timelines attached hereto as Exhibit B-2, Amendment 1, Implementation Timeline and Exhibit B-3, Amendment 1, Amendment to Agreements. • Install, configure and verify functionality of the Products under the Customer Orders in accordance with the applicable User Guide. • Deliver, install, configure, integrate, and verify functionality of BD Pyxis ES server system per the Implementation Timeline. The Contractor shall ensure the following, including but not limited to: <ul style="list-style-type: none"> ○ Functionality of contractor's side of the interface between BD Pyxis ES medication devices under the Customer Orders and the State's Netsmart EHR/Pharmacy system. ○ Recognition/authentication of assigned system users in all roles; ○ Accuracy, precision, timing, and validation of specific medication dispensing events (in comparison to Hospital eMAR; ○ Availability of pertinent data equivalent to current reporting standards; and ○ Operation of all new system functionality (inventory management, etc.) • Provide functionality of web portal capabilities. • Deploy individual Pyxis ES medication dispensing devices. • Decommision Pyxis 4000 medication dispensing devices and prepare for return shipping to BD upon completion. 		
<p>Section Number 3</p> <p>ACTIVITY, DELIVERABLE, AND MILESTONE</p>	<p>Modify Section 3, ACTIVITY, DELIVERABLE, AND MILESTONE by revising the TOTAL COST as follows:</p> <table border="1" style="width: 100%;"> <tr> <td style="text-align: right;">TOTAL COST</td> <td style="text-align: right;">\$670,320</td> </tr> </table>	TOTAL COST	\$670,320
TOTAL COST	\$670,320		

**New Hampshire Department of Health and Human Services
 Pharmaceutical Dispensing Machines
 New Hampshire Hospital - SS-2022-NHH-02-PHARM-01
 AMENDMENT #1**

Exhibit G	AMENDED TEXT
AGENCY ATTACHMENTS AND CONTRACTOR CERTIFICATES	
Section 1	Add Exhibit B-2, Amendment 1, Implementation Timeline
AGENCY ATTACHMENTS	Add Exhibit B-3, Amendment 1, Amendment to Agreements

TABLE 2: CONTRACT HISTORY				
CONTRACT AND AMENDMENT NUMBER	AMENDMENT TYPE	G&C APPROVAL DATE	END DATE	CONTRACT AMOUNT
SS-2022-NHH-02-PHARM-01	Original Contract	10/13/21, Item #15	03/31/27	\$812,160
SS-2022-NHH-02-PHARM-01-A01	1 st Amendment	TBD	07/31/27	\$(141,840)
CONTRACT TOTAL				\$670,320

State of NH Contract
 Date: 9/1/2022
 Contractor's Initials JS
 Page

New Hampshire Department of Health and Human Services
Pharmaceutical Dispensing Machines
New Hampshire Hospital - SS-2022-NHH-02-PHARM-01
AMENDMENT #1

CONTRACTOR

Except as provided herein, all provisions of the Agreement not modified by this Amendment shall remain in full force and effect. This Amendment shall take effect upon the approval date from the Governor and the Executive Council.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first above written.

Robert Schwalger Date: 9/1/2022

Robert Schwalger

CareFusion Solutions, LLC

STATE OF NEW HAMPSHIRE

Ellen Marie Lapointe Date: 9/1/2022

Ellen M. Lapointe

State of New Hampshire

Chief Executive Officer

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

Approved by the Attorney General

Robyn Quirino Date: 9/2/2022

State of New Hampshire, Department of Justice

**New Hampshire Department of Health and Human Services
Pharmaceutical Dispensing Machines
New Hampshire Hospital - SS-2022-NHH-02-PHARM-01
AMENDMENT #1**

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: _____

State of New Hampshire, Department of Administration

State of NH Contract

Date: 9/1/2022

Contractor's Initials JS

Page



AMENDMENT TO AGREEMENTS

Dated: June 21, 2022

Mailing Address:

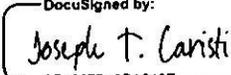
CareFusion Solutions, LLC
 3750 Torrey View Court
 San Diego, CA 92130
 Attn: Contracts Department

Provided that the customer identified below ("Customer") signs this Amendment on or before 07/21/2022, then effective as of the date of both signatures below ("Effective Date"), this Amendment modifies the Customer Orders (or Rental, Purchase or Support Agreements) listed below (each, an "Agreement" and, collectively, the "Agreements") between CareFusion Solutions, LLC ("CareFusion") and Customer as follows.

1. **Delayed Term Begin Date.** If Products under the Agreements have not been installed and Accepted by Customer as of the Effective Date hereunder ("Delayed Products"), then the Implementation Timeline applicable to the Delayed Products is hereby modified to change the Term Begin Date from the "Original Term Begin Date" to the "Delayed Term Begin Date" stated below in relation to the Delayed Products only.

Agreement Number	Amendment Number	Original Term Begin Date	Delayed Term Begin Date
1000198888		08/01/2022	09/01/2022

2. **Controlling Terms.** If the Delayed Products will be upgraded or subject to new terms and conditions under the Agreements, then, unless otherwise agreed upon by the Parties in writing, (i) the terms and conditions applicable to the Delayed Products, including payment terms ("Current Agreements"), will remain in full force and effect until the Delayed Term Begin Date, and (ii) effective as of the Delayed Term Begin Date, the terms and conditions of the Agreements will supersede the terms and conditions of the Current Agreements as applicable to the Delayed Products only.

EACH PERSON SIGNING THIS AMENDMENT REPRESENTS THAT HE/SHE INTENDS TO AND HAS THE AUTHORITY TO BIND HIS/HER RESPECTIVE PARTY TO THIS AMENDMENT.			
NEW HAMPSHIRE HOSPITAL #10118667		# 10032118	CAREFUSION SOLUTIONS, LLC
		3750 Torrey View Court San Diego, CA 92130	
		Attn: Contracts Department	
Signature		Signature	_____
Print Name	Joseph T. Caristi	Print Name	_____
Title	Chief Financial Officer, NH Hospital	Title	_____
Date	7/25/2022	Date	_____

State of New Hampshire

Department of State

CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that CAREFUSION SOLUTIONS, LLC is a Delaware Limited Liability Company registered to transact business in New Hampshire on February 08, 2017. 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: 764768

Certificate Number: 0005834929



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 25th day of July A.D. 2022.

A handwritten signature in black ink, appearing to read "David M. Scanlan".

David M. Scanlan
Secretary of State

CERTIFICATE OF AUTHORITY

I, Gary DeFazio, 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 CareFusion Solutions, LLC.
(Corporation/LLC Name)

2. The following is a true copy of the resolution of the sole member of CareFusion Solutions, LLC adopted by written consent in lieu of a meeting, duly signed on June 1, 2021.
(Date)

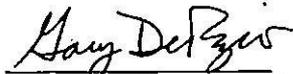
VOTED: That Robert Schwalger, Sr. Manager MMS Capital Contracting (Dispensing) (Name and Title of Contract Signatory)

is duly authorized on behalf of CareFusion Solutions, LLC 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: August 24, 2022



Signature of Elected Officer

Name: Gary DeFazio

Title: Vice President and Secretary

MEMORANDUM OF INSURANCE	DATE 22-Aug-2022
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This Memorandum is issued as a matter of information only to authorized viewers for their internal use only and confers no rights upon any viewer of this Memorandum. This Memorandum does not amend, extend or alter the coverage described below. This Memorandum may only be copied, printed and distributed within an authorized viewer and may only be used and viewed by an authorized viewer for its internal use. Any other use, duplication or distribution of this Memorandum without the consent of Marsh is prohibited. "Authorized viewer" shall mean an entity or person which is authorized by the insured named herein to access this Memorandum via <https://marshdigital.marsh.com/marshconnect/viewMOI.action?clientId=null>. The information contained herein is as of the date referred to above. Marsh shall be under no obligation to update such information.

PRODUCER Marsh USA Inc. ("Marsh")	COMPANIES AFFORDING COVERAGE	
	Co. A ACE AMERICAN INSURANCE COMPANY	
INSURED Becton, Dickinson and Company Including All Subsidiaries and Divisions One Becton Drive, Franklin Lakes New Jersey 07417 United States	Co. B Beazley AFB 2623/623	
	Co. C ACE Property and Casualty Insurance Company	
	Co. D ACE Fire Underwriters Ins. Co	
	Co. E	
	Co. F	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS MEMORANDUM MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	LIMITS IN USD UNLESS OTHERWISE INDICATED	
A	GENERAL LIABILITY Commercial General Liability Occurrence	HDO G72484770	01-Apr-2022	01-Apr-2023	GENERAL AGGREGATE	25,000,000
					PRODUCTS - COMP/OP AGG	Included in the General Aggregate Limit
					PERSONAL AND ADV INJURY	10,000,000
					EACH OCCURRENCE	10,000,000
					FIRE DAMAGE (ANY ONE FIRE)	500,000
					MED EXP (ANY ONE PERSON)	5,000
A	AUTOMOBILE LIABILITY Any Auto	ISA H25560280	01-Apr-2022	01-Apr-2023	COMBINED SINGLE LIMIT	3,000,000
					BODILY INJURY (PER PERSON)	
					BODILY INJURY (PER ACCIDENT)	
					PROPERTY DAMAGE	
C	EXCESS LIABILITY	XSL G72484812	01-Apr-2022	01-Apr-2023	EACH OCCURENCE	5,000,000
					AGGREGATE	10,000,000
A D	WORKERS COMPENSATION / EMPLOYERS LIABILITY	WLR C68918601 (CA & MA)	01-Apr-2022	01-Apr-2023	WORKERS COMP LIMITS	Statutory
					SCF C68918649 (WI Only)	01-Apr-2022
		EL DISEASE - POLICY LIMIT	2,000,000			
		EL DISEASE - EACH EMPLOYEE	2,000,000			
B	Professional Liability & Cyber Liability	B0509FINPB2250046	01-Apr-2022	01-Apr-2023	Each Claim/Aggregate	\$15,000,000 \$2,500,000 SIR

The Memorandum of Insurance serves solely to list insurance policies, limits and dates of coverage. Any modifications here to are not authorized.

MEMORANDUM OF INSURANCE		DATE 22-Aug-2022
<p>This Memorandum is issued as a matter of information only to authorized viewers for their internal use only and confers no rights upon any viewer of this Memorandum. This Memorandum does not amend, extend or alter the coverage described below. This Memorandum may only be copied, printed and distributed within an authorized viewer and may only be used and viewed by an authorized viewer for its internal use. Any other use, duplication or distribution of this Memorandum without the consent of Marsh is prohibited. "Authorized viewer" shall mean an entity or person which is authorized by the insured named herein to access this Memorandum via https://marshdigital.marsh.com/marshconnect/viewMOI.action?clientId=null. The information contained herein is as of the date referred to above. Marsh shall be under no obligation to update such information.</p>		
PRODUCER Marsh USA Inc. ("Marsh")	INSURED Becton, Dickinson and Company Including All Subsidiaries and Divisions One Becton Drive, Franklin Lakes New Jersey 07417 United States	
ADDITIONAL INFORMATION AS RESPECTS GENERAL LIABILITY COVERAGE, INCLUDING PRODUCTS LIABILITY: ADDITIONAL INSURED WORDING: ADDITIONAL INSURED STATUS IS GRANTED TO A PARTY GRANTED ACCESS TO THIS MEMORANDUM , BUT ONLY TO THE EXTENT THAT SUCH A STATUS HAS BEEN AGREED TO, AND IS EVIDENCED IN A WRITTEN AGREEMENT FOR SERVICE OR PRODUCTS, BETWEEN SUCH PARTY AND THE INSURED NAMED HEREIN OR ANY SUBSIDIARY THEREOF. BROAD FORM VENDORS COVERAGE. WAIVER OF SUBROGATION INCLUDED WHERE REQUIRED BY WRITTEN CONTRACT.		
INSURED ENTITIES: Bard Access Systems, Inc. Bard Medical Division Bard Peripheral Vascular, Inc. BD Biosciences, Systems and Reagents, Inc. BD Diagnostics BD Life Sciences BD Medical BD Preanalytical Systems Becton Dickinson & Company CareFusion 213 LLC CareFusion 2200, Inc. CareFusion 2201, Inc. CareFusion 302, LLC CareFusion 303, Inc. CareFusion Corporation CareFusion Manufacturing, LLC CareFusion Resources, LLC CareFusion Solutions, LLC Cellular Research, Inc. CME America, LLC CR Bard Davol Division CR Bard, Inc. Daval Inc. Dymax Corporation Enturican, Inc. FlowJo LLC		

Liberator Medical Supply, Inc.
Purewick Corporation
Rochester Medical Corporation
Sirigen, Inc.
Surgical Site Solutions, Inc.
Tri-County Medical & Ostomy Supplies, Inc.
TriPath Imaging, Inc.
Neomend, Inc.
GSL Solutions, Inc.
NAT Diagnostics, Inc.
Tepha, Inc.
ZebraSci, Inc
Velano Vascular, Inc.
Venclöse, Inc.

AS RESPECTS BUSINESS AUTOMOBILE COVERAGE:
AUTO COMPREHENSIVE AND COLLISION COVERAGE IS SELF-INSURED BY INSURED FOR
VEHICLES.

EXCESS POLICY EVIDENCED SITS EXCESS OF GENERAL LIABILITY/PRODUCTS ONLY

AS RESPECTS WORKERS' COMPENSATION COVERAGE, PLEASE NOTE ADDITIONAL POLICY:

POLICY NUMBER: WLR C6891856A (AOS)
INSURER: INDEMNITY INSURANCE COMPANY OF NORTH AMERICA
POLICY TERM: 04/01/2022 TO 04/01/2023

AS RESPECTS TO PROFESSIONAL LIABILITY & CYBER LIABILITY COVERAGE, THE FOLLOWING IS
INCLUDED AS PART OF THE OVERALL LIMIT OF LIABILITY:

- PRIVACY NOTIFICATION COSTS
- REGULATORY DEFENSE AND PENALTIES

The Memorandum of Insurance serves solely to list insurance policies, limits and dates of coverage. Any
modifications hereto are not authorized.

15
MAC
SEP16'21 PM 3:49 RCVDLori A. Shabinette
CommissionerHeather M. Moquin
Chief Executive Officer

STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
NEW HAMPSHIRE HOSPITAL

36 CLINTON STREET, CONCORD, NH 03301
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September 9, 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, New Hampshire Hospital, to enter into a **Sole Source** contract with CareFusion Solutions, LLC (VC#204306), San Diego, CA, in the amount of \$812,160 for pharmaceutical dispensing machines for New Hampshire Hospital, with the option to renew for up to four (4) additional years, effective upon Governor and Council approval through March 31, 2027. 34% General Funds. 66% Other Funds (Provider Fees).

Funds are available in the following account for State Fiscal Years 2022 and 2023, and are anticipated to be available in State Fiscal Years 2024, 2025, 2026 and 2027, 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.

05-95-94-940010-8750 HHS: New Hampshire Hospital, New Hampshire Hospital, Acute Psychiatric Services

State Fiscal Year	Class / Account	Class Title	Job Number	Total Amount
2022	022-500257	Technology - Software	94057400	\$108,288
2023	022-500257	Technology - Software	94057400	\$162,432
2024	022-500257	Technology - Software	94057400	\$162,432
2025	022-500257	Technology - Software	94057400	\$162,432
2026	022-500257	Technology - Software	94057400	\$162,432
2027	022-500257	Technology - Software	94057400	\$54,144
			Total	\$812,160

EXPLANATION

This request is **Sole Source** because the Contractor's pharmaceutical dispensing machines are configured with the Department's electronic health records system. Prior to this request, the pharmaceutical dispensing machines were provided by New Hampshire Hospital's electronic health records company. However, the electronic health records system vendor no longer has the ability to re-sell CareFusion equipment. The Department requires a

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

pharmaceutical dispensing system that can explicitly work with the current electronic health records system.

The purpose of this request is for New Hampshire Hospital to rent ten (10) pharmaceutical dispensing machines and all equipment necessary for med-station operation and medication dispensing.

Approximately 850 patients per year at New Hampshire Hospital will be served annually.

The Department will receive maintenance; support; integration with the New Hampshire Hospital electronic health records system; and training on the pharmaceutical dispensing machines from the Contractor. Training will be provided online to accommodate the hospital's 24/365 schedule for New Hampshire Hospital staff.

The pharmaceutical dispensing machines are configured to meet New Hampshire Hospital and Joint Commission requirements. The process involves a prescriber ordering medication within New Hampshire Hospital's electronic health record system. The pharmaceutical dispensing machines are located in the medication rooms on each unit of the hospital. When a prescriber places an order, the order goes to the pharmacy program, which sends the needed medication information to the pharmaceutical dispensing machines. Medications are removed from the machine and a nurse documents the administration of the medication to the patient in the electronic medication administration record. This established approach provides a secure, reliable and fully integrated solution that supports continued Joint Commission accreditation and ensures the quality of patient care and coordination.

The Department will monitor services by ensuring a twenty-four (24) hour response time of identified issues.

As referenced in Exhibit A of the attached agreement, the parties have the option to extend the agreement for up four (4) additional years, contingent upon satisfactory delivery of services, available funding, agreement of the parties and Governor and Council approval.

Should the Governor and Council not authorize this request New Hampshire Hospital will not have pharmaceutical dispensing machines, which could lead to patients at New Hampshire Hospital either not receiving medication or experiencing significant delays in medication dispensing. Additionally, the Department will be at risk for substantial violations if patients at New Hampshire Hospital are not properly care for based upon best practices and The Joint Commission requirements. Lastly, a change to the pharmaceutical dispensing systems would be cost prohibitive to the Department.

Area served: Patients of New Hampshire Hospital

Source of Federal Funds: General Funds and Other Funds

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

Respectfully submitted,

DocuSigned by:
Heather M. Moquin
46AF9C9C73894D2..

Heather Moquin

CEO New Hampshire Hospital



STATE OF NEW HAMPSHIRE
DEPARTMENT OF INFORMATION TECHNOLOGY
27 Hazen Dr., Concord, NH 03301
Fax: 603-271-1516 TDD Access: 1-800-735-2964
www.nh.gov/doit

Denis Goulet
Commissioner

September 10, 2021

Lori A. Shabinette, Commissioner
Department of Health and Human Services
State of New Hampshire
129 Pleasant Street
Concord, NH 03301

Dear Commissioner Shabinette:

This letter represents formal notification that the Department of Information Technology (DoIT) has approved your agency's request to enter into a contract with CareFusion Solutions, LLC of San Diego, CA, and as described below and referenced as DoIT No. 2022-002.

The purpose of this contract with CareFusion Solutions, LLC is for New Hampshire Hospital to rent ten (10) pharmaceutical dispensing machines and all equipment necessary for med-station operation and medication dispensing. In addition, the Department will receive maintenance, support, integration with the New Hampshire Hospital electronic health records system, and training on the machines from the Contractor.

The amount of the contract is not to exceed \$812,160 and shall become effective upon the date of Governor and Executive Council approval through March 31, 2027

A copy of this letter should accompany the Department of Health and Human Services' submission to the Governor and Executive Council for approval.

Sincerely,

Denis Goulet

DG/ik
DoIT #2022-002

cc: Michael Williams, IT Manager, DoIT



STATE OF NEW HAMPSHIRE

Pharmaceutical Dispensing Machines
Department of Health and Human Services
New Hampshire Hospital
SS-2022-NHH-02-PHARM-01

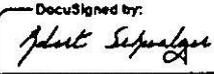
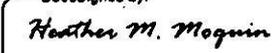
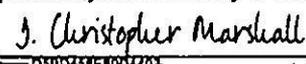
STATE OF NEW HAMPSHIRE
Department of Health and Human Services
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STATE OF NEW HAMPSHIRE GENERAL PROVISIONS - P37

FORM NUMBER P-37 (version 12/11/2019)

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 CareFusion Solutions, LLC.		1.4 Contractor Address 3750 Torrey View Court San Diego, CA 92130	
1.5 Contractor Phone Number 858-617-2000	1.6 Account Number 05-95-94-940010-8750	1.7 Completion Date 3/31/2027	1.8 Price Limitation \$812,160
1.9 Contracting Officer for State Agency Nathan White		1.10 State Agency Telephone Number 603-271-9631	
1.11 Contractor Signature DocuSigned by:  Date: 9/15/2021		1.12 Name and Title of Contractor Signatory Robert Schwalger Sr. Manager, Capital C	
1.13 State Agency Signature DocuSigned by:  Date: 9/16/2021		1.14 Name and Title of State Agency Signatory Heather M. Moquin Chief Executive Office	
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: 9/16/2021			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: _____			

D3


STATE OF NEW HAMPSHIRE
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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

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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 Department of Health and Human Services (DHHS) 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

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.

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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

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, out of (or which may be claimed to arise out of) the acts or omission of the 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

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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.



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EXHIBIT A – SPECIAL PROVISIONS

EXHIBIT A - SPECIAL PROVISIONS

The terms outlined in the P-37 General Provisions are modified as set forth below:

A.1 Provision 3, Effective Date/Completion of Services, is modified as follows:

- 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, unless otherwise amended and agreed upon by both parties.
- 3.3 Upon mutual agreement of the parties, the Term may be extended up to Four (4) years(s), ("Extended Term"), subject to the parties prior written Agreement on applicable fees for each extended Term, up to but not beyond March 31, 2031, under the same terms and conditions, subject to approval of the Governor and Executive Council.

A.2 Provision 4, Conditional Nature of Agreement, is modified as follows:

- 4 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, and the Products shall be returned to the Contractor pursuant to the terms of this Agreement. 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.

A.3 Provision 5, Contract Price/Price Limitation/ Payment, is updated with the following addition:

- 5.5 The State's liability under this Agreement shall be limited to monetary damages not to exceed the contract *Price Limitation* pursuant to Paragraph 5.2 of the General Provisions. The Contractor agrees that it has an adequate remedy at law for any breach of this Agreement by the State and hereby waives any right to specific performance or other equitable remedies against the State. 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 paragraph shall survive termination of this Agreement.

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EXHIBIT A – SPECIAL PROVISIONS

- 5.6 Except for Contractor's liability for any data security breaches caused by the Contractor, as referenced in Exhibit K, DHHS Information Security Requirements (Section IV, Procedures for Security, Paragraph 11), and for Contractor's indemnification obligations set forth in Paragraph 13 of the General Provisions, notwithstanding anything to the contrary, in no event shall the Contractor be liable to the State, whether a claim be in tort, contract or otherwise, for any amount in excess of the contract *Price Limitation* pursuant to Paragraph 5.2 of the General Provisions. This paragraph shall survive termination of this Agreement.
- 5.7 In no event shall the State or the Contractor be liable for any consequential, special, indirect, incidental, punitive, or exemplary loss, damage, or expense relating to this Agreement (including, without limitation, loss of profit, data, revenue, goodwill, or similar damages) even if advised of the possibility of such damages. This paragraph shall survive termination of this Agreement.
- A.4 **Modify Provision 7, Personnel, is updated with the following addition:**
- 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 knowingly directly solicit for employment 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 the 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.
- A.5 **Modify Provision 8, Event of Default/Remedies, is updated with the following addition:**
- 8.1.1 Failure to provide Products (as such term is defined in Exhibit B) that function in accordance with the specifications of the applicable User Guide or perform the Services on schedule and in accordance with the material terms of this Agreement.
- 8.2.2 Upon written notice to the Contractor specifying the Event of Default, the Contractor will suspend the Rental Term and Support Term, and the State's obligation to pay the applicable Monthly Rental and Support Fees, for the applicable Product, beginning the month in which Customer provided notice of the Event of Default ("Suspension Month") and continuing until such time as the State determines that the Contractor has cured the Event of Default.
- 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/
- A.6 **Provision 9, Termination, is deleted and replaced with the following:**

9. TERMINATION

- 9.1 Notwithstanding Paragraph 8, and subject to Exhibit B, Section 8.2 (*Footprint Modification Option*), the State may, at its sole discretion, and with written notice,

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Contractor Initials: 

Date: 9/15/2021

STATE OF NEW HAMPSHIRE
Department of Health and Human Services
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EXHIBIT A – SPECIAL PROVISIONS

terminate the Agreement for any reason. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. The State shall be liable for the cost of all Services, Products, and Deliverables for which Acceptance has been given by the State, provided through the date of termination but will not be liable for any costs for incomplete Services or winding down the Contract activities. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

9.2 Termination Procedure

9.2.1 Upon termination of the Contract, the State, in addition to any other rights provided in the Contract, may require Contractor to deliver to the State any property to which the State has rights, including without limitation, Software and Written Deliverables, for such part of the Contract as has been terminated. For clarification, the State has no right to title to any Products being leased under this Agreement.

9.2.2 After receipt of a notice of termination, and except as otherwise directed by the State or otherwise set forth in this Agreement, Contractor shall:

- a. Stop work under the Contract on the date, and to the extent specified, in the notice;
- b. Promptly, and within a commercially reasonable amount of time as mutually agreed upon by the parties, terminate its orders and subcontracts related to the work which has been terminated, and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the State to the extent required, which approval or ratification shall be final for the purpose of this Section;
- c. Take such action as the State directs, or as necessary to preserve and protect the property related to the Agreement which is in the possession of Contractor and in which the State has an interest;
- d. Take no action to intentionally erase or destroy any State Data, which includes State Data held by the Contractor's subcontractors; and
- e. Provide written Certification to the State that Contractor has surrendered to the State all said property. 9.2.3 and in accordance with Exhibit K.

9.2.4 This covenant in paragraph 9 shall survive the termination of this Contract.

A.7 Provision 10, Data/Access/Confidentiality/Preservation, is updated with the following addition:

10.4 In performing its obligations under this Agreement, Contractor may gain access to Confidential Information of the State. Confidential Information is defined in the Department of Health and Human Services' Information Security Requirements Exhibit. Subject to applicable federal or State laws and regulations, Confidential Information shall not include information which:

- a. shall have otherwise become publicly available other than as a result of disclosure by the receiving Party in breach hereof;

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EXHIBIT A – SPECIAL PROVISIONS

- b. was disclosed to the receiving Party on a non-confidential basis from a source other than the disclosing Party, which the receiving Party believes is not prohibited from disclosing such information as a result of an obligation in favor of the disclosing Party; or
- c. is disclosed with the written consent of the disclosing Party's Privacy Officer or designee

10.7 Contractor Confidential Information. Contractor shall clearly identify in writing all information it claims to be confidential or proprietary upon providing such information to the State. For the purposes of complying with its legal obligations, the State is under no obligation to accept the Contractor's designation of material as confidential. Contractor acknowledges that the State is subject to State and federal laws governing disclosure of information including, but not limited to, RSA Chapter 91-A. In the event the State receives a request for the information identified by Contractor as confidential or proprietary, the State shall notify Contractor and specify the date the State will be releasing the requested information. At the request of the State, Contractor shall cooperate and assist the State with the collection and review of Contractor's information, at no additional expense to the State. Any effort to prohibit or enjoin the release of the information shall be Contractor's sole responsibility and at Contractor's sole expense. If Contractor fails to obtain a court order enjoining the disclosure, the State shall release the information on the date specified in the State's notice to Contractor, without any liability to the State.

10.8 This covenant in paragraph 10 shall survive the termination of this Contract.

A.8 Modify Provision 12, Assignment/Delegation/Subcontracts, with the following:

12.1 Neither Party shall 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 other Party, which shall not unreasonably withheld; provided, however, that a Party may with notice in accordance with this section assign, otherwise transfer its interests in this Agreement in the event of a Change of Control. "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."

12.3 In the event that the Contractor should change ownership for any reason whatsoever that results in a Change of Control of the Contractor, the State shall have the option of:

12.3.1 Continuing under the Agreement with the Contractor, its successors or assigns for the full remaining Term of the Agreement or for such period of time as determined necessary by the State;

12.3.2 Immediately terminate the Agreement, subject to Section 9 (*Termination*), above.

A.9 Modify Provision 13, Indemnification, is updated with the following addition:

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EXHIBIT A – SPECIAL PROVISIONS

13 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, to the extent arising out of (or which may be claimed to arise out of) the acts or omission of the 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.

A.10 Modify Provisions 14, Insurance, with the following:

- 14.1** The Contractor shall, at its sole expense, obtain and continuously maintain in force, the following insurance:
- 14.1.1 commercial general liability insurance against 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 authorized 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 memorandum of insurance for all insurance required under this Agreement. The Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, memorandum 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 memorandum of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Notwithstanding the foregoing, the Parties understand and agree that the Contractor may self-insure for all or part of the insurance required hereunder.

A.11 Modify 15, Provision Workers Compensation, Subsection 15.2, , with the following:

- 15.2** To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, the Contractor shall 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 the Contractor, or any subcontractor or employee of the Contractor, which might arise under applicable

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State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

A.12 The following Provisions are added and made part of the P37:

25. FORCE MAJEURE

- 25.1** Neither the Contractor nor the State shall be responsible for delays or failures in performance resulting from events beyond the control of such Party and without fault or negligence of such Party. Such events shall include, but not be limited to, acts of God, strikes, lock outs, riots, and acts of War, epidemics, acts of Government, fire, power failures, nuclear accidents, earthquakes, and unusually severe weather.
- 25.2** Except in the event of the foregoing, Force Majeure events shall not include the Contractor's inability to hire or provide personnel needed for the Contractor's performance under the Contract.

26. EXHIBITS/ATTACHMENTS

The Exhibits and Attachments referred to in and attached to the Contract are incorporated by reference as if fully included in the text of the Contract.

- a. Exhibit B -1 Customer Orders
- b. Exhibit B-2 Implementation Timeline
- c. Exhibit B Business and Technical Requirements Spreadsheet – Attachment 1
- d. Agency Compliance Documents – Attachment 2

27. ORDER OF PRECEDENCE

In the event of conflict or ambiguity among any of the text within this agreement, the following Order of Precedence shall govern:

- State of New Hampshire, SS-2022-NHH-02-PHARM-01 Contract Agreement.
- Agency Compliance Documents – Attachment 2
- Exhibit B: Business and Technical Requirements Spreadsheet – Attachment 1
- Exhibit B -1 Customer Orders
- Exhibit B-2: Implementation Timeline

28. NON-EXCLUSIVE CONTRACT

The State reserves the right, at its discretion, to retain other vendors to provide any of the Services or Deliverables identified under this Agreement. The Contractor shall make best efforts to coordinate work with all other State vendors performing Services which relate to the work or Deliverables set forth in the Agreement. The State intends to use, whenever possible, existing Software and hardware contracts to acquire supporting Software and hardware.

29. GOVERNMENT APPROVALS

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The Contractor shall obtain all necessary and applicable regulatory or other governmental approvals necessary to perform its obligations under the Contract.

30. PROPER REPORTING OF DISCOUNTS AND PRICING

The prices under this Agreement may reflect "discounts or other reduction in price" as that term is used in the "safe harbor" regulations in the Medicare/Medicaid Anti-Kickback Statute, 42 C.F.R. § 1001.952(h). The Parties hereto shall: (i) comply with all applicable laws and regulations relating to the accounting, application, and proper reporting of discounts and pricing under this Agreement, including but not limited to the requirements of the discount "safe harbor" located at 42 C.F.R. § 1001.952(h); (ii) properly report and appropriately reflect all prices paid under the Agreement net of all discounts as required by applicable laws and regulations, including but not limited to on Medicare, Medicaid and state agency cost reports; and (iii) retain a copy of the Agreement and all other documentation regarding the Agreement, together with the invoices for purchase of Products thereunder and shall permit representatives of the U.S. Department of Health & Human Services or any relevant state agency access to such records upon request.

31. EXCLUSION

As of the Effective Date, Contractor is not excluded from participation from any federally funded health care program (including, without limitation, Medicare and Medicaid) (each, a "Program"). If Contractor becomes excluded from any Program, then Contractor will promptly notify the State. Within thirty (30) days after receipt of such notice and subject to the satisfaction of any remaining payment or other obligations, the State may cancel this Agreement by written notice.

32. RESPONSIBILITY FOR MEDICAL CARE

Contractor, through its employees and agents (collectively, "Contractor Personnel"), is not responsible for the delivery of medical care or other services to any patients. Accordingly, the State will not rely upon Contractor Personnel to practice medicine or provide patient care.

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EXHIBIT B – STATEMENT OF WORK
BUSINESS / TECHNICAL REQUIREMENTS AND DELIVERABLES

EXHIBIT B – STATEMENT OF WORK (SOW)

BUSINESS AND TECHNICAL REQUIREMENTS AND DELIVERABLES

The Statement of Work, Business and Technical Requirements, and Deliverables are set forth below:

1. STATEMENT OF WORK

The Contractor shall provide the Department with the BD Pyxis™ system products set forth in the Customer Orders attached hereto as Exhibit B-1 (each, a "Customer Order"), which consists of automated medication dispensing machines which integrate with the current New Hampshire Hospital Electronic Medical Records. Each Customer Order sets forth the hardware ("Equipment"), software licenses, and accessories that together constitute the BD Pyxis™ products (collectively, the "Products") and/or related services ("Services") being provided by Contractor to the State pursuant to this Agreement. Additional Customer Orders for Products and Services may be added to this Agreement by way of a mutually agreed upon written amendment executed by the Parties. The BD Pyxis™ system products set forth in the Customer Orders under Exhibit B-1 are as follows:

- *BD Pyxis™ MedStation™ ES.*
- *BD Pyxis™ CII Safe™ v9*
- *BD Knowledge Portal for Medication Technologies*

The Contractor shall:

- Deliver the Products under the Customer Orders attached as Exhibit B-1 per the Implementation Timelines attached hereto as Exhibit B-2.
- Install, configure and verify functionality of the Products under the Customer Orders in accordance with the applicable User Guide.
- Deliver, install, configure, integrate, and verify functionality of BD Pyxis ES server system per the Implementation Timeline. The Contractor shall ensure the following, including but not limited to:
 - Functionality of Contractor's side of the interface between the BD Pyxis ES medication dispensing devices under the Customer Orders and the State's Netsmart EHR/Pharmacy system;
 - Recognition/authentication of assigned system users in all roles;
 - Accuracy, precision, timing, and validation of specific medication dispensing events (in comparison to Hospital eMAR;
 - Availability of pertinent data equivalent to current reporting standards; and
 - Operation of all new system functionality (inventory management, etc.)
- Provide functionality of web portal capabilities
- Deploy individual Pyxis ES medication dispensing devices.
- Decommission Pyxis 4000 medication dispensing devices and prepare for return shipping to BD, upon Agreement completion.

2. BUSINESS / TECHNICAL REQUIREMENTS

Business and Technical Requirements are identified in Exhibit G: Attachment 1

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2.1 Compliance Requirements

Agency Compliance Documents are identified in Exhibit G: Attachment 2

3. ACTIVITY, DELIVERABLE, AND MILESTONE

ACTIVITY / DELIVERABLES / MILESTONES PRICING WORKSHEET				
	ACTIVITY, DELIVERABLE, OR MILESTONE	DELIVERABLE TYPE	PROJECTED DELIVERY DATE	MILESTONE PAYMENT
PLANNING AND PROJECT MANAGEMENT				
1	Conduct Project Kickoff Meeting	Non-Software	10/18/2021	N/A
2	Work Plan	Written	10/18/2021	N/A
3	Project Status Reports	Written	Weekly Cadence	N/A
4	Infrastructure Plan, including Desktop and Network Configuration Requirements	Written	Tech Scope Call	N/A
5	Information Security Plan	Written	N/A	N/A
6	Communications and Change Management Plan	Written	10/18/2021	N/A
7	Software Configuration Plan	Written	12/1/2021	N/A
8	Systems Interface Plan and Design/Capability	Written	Tech Confirmation Call	N/A
9	Testing Plan	Written	12/1/2021	N/A
10	Deployment Plan	Written	12/1/2021	N/A
11	Comprehensive Training Plan and Curriculum	Written	12/1/2021	N/A
12	End User Support Plan	Written	12/1/2021	N/A
INSTALLATION				
13	Provide Software Licenses if needed	Written	10/29/2021	N/A
14	Provide Software Installed, Configured, and Operational to Satisfy State Requirements	Software	2/3/2022	N/A
TESTING				

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ACTIVITY / DELIVERABLES / MILESTONES PRICING WORKSHEET				
	ACTIVITY, DELIVERABLE, OR MILESTONE	DELIVERABLE TYPE	PROJECTED DELIVERY DATE	MILESTONE PAYMENT
15	Conduct Integration Testing	Non-Software	1/5/2022	N/A
16	Conduct User Acceptance Testing	Non-Software	1/5/2022	N/A
17	Perform Production Tests	Non-Software	1/5/2022	N/A
18	Test In-Bound and Out-Bound Interfaces	Software	1/5/2022	N/A
19	Conduct System Performance (Load/Stress) Testing	Non-Software	1/5/2022	N/A
SYSTEM DEPLOYMENT				
20	Conduct Training	Non-Software	1/27/2022	N/A
21	Cutover to New Software	Non-Software	1/13/2022	N/A
22	Provide Documentation	Written	2/3/2022	N/A
23	Execute System Security Plan	Non-Software	2/3/2022	N/A
OPERATIONS				
24	Ongoing Support & Maintenance	Software	Ongoing	N/A
25	Conduct Project Exit Meeting	Non-Software	Post go Live (2/3/2022)	3/1/2022
TOTAL COST				\$812,160

4. DELIVERABLE REVIEW AND ACCEPTANCE

- 4.1 Prior to the commencement of work on System, Software, Non-Software, or Written Deliverables, the Contractor shall provide to the State, upon request, an agenda, project plan, implementation plan/timeline, work plan, template, table of contents, or draft course curriculum and handout materials (or other appropriate materials as applicable to the Products provided by CareFusion), for Review and prior written approval by the State. The State will review and either approves the proposed content for the Deliverable or not accept it and specifies what the State requires. The finalized material will then be utilized to subsequently Review the Deliverable to ensure it has met the State's expectations and can be accepted or not accepted based on previously agreed upon criteria.
- 4.2 The State will notify the Contractor in writing of its Acceptance or rejection of the Deliverable, or its partial or conditional Acceptance of the Deliverable, within five (5) business days of the State's receipt of the Contractor's written Certification; provided that if the State determines

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that the State needs more than five (5) days, then the State shall be entitled to an extension of up to an additional ten (10) business days.

- 4.3 If the State rejects the Deliverable or any portion of the Deliverable, or if any Acceptance by the State is conditioned upon completion of any related matter, then the State shall notify the Contractor of the nature and class of the Deficiency, or the terms of the conditional Acceptance, and the Contractor shall correct the Deficiency or resolve the condition to Acceptance within the period identified in the Implementation Timeline or other work plan, as mutually agreed upon by the parties.
- 4.4 If no period for the Contractor's correction of the Deliverable or resolution of condition is identified, the Contractor shall correct the Deficiency in the Deliverable or resolve the condition within five (5) business days or such longer period as mutually agreed upon by the State and Contractor. Upon receipt of the corrected Deliverable, the State shall have five (5) business days to review the Deliverable and notify the Contractor of its Acceptance, Acceptance in part, conditional Acceptance, or rejection thereof, with the option to extend the Review Period up to five (5) additional business days, or a longer mutually agreed upon timeframe. If the Contractor fails to correct the Deficiency within the allotted period, the State may, at its option, continue reviewing the Deliverable and require the Contractor to continue until the Deficiency is corrected, or immediately terminate the Contract, declare the Contractor in default, and or pursue its remedies at law and in equity.
- 4.5 By accepting a Deliverable, the State reserves the right to reject any and all Deliverables in the event the State detects any Deficiency in the System, in whole or in part, through completion of all Acceptance Testing, including but not limited to, Software/System Acceptance Testing, and any extensions thereof.

5. PRODUCT ACCEPTANCE

Notwithstanding the foregoing, a Product will be deemed "Accepted" by the State upon delivery (if no implementation Services are needed) or upon completion of the applicable Contractor implementation Services, provided that such Product functions substantially in accordance with the specifications of its User Guide (defined below) ("Acceptance" or "Accepted"). The State may reject a Product if the Product fails to function substantially in accordance with the specifications of its User Guide. Upon completion of applicable implementation Services, Customer will execute CareFusion's standard confirmation form."

6. CHANGE ORDER

- 6.1 The State may request changes or revisions to the configuration of the Products provided under this Agreement at any time by written Change Order. The State may also request revisions or request enhancements to the Scope of Work at any time by written Change Order. The State originated changes, revisions or enhancements shall be approved by the Department of Information Technology. Within five (5) business days of the Contractor's receipt of a Change Order, the Contractor shall advise the State, in detail, of any impact on cost (e.g., increase or decrease), the Schedule, and the Work Plan.
- 6.2 The Contractor may propose a change within the scope of the Contract by written Change Order, identifying any impact on cost and the applicable Implementation Timeline." The State shall

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acknowledge receipt of the Contractor’s requested Change Order within five (5) business days. The State Agency, as well as the Department of Information Technology, must review and approve all Change Orders in writing. The State shall be deemed to have rejected the Change Order if the Parties are unable to reach an agreement in writing within 30 days of receipt of the Change Order.

- 6.3 Change orders resulting in an increase of Price Limitation, an extension of time for Contract completion or a significant change to the scope of the Contract may require approval by the Governor and Council.
- 6.4 A Change Order which is accepted and executed by both Parties, and if applicable approved by Governor and Council, shall amend the terms of this Agreement.

7. IMPLEMENTATION SERVICES

The Contractor shall employ an industry-standard Implementation strategy with a timeline set forth in accordance with the Implementation Timeline:

7.1 Project Execution

Contractor and the State agree to provide qualified resources throughout the duration of the Project. The Contractor shall manage Project execution and provide the tools needed to create and manage the Project’s Work Plan and tasks, manage and schedule Project staff, track and manage issues, manage changing requirements, maintain communication within the Project Team, and Report status.

7.2 Implementation Terms

The implementation terms (“Implementation Terms”), together with the Implementation Timeline attached to the Agreement under Exhibit B-2, describe the process, tasks, responsibilities, completion criteria and deliverables for the BD Pyxis™ Products implementation project.

7.3 Implementation Activities

The Project will be completed in stages as set forth in each Implementation Timeline. The Contractor and the State will complete any applicable technical, infrastructure, and workflow assessment (“Implementation Assessment”) at the State’s site(s), providing the basis for the implementation activities set forth herein and in each Implementation Timeline (“Implementation Activities”). The Contractor and the State shall adopt an agile approach best to complete the Implementation Activities on or before the applicable Completion Date(s) set forth in the Implementation Timeline(s).

7.4 Medication Handling

The Contractor employees and agents (“Contractor Personnel”) shall not handle the State’s medications. The State must be physically present and capable of observing the Contractor Personnel during any implementation activity in which the Contractor Personnel have access to the State’s medications. If the State fails to do so, then the Contractor may re-schedule that

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activity and, upon invoice, the State will reimburse the Contractor for expenses related to re-scheduling that activity.

7.5 Term Begin Date

The "Term Begin Date" means the date on which the Rental Terms and Support Terms for the Products under a Customer Order will begin, and is set forth in the mutually agreed upon Implementation Timeline, subject to the terms of this Agreement. If no Term Begin Date is set forth in an Implementation Timeline or if there is no Implementation Timeline, then the "Term Begin Date" shall be the first date of the month following the Acceptance of the Product. For clarity, the Term Begin Date represents the date after which implementation of the Products will be completed and the parties have confirmed that the Products are performing in accordance with the specification of the applicable User Guide.

If the State is leasing BD Pyxis™ Products, then the Rental Term for each BD Pyxis™ Product shall begin on the Term Begin Date. If the State is purchasing BD Pyxis™ Products, then the State shall pay the net purchase price for each BD Pyxis™ Product within thirty (30) days of the Term Begin Date. If, due to the sole fault of Contractor, a BD Pyxis™ Product is not Accepted (as such term is defined in Exhibit B of the Agreement) until after the Term Begin Date, then the Term Begin Date shall be the first day of the month following the date the BD Pyxis™ Product is Accepted. The applicable Completion Dates for the BD Pyxis™ Products under a Customer Order shall not exceed six (6) months from the Term Begin Date.

Notwithstanding the foregoing, if a BD Pyxis™ Product is not Accepted by the Term Begin Date for any reason that is not the sole fault of Contractor each, a "Delayed Product"), then the State is nonetheless obligated to pay the applicable rental or purchase fee(s) on the Term Begin Date; provided, however, that if a Delayed Product has not been delivered or installed, then the State may exchange the Delayed Product for an alternate BD Pyxis™ Product ("Alternate Product") of equal or greater value as determined under the then-current BD Pyxis™ product price catalog, subject to the following: (a) if the rental or purchase fee(s) applicable to the Alternate Product is greater than the fee(s) for the Delayed Product, then the State will pay the difference in such fees in accordance with the terms of the Agreement; (b) the State will pay any applicable transaction fees, including, without limitation, Contractor's costs of manufacturing, shipping and freight; and (c) if the Delayed Product has not been delivered to the State, Contractor may, at its sole option, cancel the Customer Order for that BD Pyxis™ Product.

If previously-installed BD Pyxis™ products are being upgraded or subject to new terms and conditions, then the previously-applicable terms and conditions, including payment terms, for those products shall remain in full force and effect until the Term Begin Date, unless otherwise agreed to in writing by the Parties.

8. TERMS AND CONDITIONS APPLICABLE TO RENTAL OF PRODUCTS

8.1 Rental Term. The "Rental Term" for Rental Equipment equals the time period that Contractor leases Rental Equipment to the State pursuant to the Agreement. Contractor (or its assignee) is the

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owner of Rental Equipment, and the State is only acquiring a right to possess and use Rental Equipment during the Rental Term, and no other right, title or interest. Title will not transfer to the State at the end of the Rental Term. The initial Rental Term for Rental Equipment will begin on the Term Begin Date stated in the applicable Implementation Timeline and will continue for the number of months stated in the applicable Customer Order attached under Exhibit B-1 to the Agreement, provided that, if there is no Term Begin Date in an Implementation Timeline, then the Term Begin Date will be the first day of the month following the date such Rental Equipment is Accepted.

- 8.2 Footprint Modification Option.** Notwithstanding the foregoing, the State will have the right and option to terminate the Rental Term for a subset of Rental Equipment, as provided in this Section 8.2.
- (a) As used herein, (i) "FMO Products" means Rental Equipment and Software (other than Third Party Products or Third Party Software) under a Customer Order representing up to twenty percent (20%) of the total Monthly Rental and Monthly Subscription Fees for all Rental Equipment and Software under such Customer Order as evaluated in each Contract Year; and (ii) "Contract Year" means the twelve (12) month period beginning on any anniversary of the Effective Date of the Agreement.
- (b) Provided that the State is not then in breach of any agreement with Contractor, the State may terminate the Rental Term or Subscription Term for the FMO Products any time during a Contract Year with at least ninety (90) days prior written notice. Termination shall be subject to execution of Contractor's standard form amendment, and the State's compliance with the terms thereof, including, without limitation, return of the FMO Products at the State's expense. Termination shall be effective the first day of the month following the date Contractor takes possession of the FMO Products. On the effective date of termination, the Rental, Support and/or Subscription Terms and the State's obligation to pay Monthly Rental, Support and/or Subscription Fees for the FMO Products will terminate.
- (c) For the sake of clarity, the foregoing right and option will not apply to (i) any Products other than the FMO Products, (ii) any "sold-to" or "ship-to" entity other than the entity designated in the applicable Customer Order, (iii) any Third Party Product or Third Party Software listed in the Customer Order, and will not (iv) carry over to a subsequent Contract Year.
- 8.3 Personal Property.** All Rental Equipment is personal property for all purposes. The State will not allow any Rental Equipment to become a fixture of real property. The State will take appropriate action as necessary to prevent any third party from acquiring any interest in Rental Equipment or the Agreement. In addition to performing its obligations under the Taxes provision of the Agreement, the State will reimburse Contractor for any personal property tax imposed on Contractor as the lessor.
- 8.4 Use, Maintenance and Repair of Rental Equipment.** The State will keep and use Rental Equipment only at the delivery address set forth in the applicable Customer Order and will not move it without Contractor's prior written consent. The State will allow only competent and duly qualified personnel to operate Rental Equipment. The State will keep Rental Equipment in good condition and working order, and will allow Contractor to make engineering changes and Software updates

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upon reasonable request. The State will keep all Rental Equipment free and clear of all liens, adverse claims and encumbrances.

- 8.5 Return of Rental Equipment.** If the State relinquishes possession of any Rental Equipment for any reason (including at the end of the Rental Term), then the State will: (i) promptly remove all medications, data, and State property from such Rental Equipment without damaging such Rental Equipment; (ii) acknowledge receipt of any data device that Contractor removes from Rental Equipment and tenders to the State; and (iii) promptly and properly crate and ship Rental Equipment to Contractor at a rate of two hundred and fifty dollars (\$250) per wheeled asset, unless otherwise agreed to by the Parties in writing.
- 8.6 Assignment of Payment Obligations.** [Intentionally Omitted].
- 8.7 Termination by Contractor for Cause.** Notwithstanding the termination provisions of the Agreement, if the State fails to: (i) pay any undisputed amount required by the Agreement within thirty (30) days after Contractor provides written notice stating that the payment is past due; or (ii) correct any other material non-compliance with the Agreement within sixty (60) days after Contractor provides written notice to the State identifying such non-compliance, then Contractor may, to the extent permitted by applicable law and in addition to and without prejudice to any other remedy available at law or equity: (a) cancel one or more Rental Term(s) and require the State to make the applicable Rental Equipment available for repossession by Contractor at a reasonably convenient location; and/or (b) recover an amount from the State equal to the present value of the unpaid balance of all Monthly Rental Fees for each unexpired Rental Term, (calculated using a discount rate of six percent (6%) per annum), for each unexpired Rental Term or up to six (6) months, whichever is shorter, subject to Section 4 of the P-37.
- 8.8 Conditional Security Agreement.** [Intentionally Omitted].

9. PROJECT MANAGEMENT

The Contractor shall provide project tracking tools and templates to record and manage Issues, Risks, Change Requests, Requirements, and other documents used in the management and tracking of the project, as mutually agreed upon by both parties. The State believes that effective communication and Reporting are essential to Project success. The Contractor shall employ effective communication and Reporting strategies to ensure Project success. The Contractor Key Project Staff shall participate in meetings as requested by the State, in accordance with the requirements and terms of this Contract.

The Project requires the coordinated efforts of a Project Team consisting of both the Contractor and State personnel. Each Party shall provide all necessary resources to perform its respective obligations, including its respective Implementation Activities, under the Contract. Each Party is responsible for providing all appropriate resources and personnel to manage its respective obligations under the Project to a successful completion.

9.1 The Contractor Key Project Staff

a) The Contractor's Contract Manager

The Contractor shall assign a Contract Manager who will be responsible for all Contract authorization and administration, including but not limited to processing Contract documentation,

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obtaining executive approvals, tracking costs and payments, and representing the parties in all Contract administrative activities. The Contractor's Contract Manager is:

Robert Schwalger
858-617-2815
Robert.Schwalger@bd.com

b) The Contractor's Project Manager

The Contractor shall assign a Project Manager who is qualified to perform or supervise the Contractor's obligations under this Agreement. The Contractor's Project Manager is:

Robert Schwalger
858-617-2815
Robert.Schwalger@bd.com

The Contractor's selection of the Project Manager shall be subject to the prior written approval of the State. The State's approval process may include, without limitation, at the State's discretion, review of the proposed Project Manager's resume, qualifications, references, and background checks, and an interview. The State may require removal or reassignment of Project Manager who, in the sole judgment of the State, is found unacceptable or is not performing to the State's satisfaction.

Project Manager must be qualified to perform the obligations required of the position under the Contract, shall have full authority to make binding decisions under the Contract, and shall function as the Contractor's representative for all administrative and management matters. Project Manager must be available to promptly respond Monday through Friday, 8am – 5pm EST, to respond to inquiries from the State, and be at the site as needed, project manager must respond within the same business day as the request is made.

9.2 Change of Project Manager

The Contractor may not replace the Project Manager or change its assignment of Project Manager without providing the State written notice and obtaining the prior approval of the State of the replacement Project Manager. State approvals for replacement of Project Manager shall not be unreasonably withheld. The replacement Project Manager is subject to the same requirements and Review as set forth above. The Contractor shall assign a replacement Project Manager as agreed upon by the parties after of the departure of the prior Project Manager, and the Contractor shall continue during such period to provide competent project management Services through a qualified interim Project Manager.

9.3 The Contractors Additional Key Project Staff

The State considers the following individuals to be Key Project Staff for this Project:

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Raquel DiCandio	Project Manager
Kurt Shutter	Systems Engineer

The State reserves the right to require removal or reassignment of Key Project Staff who are found unacceptable to the State. The Contractor shall not change Key Project Staff commitments without providing the State written notice and obtaining the prior written approval of the State. State approvals for replacement of Key Project Staff will not be unreasonably withheld. The replacement Key Project Staff shall have comparable or greater skills than Key Project Staff being replaced.

9.4 Background Checks

The State requires the Contractor, at its sole expense, to conduct reference and background screening of the Contractor's staff assigned to this Contract.

9.5 Termination for Lack of Project Management and Key Project Staff

Notwithstanding any other provision of the Contract to the contrary, the State shall have the option to terminate the Contract, declare the Contractor in default and to pursue its remedies at law and in equity, if the Contractor fails to assign a Project Manager and/or Key Project Staff meeting the requirements and terms of the Contract or if the State is dissatisfied with the Contractor's replacement of the Project Manager and/or Key Project Staff.

9.6 The State Key Project Staff

a) The State Contract Manager

The State shall assign a Contract Manager who shall function as the State's representative with regard to Contract administration. The State Contract Manager is:

Daniel Rinden
603-271-5512
Daniel.T.Rinden@dhhs.nh.gov

b) The State Project Manager

The State shall assign a Project Manager. The State's Project Manager is:

Sean P. Hollingsworth
603-271-5752
Sean.p.hollingsworth@doit.nh.gov

The State Project Manager's duties shall include the following:

- a. Leading the Project;
- b. Engaging and managing all Contractors working on the Project;
- c. Managing significant issues and risks;
- d. Reviewing and accepting Contract Deliverables;
- e. Invoice sign-offs;

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- f. Review and approval of Change Orders;
- g. Managing stakeholders' concerns.

10. IMPLEMENTATION TIMELINE

- 10.1 The Contractor's Project Manager and the State Project manager shall finalize the applicable Implementation Timelines within 10 days of the Effective Date and further refine the tasks required to implement the Project. Continued development and management of the Implementation Timeline is a joint effort on the part of the Contractor and State Project Managers. The preliminary Implementation Timelines created by the Contractor and the State is set forth in this Section and attached hereto as Exhibit B-2.
- 10.2 In conjunction with the Contractor's Project Management methodology, which shall be used to manage the Project's life cycle, the Contractor's team and the State shall finalize the Implementation Timeline at the onset of the Project. This Implementation Timeline shall identify the tasks, Deliverables, major milestones, task dependencies, and a payment schedule required to implement the Project. It shall also address intra-task dependencies, resource allocations (both State and the Contractor's team members), refine the Project's scope, and establish the Project's schedule.

11. ACCEPTANCE & TESTING SERVICES

The State shall work with the Contractor to define testing requirements for the proposed scope of work. The Contractor shall provide end-to-end planning and preparation for testing and Acceptance of the solution throughout the Project. This shall include training, a detailed testing methodology which covers all "areas of testing" (refer to glossary), security, required staffing with clear roles and responsibilities, test cases and scripting with associated Data, status and results Reporting. The Test Plan defined shall ensure designed and implemented Solutions are fully supported, tested, and documented.

11.1 ASSUMPTIONS

a) **General**

- The State shall provide team members with decision-making authority to support the Implementation efforts.
- All State tasks must be performed in accordance with the revised Work Plan.
- All key decisions will be resolved within five (5) business days, unless otherwise agreed to by the parties. Issues not resolved within this initial period will be escalated to the State Project Manager for resolution.
- Any activities, decisions or issues taken on by the State that affect the mutually agreed upon Implementation Timeline, scope, resources, and costs shall be subject to the identified Change Control process.
- The Contractor shall maintain an accounting system in accordance with Generally Accepted Accounting Principles (GAAP).

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11.2 Project Management

- The State shall provide the Project Team with reasonable access to the State personnel as needed to complete Project tasks.
- A Project folder created within the State system shall be used for centralized storage and retrieval of Project documents, work products, and other material and information relevant to the success of the Project and required by Project Team members. This central repository is secured by determining which team members have access to the Project folder and granting either view or read/write privileges. The State Project Manager will create the folder and serve as the primary owner. The Contractor's Project Manager will collaborate with the State Project Manager to ensure all project artifacts are loaded. The State Project Manager shall approve access for the State team. Documentation can be stored locally for the Contractor and State team on a "shared" network drive to facilitate ease and speed of access. Final versions of all Documentation shall be loaded to the State System.
- The Contractor assumes that an Alternate Project Manager may be appointed from time to time to handle reasonable and ordinary absences of the Project Manager.

11.3 Conversions – If applicable.

- The Contractor Team's proposal is based on the assumption that the State's technical team is capable of implementing, with assistance from the Contractor's technical team, a subset of the conversions. To the extent applicable, the Contractor's Team shall lead the State with the mapping of the legacy Data to the Contractor's applications
- Additionally, the Contractor's Team shall, to the extent applicable:
 1. Provide the State with Contractor's application data requirements and examples, of data mappings, conversion scripts, and data loaders. The Contractor's Team shall identify the APIs the State should use in the design and development of the conversion.
 2. Provide guidance and assistance with the use of the data loaders and conversion scripts provided.
 3. Lead the review of functional and technical Specifications.
 4. Assist with the resolution of problems and issues associated with the development and Implementation of the conversions.

11.4 Reporting

- The Contractor shall conduct meetings, on a date and time as agreed upon by both parties, and provide reports that include, but are not limited to, minutes, action items, test results, and Documentation.

11.5 User Training

- The Contractor's Team shall lead the development of the end-user training plan.
- A train the trainer approach shall be used for the delivery of end-user training.
- The State is responsible for the delivery of end-user training.
- The State shall schedule and track attendance on all end-user training classes.

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11.6 Performance and Security Testing

- The Contractor's Team shall provide a performance test workshop to identify the key scenarios to be tested, the approach and tools required, and best practices information on performance testing.
- The State shall work with the Contractor on all testing as set forth in this Contract.

12. MAINTENANCE, OPERATIONS AND SUPPORT

The Contractor shall maintain and support the System in all material respects as described in the Contract through the Contract Completion Date. The Contractor shall provide support and maintenance services for the Products as more fully set forth below:

12.1 Support Term; Monthly Support Fees.

- a) The "Initial Support Term" for a BD Pyxis™ Product means the number of months stated in the applicable Customer Order, beginning on the Term Begin Date as stated in the applicable Implementation Timeline. If there is no Term Begin Date set forth in an Implementation Timeline, then the Initial Support Term will begin on the first day of the month after the Pyxis Product is Accepted. Unless a Party provides at least sixty (60) days' prior written notice of its intention to extend the Initial Support Term ("Extended Support Term"), then the Support Term will automatically terminate at the conclusion of the Initial Support Term. Any Extended Support Term will be coterminous with the any Extended Term, as set forth under Exhibit A, Section 3.3 (*Effective Date/Completion of Services*). An Extended Support Term may be terminated by either party, upon no less than thirty (30) days' prior written notice. For the purposes of this Schedule, "Support Term" shall mean the Initial Support Term together with any Extended Support Term.
- b) During the Initial Support Term, the Monthly Support Fee for each BD Pyxis™ Product shall be as stated in the Customer Order, and during each Extended Support Term the Monthly Support Fee will be based on the month-to-month rate set forth in the then-current BD Pyxis™ product price catalog, less any then-applicable discounts (each, a "Monthly Support Fee"). The State will pay the Monthly Support Fees on the first business day of each month during the Support Term. If the State fails to pay any Monthly Support Fees for Support in accordance with the terms of the Contract, then Contractor may cease providing such Support to the State upon thirty (30) days' notice for so long as the fees remain unpaid.

12.2 Properly Performing

During the Support Term, and subject to Section 13 (*Exclusions*), the Contractor will provide replacement parts, labor and Equipment as necessary to keep the BD Pyxis™ Products and the Contractor-provided interfaces ("Interfaces") performing in accordance with the material specifications of the applicable User Guide ("Properly Performing"). During any Extended Support Term, the Contractor will use best efforts to restore the functionality of any BD Pyxis™ Product which is not Properly Performing including the use of refurbished parts, but will have no obligation to replace Equipment or Software with new Equipment, parts or Software. If, during an Extended Support Term, the Contractor is unable to restore the functionality of a Pyxis Product,

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then in its sole determination, the Contractor may elect to terminate the Support Term for the BD Pyxis™ Product, effective as of the first day of the month following the Contractor's notice of its determination.

12.3 Support

The Contractor must perform on-site or remote technical support in accordance with the Contract, including without limitation the requirements, terms, and conditions contained herein. If technical support requires access to Confidential Data, as defined in the DHHS Information Security Exhibit (Exhibit K), then technical support staff must be physically located within the Continental United States, unless the Contractor has received written approval from the Department's Information Security Officer and security controls in place to enable the remote technical support staff located outside of the Continental United States to view the Confidential data stored within the Continental United States and prevent remote technical staff from scraping, downloading or storing Confidential Data. Notwithstanding the foregoing, Contractor may access Confidential Data from outside the United States as required for Contractor to provide remote support services to the State under a Customer Order.

To obtain Technical Support, the State shall contact the Contractor's Technical Support Center ("TSC"), by phone at 1.800.727.6102 (for immediate response by the TSC) or online at www.carefusion.com/css, twenty-four (24) hours a day, seven (7) days a week, each day of the year. When the State reports that a Pyxis Product is not Properly Performing (an "Issue"), Contractor will promptly respond to the State's report. Contractor will request additional information about the Issue, if needed, assess the severity of the Issue in consultation with the State and begin work to verify, diagnose and resolve the Issue. At no time will print screens containing Confidential Data, as defined by the DHHS Information Security Requirements Exhibit be requested by the Contractor's Technical Support Center, Technical Support Staff or be provided by DHHS staff.

12.4 Remote Issue Resolution

If remote support technologies ("RSS") are deployed with the BD Pyxis™ Product, the Contractor will use RSS as appropriate in its work to verify, diagnose and resolve the Issue. The Contractor will take industry standard precautions to ensure the RSS feed does not contain suspicious file types and is monitored at all times for security vulnerability. The State will provide high-speed internet access and firewall modifications to enable connectivity to the BD Pyxis™ Product via RSS and the Contractor will use RSS as appropriate to verify, diagnose and resolve any Issue. If the State's system, connectivity, or personnel do not permit RSS on a BD Pyxis™ Product, then:

- (i) any Guaranteed Response Time or Uptime Guarantee (as defined below) applicable to that BD Pyxis™ Product will be void; and
- (ii) the State will pay the Contractor on a time and materials basis for any onsite services required as a result of the RSS interference. The State will permit the Contractor to install and maintain at the State's site the applications necessary to allow the deployment of Updates and Upgrades (as defined below) by RSS. Where direct access to Equipment is required, the State will allow the Contractor such access. The Contractor will monitor the

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applicable BD Pyxis™ Products via RSS and will notify State identified representatives of specific alarms and events where the Contractor has acted either to prevent or correct a service condition.

12.5 On-Site Issue Resolution

If the Contractor determines that on-site service is necessary for proper verification, diagnosis or resolution of an Issue, it will promptly, within twenty-four (24) hours, dispatch a field service technician to the State's facility, or, if the Contractor determines that the Issue does not require immediate attention, it will schedule on-site service for a mutually-agreed date. The Contractor will resolve Equipment Issues by repairing or, replacing Equipment, as determined appropriate by the Contractor to assure its Properly Performing; provided that the Contractor will not be obligated to replace Equipment during an Extended Support Term.

12.6 Support of Equipment

The Contractor will provide the additional Support summarized in the table below.

Support Services	Comprehensive
Guaranteed Response Time	24 Hours
Equipment Uptime Guarantee	not included
Preventative Maintenance	√
Equipment Relocation	√
Replacement Parts	√

12.7 Guaranteed Response Time for On-Site Support

When the Contractor determines that immediate on-site Support is required and, unless the Parties schedule an alternative time, the Contractor guarantees that a technician will arrive at the State's site within twenty-four (24) hours after dispatch under the Comprehensive Support Plan ("Guaranteed Response Time"). For any failure to meet the applicable Guaranteed Response Time, the State, as its sole remedy for the failure, will be entitled to credits against the applicable Monthly Support Fees in an amount equal to five percent (5%) of the Monthly Support Fees for the affected BD Pyxis™ Products under the Comprehensive Support Plan.

12.8 Preventative Maintenance

Contractor will perform recommended onsite preventative maintenance of Equipment in accordance with Contractor's then-current preventive maintenance schedule.

12.9 Equipment Relocation

Upon thirty (30) days' written notice from the State, Contractor will relocate eligible Equipment to another State-owned facility within one hundred (100) miles. Relocation services will be provided during normal business hours or as otherwise mutually agreed upon by the Parties.

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12.10 Software Support

For those BD Pyxis™ Products that are on-premise Software Products, in addition to the Support obligations outlined above, Contractor will provide the following Support, based on the Support Plan identified in the Contract, as summarized in the table below and as detailed in Subsections 12.10(a) through 12.10(g), below.

Support Services	Comprehensive
Remote Support Services	v
Updates and Upgrades	v
Software Patching	v
Virtual Machine (VM) Deployments	v
Proactive Monitoring*	v
Project Management for Upgrades	v
Online Learning	v
BD Knowledge Portal for Medication Technologies	v

a) Updates

“Update” means a bug fix, error correction, virus update, minor enhancement or modification to existing features to maintain the security or operation of the Software. Update also includes the Contractor-approved software patches for its Software. During the Support Term, if Contractor generally releases an Update to the Software, then Contractor will install the Update and will deliver notice to the State of the Update. The State will promptly test the connections between the BD Pyxis™ Product and the State’s information system. Critical security patches received by Contractor will be immediately tested by Contractor pursuant to Contractor’s quality policies and deployed to the State after such testing is complete.

b) Upgrades

“Upgrade” means a major enhancement, new feature or other improvement to the Software, but does not include any Equipment, Third Party Software, or any other Software that the Contractor generally licenses separately. During the Support Term, if Contractor generally releases an Upgrade to the Software, then Contractor will install the Upgrade and will deliver notice to Customer of the Upgrade.

c) Server Upgrades

For Premier Support, the Contractor will provide support services and Contractor licenses on a one-time basis to upgrade the State’s server to the latest version if required in order to support a BD Pyxis™ Product release.

d) Virtual Machine (VM) Services

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For Software deployed using VM technology, if the applicable relational database server (e.g., MSSQL) instance is housed locally in the Contractor-provided VM container, then Support will include:

- (i) database backup and recovery,
- (ii) operating system patches, updates and security, and
- (iii) the applicable relational database server (e.g., MSSQL). If the applicable relational database server instance is not housed locally in the Contractor-provided VM container then the State shall have these obligations as set forth in Section 13.4 (Virtual Machine (VM) Deployments).

e) Project Management for Upgrades

Contractor will remotely assist the State in managing project tasks and deliverables for Software Upgrades. The State is entitled to twenty (20) hours of consulting in each annual period (unused hours do not carry over to succeeding periods). The State may schedule these consulting services no less than six (6) weeks in advance.

f) Online learning

Contractor will provide the State with access to its online learning management system. Customers with access to this portal can also view scheduled trainings and webinars. In addition, the State may participate in Contractor-hosted webinars with clinicians to discuss best practices in using the Software. Webinars may be accessed at <https://bd.com/LearningCompass>.

g) BD Knowledge Portal for Medication Technologies

The State may access the BD BD Pyxis™™ Knowledge Portal for Medication Technologies website www.bd.com/self-service. Resources available at the website include product documentation, self-study courses, and group training sessions.

13. STATE OBLIGATIONS

13.1 Server Support

The State will ensure the proper functioning and availability of:

- (i) the State's side of station and server network connectivity,
- (ii) State-provided server Equipment, and
- (iii) server-based, non-application related system performance and downtime, e.g., operating system, database issues, host system etc.

13.2 System Requirements

The State will provide:

- (i) station and server environment,
- (ii) State data center and network availability,

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- (iii) conformance with minimum server environment requirements for the BD Pyxis™ Product(s) as set forth in an applicable equipment requirements schedule, and
- (iv) a virtual platform approved by Contractor for all Contractor-provided Virtual Machine deployments as set forth in an applicable equipment requirements schedule.

13.3 Interface Modification

If Contractor modifies an Interface between a BD Pyxis™ Product and the State's information system as part of Support, then the State will test the modified Interface within seventy-two (72) hours.

13.4 Virtual Machine (VM) Deployments

For Software deployed using VM technology, the State will provide all services for (i) database backup and recovery, (ii) operating system patches, updates and security, and (iii) the performance of the applicable relational database server (e.g., MSSQL) instance for the BD Pyxis™ Product(s) as set forth in the equipment requirements schedule.

13.5 Active Directory

For products that support Active Directory capability, the State will provide integrated Active Directory services and user administration, e.g., passwords, user log-in, etc.

13.6 Data Backup

Where applicable, the State will implement a network data backup capability that is remote to BD Pyxis™ Product(s) and in accordance with guidelines provided by Contractor and in compliance with the DHHS Information Security Requirements Exhibit.

13.7 Software Patching

The State will schedule and deploy Contractor-approved software patches to servers (e.g., operating system, anti-virus, and product patches) for BD Pyxis™ ES Products.

13.8 Peripherals

The State will provide support for all non-Contractor provided peripheral products, e.g., mobile devices.

13.9 Consumables

The State is solely responsible for the replacement or installation of consumables, including but not limited to batteries, paper and toner.

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13.10 Additional Services

Any service not specifically identified herein as a component of the Support Plan elected by the State may be provided by Contractor under separate agreement between the Parties at Contractor's then-current time and materials rates for that service.

13.11 Onsite Support; Medication Handling

The State may cancel scheduled onsite Support by delivering notice to TSC no less than two (2) business days prior to the start date. If the State fails to provide timely notice or interferes with Contractor's performance of scheduled onsite Support, then the Guaranteed Response Time will not be honored, and the Uptime Guarantee calculation will not include the service case hours associated with that service call. Contractor employees and agents ("Contractor Personnel") shall not handle the State's medications. The State must be present and capable of monitoring Contractor Personnel during any activity in which medications are present. If the State fails to do so, then the State will reimburse Contractor for any expenses related to re-scheduling such activity.

14. EXCLUSIONS

14.1 Outdated Software

Contractor is not obligated to provide Support, and no Uptime Guarantee or Guaranteed Response Time applies, for a BD Pyxis™ Product that is more than two (2) versions older than the then-current version.

14.2 Customer Equipment

Contractor will not provide Support for products that are not BD Pyxis™ Products, including but not limited to the State's equipment, software and personal peripheral devices (e.g., mobile devices, printers) used in conjunction with the BD Pyxis™ Products.

14.3 External Causes

Contractor is not obligated to perform Support for any part of a BD Pyxis™ Product which is not Properly Performing because of:

- (i) abuse, misuse or vandalism;
- (ii) unauthorized repairs, including modification, alteration and adjustment; (iii) failure of equipment not supplied by Contractor;
- (iii) a computer virus or other disabling code introduced by a source other than Contractor;
- (iv) any Support activity that is a State obligation as defined in Section 6 (Customer Obligations) above; or
- (v) the State prevents or refuses installation of an Update or Upgrade (collectively, "External Causes").

If the State requests that Contractor attempt to correct a problem with a BD Pyxis™ Product attributable to an External Cause, then Contractor will use "best efforts" to repair the BD

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Pyxis™ Product on a time and materials basis at Contractor's then-current rates and prices. Notwithstanding the foregoing if a BD Pyxis™ Product is not Properly Performing due to an External Cause that would not have occurred but for CareFusion's failure to meet its performance obligations under this Agreement or otherwise due to CareFusion's negligence, then CareFusion shall be obligated to provide Support as stated under the standard Support obligations set forth in this Agreement, and such performance issue shall then no longer be deemed an External Cause for purposes of this Section.

15. THIRD-PARTY APPLICATIONS AND EQUIPMENT LIMITATIONS; CODONICS PRODUCTS.

- 15.1 Support for any Software or Equipment sublicensed or resold, as applicable, to the State by Contractor, including the Codonics® Safe Label System™ (hereafter, each, a "Resale Product") will be limited to the support and maintenance provided by that third party, with Contractor as the primary point of contact for such support and maintenance. If requested by the State, Contractor shall serve as liaison between the State and the applicable third party for support requested by the State, with such liaison services provided at Contractor's then-current service rates.
- 15.2 If the Codonics® Safe Label System™ is acquired by the State under a Contact providing Support, then the warranty and support services shall be provided in accordance with the warranty and support information set forth at <https://www.codonics.com/wp-content/uploads/2017/11/SLS-RTF-WARRANTY-TECH-BRIEF-901-240-001.01.pdf>.
- 15.3 For the sake of clarity, (i) the Limited Warranty set forth in Section 18.1 (*Limited Warranty*), below will have no application to a Resale Product; (ii) none of the Support Plans, terms or conditions beginning at Section 3 of this Exhibit shall apply to a Resale Product; and (iii) if the State fails to pay Monthly Support Fees for a Resale Product, Contractor will instruct the applicable third party to cease providing Support to the State and any or all of its facilities for the Resale Product.

16. END OF LIFE

From time to time, as part of Contractor's ongoing product and service development programs, Contractor may discontinue BD Pyxis™ Products and replace them with one or more of these technologies, products and services. To help customers identify these transitions and plan for infrastructure adjustments, Contractor maintains end-of-sale and end-of-life policies for all BD Pyxis™ Products. Contractor will, among other things

- (i) announce the date on which Contractor will no longer license, lease or sell a Product ("End-of-Sale"),
- (ii) specify the date on which Contractor will cease providing Support for a BD Pyxis™ Product ("End-of-Life"), and
- (iii) identify one or more new technologies or services, or existing BD Pyxis™ Products, that may be suitable replacements for the End-of-Sale or End-of-Life Product.

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Contractor warrants that its services will be performed by trained individuals in a professional, workman-like manner. Contractor will promptly re-perform any non-conforming services for no charge if the State provides reasonably prompt written notice to Contractor. The foregoing is the State's sole and exclusive remedy (and Contractor's sole and exclusive liability) for all claims regarding Contractor's responsibilities under this exhibit. These exclusive remedies shall not have failed of their essential purpose as long as Contractor remains willing to re-perform any non-conforming services for no charge, as applicable, within a mutually agreed upon by the Parties, after being notified of the State's claim. **NO OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE WILL APPLY.** Contractor may use refurbished parts during service so long as it uses the same quality control procedures as for new parts. Any part for which Contractor has supplied a replacement shall become Contractor owned property.

18. CONDITIONAL SUSPENSION; TERMINATION FOR CAUSE BY THE STATE

Notwithstanding the termination provisions of the Agreement, if a BD Pyxis™ Product is not Properly Performing (for a reason other than an External Cause) for more than thirty (30) consecutive days after the State has initially contacted the TSC to request Support on that BD Pyxis™ Product, then, upon notice from the State to Contractor ("Election Notice"), Contractor will suspend the Rental Term and Support Term for the applicable BD Pyxis™ Product, beginning the month in which the State requested such suspension ("Election Month") and continuing until the first day of the month following the month in which the BD Pyxis™ Product becomes Properly Performing. Contractor shall reimburse the State the Monthly Rental and Support Fees paid by the State for that BD Pyxis™ Product for any Election Month.

If a BD Pyxis™ Product is not Properly Performing (for a reason other than an External Cause) for more than sixty (60) consecutive days after the State has initially contacted the TSC to request Support on that BD Pyxis™ Product, the State may notify Contractor of its desire to terminate the remaining Rental Term and Support Term for the applicable BD Pyxis™ Product ("Termination Notice"). Contractor shall then (i) terminate the remaining Rental and Support Terms, effective on the first day of the month following the month that Contractor receives such notice; and (ii) de-install and remove the applicable BD Pyxis™ Product from the State's facility. The State shall then have no further obligation with regard to that BD Pyxis™ Product.

19. CONTRACT WARRANTIES AND REPRESENTATIONS; PRODUCT USE

19.1 Limited Warranty

Contractor warrants to the State that for a period of ninety (90) days after Acceptance, the Product will perform substantially in accordance with the specifications of its User Guide (the "Limited Warranty"). If a Product fails to perform substantially in accordance with the specifications of its User Guide during the applicable warranty period, then the State will notify Contractor in writing. In that case, as the State's sole remedy, Contractor (at its option) will promptly repair or replace that Product, or any part or portion thereof. **EXCEPT FOR THE LIMITED WARRANTY DESCRIBED IN THIS SECTION, CONTRACTOR DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING, WITHOUT**

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LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON INFRINGEMENT OR ARISING UNDER USAGE OF TRADE OR COURSE OF PERFORMANCE). The Limited Warranty does not apply to any Product that does not perform substantially in accordance with the specifications of its User Guide because the Product: (i) has been modified, repaired or altered, except by Contractor; (ii) has not been properly installed, used, handled, operated or maintained in accordance with any handling or operating instructions provided by Contractor; (iii) has been subjected to physical or electrical stress, misuse, abuse, negligence, accidents, or causes beyond Contractor's reasonable control; or (iv) includes repair or service parts, add-ons, or disposables that are not manufactured or approved by Contractor.

20. DATA PROTECTION; DATA LOCATION

- 20.1 At no time shall any State Data be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the State.
- 20.2 **Data Location.** The Contractor shall provide its Services to the State and its end users solely from data centers within the Continental United States. All storage, processing and transmission of Confidential data, as defined in the DHHS Information Security Requirements Exhibit, shall be restricted to information technology systems within the Continental United States. The Contractor shall not allow its personnel or sub-contractors to store State data on portable devices, including personal computers. Notwithstanding the foregoing, Contractor may access State data from outside the United States as required for Contractor to provide remote support services to the State under a Customer Order.

21. SOFTWARE AGREEMENT

The Contractor shall provide the State with access to the Software Licenses and Documentation set forth in the Contract, and particularly described Exhibit D: Software Agreement.

22. ADMINISTRATIVE SERVICES

The Contract shall provide the State with the Administrative Services set forth in the Contract, and particularly described in Exhibit E: Administrative Services

23. TRAINING

Training content will be determined through discovery sessions with the State once the contract has been executed. The State will be the final decision maker of all training content.

The Contractor shall provide the following Training Services:

- Training consist of online and instructor led content. The Contractor provides training for super users:
 - o Up to 15% of end users are designated as super users
 - o Sessions scheduled for 8-hour training periods between 7 AM and 7 PM, Monday through Friday, EST
- The Contractor provides resource travel to and from site as part of the super user training plan
 - o Final training plan is agreed upon between CFN and the State

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- The State will be the owner of the final training plan with hard and electronic copy provided to the State by the Contractor.
- Additional sessions after initial training are available for an additional fee
- State conducts end user training. End User training Guide will be provided by the Contractor to the State.

24. MERCHANT CARD SERVICES

Not applicable.

25. TERMS AND DEFINITIONS

Terms and Definitions applicable to this Contract are identified in Exhibit F: Terms and Definitions.

26. CONTRACTOR'S CERTIFICATES

Required Contractor Certificates are attached in Exhibit G.

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STATE OF NEW HAMPSHIRE
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EXHIBIT C – PRICE AND PAYMENT SCHEDULE

EXHIBIT C – PRICE AND PAYMENT SCHEDULE

The terms outlined in the Payment Schedule is set forth below:

1. CONTRACT PRICE

Notwithstanding any provision in the Contract to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments made by the State exceed the amount indicated in P-37 General Provisions - Block 1.8: Price Limitation. The payment by the State of the total Contract price shall be the only, and the complete reimbursement to the Contractor for all fees and expenses, of whatever nature, incurred by the Contractor in the performance hereof.

2. TRAVEL EXPENSES

The State will not be responsible for any travel or out of pocket expenses incurred in the performance of the Services performed under this Contract. The Contractor must assume all travel and related expenses incurred by Contractor in performance of its obligations. All labor rates in this Agreement will be considered "Fully Loaded", including, but not limited to: meals, hotel/housing, airfare, car rentals, car mileage, and any additional out of pocket expenses.

3. SHIPPING FEES

Products will be delivered FOB Destination, freight prepaid within a commercially reasonable amount of time after the Effective Date of this Agreement as mutually agreed upon by the parties in writing. The State will not pay for any shipping or delivery fees unless specifically itemized in this Agreement. Upon delivery, the State will be responsible for loss or damage to the Product.

INVOICING

The Contractor shall submit correct invoices to the State for all amounts to be paid by the State. All invoices submitted shall be subject to the State's prior written approval, which shall not be unreasonably withheld. The Contractor shall only submit invoices for Services or Products as permitted by the Contract. Invoices must be in a format as determined by the State and contain detailed information, including without limitation: itemization of each Product and identification of the Product for which payment is sought, and the Acceptance date triggering such payment; date of delivery and/or installation; monthly maintenance charges; any other Project costs or retention amounts if applicable.

Upon Acceptance of a Product, and a properly documented and undisputed invoice, the State will pay the correct and undisputed invoice within thirty (30) days of invoice receipt. Invoices will not be backdated and shall be promptly dispatched.

4. INVOICE ADDRESS

Invoices may be sent to:

New Hampshire Hospital Attn: Financial Manager
36 Clinton St
Concord, NH 03301
NHHFinancialServices@dhhs.nh.gov

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EXHIBIT C – PRICE AND PAYMENT SCHEDULE

5. PAYMENT ADDRESS

Payments shall be made via ACH. Use the following link to enroll with the State Treasury for ACH payments: <https://www.nh.gov/treasury/state-vendors/index.htm>

6. OVERPAYMENTS TO THE CONTRACTOR

The Contractor shall promptly, but no later than fifteen (15) business days, return to the State the full amount of any overpayment or erroneous payment upon discovery or notice from the State.

- 7. TAXES.** Prices and fees for Products and/or Services do not include any taxes. As of the effective date of this Agreement, the Parties acknowledge and agree that the State is exempt from sales tax. In the event any use, rental, property, or other taxes or assessments of any kind (including, without limitation, withholding or value-added taxes) imposed by any federal, state, local or other governmental entity for Products and/or Services provided under this Agreement, excluding taxes based solely on Contractor's net income (collectively, "Taxes"). If applicable additional Taxes arise, the State may enter into a contract Amendment to cover such Taxes, as agreed upon by both parties and as approved by the Governor and Executive Council. If the State is exempt from any other Taxes, the State will not be relieved of its obligation to pay such Taxes until the State provides to Contractor documentation sufficient to establish the State's tax-exempt status. The State will immediately notify Contractor in writing of any change in its tax status. If the State's exempt status is challenged by any jurisdiction, then the State will: (i) immediately notify Contractor; (ii) resolve the challenge; and (iii) hold Contractor harmless from all claims and expenses related to any such challenge.

8. CREDITS

The State may apply credits due to the State arising out of this Contract, against the Contractor's invoices with appropriate information attached.

9. PAYMENT SCHEDULE

9.1 Contract Type

9.1.1. Activities / Deliverables / Milestones Pricing

This is a Not to Exceed Contract. The total Contract value is indicated in P-37 General Provisions - Block 1.8: Price Limitation for the period between the Effective Date through date indicated in P-37 General Provisions - Block 1.7: Completion Date. The Contractor shall be responsible for performing its obligations in accordance with the Contract. This Contract will allow the Contractor to invoice the State for the following activities, Deliverables, or milestones appearing in the price and payment tables, in Exhibit B-1 Customer Order.

Remainder of this page intentionally left blank

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JS

Date: 9/15/2021

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Department of Health and Human Services
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EXHIBIT D – SOFTWARE AGREEMENT

EXHIBIT D – SOFTWARE AGREEMENT

The terms outlined in the Software Agreement are set forth below:

1. LICENSE GRANT

1.1 SAAS

Subject to the terms and conditions of this Agreement and the applicable User Guide, Contractor grants to the State a limited, non exclusive, non transferable license to use Software at the State's site(s) (as set forth in the applicable Customer Order) during the applicable Subscription Term, provided that all licensing of Third Party Software will be subject to the terms under Section 1.2 (*Third Party Software Terms*), below. Each license the State acquires from Contractor for use of the embedded Software is valid only for use with the particular unit of Product, identified by serial number, within which it is embedded. Each license granted to the State is:

- (i) perpetual, unless a different license term is expressly set forth in the applicable Contact under which the Software is licensed to Customer; and
- (ii) subject to the termination provisions of the Agreement. The Parties acknowledge that this Agreement is a Services agreement and Contractor will not be delivering copies of the Software to Customer as part of the Agreement.

1.2 Third Party Software Terms

The State's use of software or databases owned by a third party embedded or used in connection with the Products (collectively referred to as "Third Party Software") will be subject to the additional terms and conditions below:

1.2.1. Ownership

Third Party Software is licensed, not sold, by the Contractor to the State. All title and intellectual property rights in and to Third Party Software (including, but not limited to, code sequence, logic, structure and screens) and documentation, and in and to any improvements, enhancements, updates, or upgrades thereto, including concepts and technology inherent in Third Party Software, are and at all times shall remain, the sole and exclusive property of a third party and/or its affiliates ("Third Party"). Third Party Software is protected by copyright laws as well as other intellectual property laws and treaties. The State's possession, use, or access to Third Party Software does not transfer any ownership of Third Party Software nor any intellectual property rights to the State. All rights not expressly granted under this Exhibit are reserved by Contractor or Third Party. Nothing contained in this Exhibit shall be construed directly or indirectly to assign or grant to the State any right, title or interest in or to trademarks, service marks, copyrights, patents, or trade secrets of Third Party, or any ownership rights in or to the Third Party Software.

DS
[Handwritten Signature]

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EXHIBIT D – SOFTWARE AGREEMENT

1.2.2. Use

The State may use Third Party Software only in conjunction with Products and Services provided by Contractor, and not as a stand-alone product. The license granted herein does not include a license to use the Third Party Software for development, testing or support purposes.

1.2.3. Copies

The State may not make any copies of Third Party Software for any purpose unless expressly authorized by Contractor. The State must erase or destroy all Third Party Software upon notice from Contractor.

1.2.4. Restrictions

Except as permitted by applicable law, the State shall not:

- (a) work around any technical limitations in Third Party Software;
- (b) reverse engineer, de-compile, translate, disassemble or otherwise attempt to derive source code from the Third Party Software, in whole or in part (or in any instance where the law permits any such action, the State shall provide Contractor at least ninety (90) days advance written notice of its belief that such action is warranted and permitted, and shall provide Contractor (in conjunction with Third Party) with an opportunity to evaluate if the law's requirements necessitate such action);
- (c) allow access or permit use of the Third Party Software by any user other than that permitted by Contractor in the State's license agreement with Contractor;
- (d) modify or create derivative works based upon Third Party Software;
- (e) publish Third Party Software, or post any portion of it on public bulletin boards, websites, Internet ...domains, or online chat rooms;
- (f) sell, rent, lease, lend, license, sublicense or otherwise transfer, in whole or in part, Third Party Software or related documentation to any third party;
- (g) use Third Party Software in connection with, through or to an application service provider, or using other similar network hosting methods;
- (h) alter, remove or destroy and will take commercially reasonable steps to prevent the alteration, removal or destruction of, any Third Party copyright notice, trade secret or other proprietary rights notice from Third Party Software

The State shall provide the same level of security for Third Party Software as it provides for its own products, but in no event less than reasonable care, to prevent third parties from performing such activities.

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1.2.5. Internet-Based Services. Third Party Software may contain components that enable and facilitate the use of certain Internet-based services. The State acknowledges and agrees that Third Party may automatically check the version of Third Party Software and/or its components that the State is using and may provide upgrades or supplements to Third Party Software which may be automatically downloaded. No personally-identifiable information will be obtained through these services.

1.2.6. No Warranties. Third Party Software is provided "as is" without warranty of any kind. CONTRACTOR AND THIRD PARTY EXCLUDE AND DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THIRD PARTY SOFTWARE, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

1.2.7. Liability Limitations. The State agrees that, regardless of the form of any claim, neither Contractor nor Third Party has any liability for damages, whether direct, consequential, special, punitive, indirect or incidental, for anything related to Third Party Software. This limitation also applies even if Contractor or Third Party should have been aware of the possibility of damages. In no event will Contractor's liability for Third Party Software be for any amount in excess of two hundred fifty dollars (\$250.00).

1.3 Additional Terms And Conditions Applicable Only To Lexi-Comp Licensed Databases

1.3.1 Limited Right to Print Articles

The State may print out individual articles containing only insubstantial portions of the Lexi-Comp Licensed Databases ("Databases") for the State's personal educational use as long as the State includes a source reference to Lexi-Comp and its copyright notice.

1.3.2 Updates

If the State has purchased a Pyxis MedStation™ 3000, 3500 or 4000 system, Contractor shall provide quarterly updates to the Databases at no additional cost. The State is responsible for installing any updates.

1.3.3 Use of Professional Judgment

The State should consult a variety of information sources before making any treatment decision. The State should check the product information sheet accompanying each drug or medication to verify conditions of use, and should identify any changes in dosage schedule or contraindications. Information in the Databases is not a substitute for individual patient assessment based upon examination of each patient and consideration of laboratory data and other factors unique to the patient.

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EXHIBIT D – SOFTWARE AGREEMENT

2. SOFTWARE TITLE

Title, right, and interest (including all ownership and intellectual property rights) in the Software provided under this Agreement, and its associated documentation, shall remain with the Contractor.

3. SOFTWARE LICENSE RESTRICTIONS; SCOPE OF USE.

Except as otherwise permitted under the Contract, the State agrees not to:

- a) translate, disassemble, decompile, reverse engineer, alter, modify or create any derivative work of any portion of Software;
- b) make any copies of Software or its documentation, except one (1) copy for back-up or archival purposes;
- c) separate integrated Software from any Product, or otherwise use integrated Software except as an integrated part of the applicable Product;
- d) unless otherwise approved in writing, use the Software in conjunction with any Contractor-manufactured Product that was not provided to the State by Contractor or a Contractor authorized party;
- e) Remove or modify any program markings or any notice of the Contractor's proprietary rights;
- f) Make the programs or materials available in any manner to any third party for use in the third party's business operations, except as permitted herein or sell, assign, sublicense, distribute, rent, or otherwise transfer Software to a third party; or
- g) Cause or permit reverse engineering, disassembly or recompilation of the programs.

Without limiting the license restrictions in this Section and as an additional obligation, the State will adopt and implement reasonable measures to guard against unauthorized use of Software. Upon at least thirty (30) days written notice to the State, Contractor may suspend or revoke user codes, or take other appropriate action, if Contractor reasonably believes that a security violation has occurred. Scope of use restrictions for Software may be set forth in a Customer Order. Contractor will measure the State's scope of use periodically and will notify Customer if the scope of use is exceeded. If the scope of use is exceeded, additional fees will apply. Upon Contractor's reasonable request (no more than once per year), the State will provide Contractor with relevant information to verify the State's scope of use. The State will provide CareFusion with thirty (30) days prior notice for any event affecting the State's scope of use, such as acquisition of a hospital or construction of a new facility, so Contractor can adjust the State's scope of use.

4. VIRUSES

The Contractor shall provide Software that is free of viruses, destructive programming, and mechanisms designed to disrupt the performance of the Software in accordance with the Specifications. As a part of its internal development process, Contractor will use reasonable efforts to test the Software for Viruses.

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EXHIBIT D – SOFTWARE AGREEMENT

5. SOFTWARE WARRANTY

Contractor warrants that it has good title to, or the right to allow the State to use all Services, equipment, and Software, including any all component parts thereof such as third party Software or programs that may be embedded in the Software ("Contracted Resources") provided under this Contract, and that, as of the Effective Date of this Agreement, such Services, equipment, and Software used in accordance with the applicable User Guide and the terms if this Agreement do not violate or infringe any U.S. patent, trademark, copyright, trade name or other U.S intellectual property rights or misappropriate a U.S. trade secret of any third-party.

In the event that someone makes a claim against the State that any Contracted Resources infringes their intellectual property rights, the Contractor shall defend and indemnify the State against the claim provided that the State:

- a. Promptly notifies the Contractor in writing, not later than 30 days after the State receives actual written notice of such claim;
- b. Gives the Contractor control of the defense and any settlement negotiations; and
- c. Gives the Contractor the information, authority, and assistance reasonably needed to defend against or settle the claim.

Notwithstanding the foregoing, nothing in this Section 7 shall limit either Party's indemnification rights or obligations under this Agreement, or the State's counsel may participate in any claim to the extent the State seeks to assert any immunities or defenses applicable to the State.

If the Contractor believes or it is determined that any of the Contracted Resources may have violated someone else's intellectual property rights, the Contractor may choose to either modify the Contracted Resources to be non-infringing or obtain a License to allow for continued use, or if these alternatives are not acceptable to the State, the Contractor may end the License, and require return of the applicable Contracted Resources and refund all fees the State has paid the Contractor under the Contract. The Contractor will not indemnify the State if the State alters the Contracted Resources without the Contractor's consent or uses it outside the scope of use identified in the Contractor's User Guide or if the State uses a version of the Contracted Resources which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Contracted Resources which was provided to the State at no additional cost. The Contractor will not indemnify the State to the extent that an infringement claim is based upon any information design, Specification, instruction, Software, Data, or material not furnished by the Contractor. The Contractor will not indemnify the State to the extent that an infringement claim is based upon the combination of any Contracted Resources with any products or Services not provided by the Contractor without the Contractor's consent. Contractor shall have no liability to the State above the contract price.

6. CONTROL OF ALL COMPONENT ELEMENTS

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EXHIBIT D – SOFTWARE AGREEMENT

Contractor acknowledges and agrees that it is responsible for maintaining all Licenses or permissions to use any third-party Software, equipment, or Services that are component parts of any Products provided under this Agreement for the entire Term of the Contract. Nothing within this provision shall be construed to require Contractor to maintain Licenses and permissions for Software acquired by the State directly or through third-parties which may be integrated with the Contractor's Products.

7. CUSTOM SOURCE CODE-

Not Applicable

8. SOFTWARE ESCROW-

Not Applicable

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EXHIBIT E – ADMINSTRATIVE SERVICES

EXHIBIT E – ADMINISTRATIVE SERVICES

1. DISPUTE RESOLUTION

Prior to the filing of any formal proceedings with respect to a dispute (other than an action seeking injunctive relief with respect to intellectual property rights or Confidential Information), the Party believing itself aggrieved (the "Invoking Party") shall call for progressive management involvement in the dispute negotiation by written notice to the other Party. Such notice shall be without prejudice to the Invoking Party's right to any other remedy permitted under the Contract.

The Parties shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, between negotiators for the Parties at the following successive management levels, each of which shall have a period of allotted time as specified below in which to attempt to resolve the dispute:

Table E-1.			
DISPUTE RESOLUTION RESPONSIBILITY AND SCHEDULE TABLE			
LEVEL	CONTRACTOR POINT OF CONTACT	STATE POINT OF CONTACT	CUMULATIVE ALLOTTED TIME
Primary	Account Executive	Program Manager	Fourteen (14) Business Days
First	Sales Director	Program Administrator	Twenty-one (21) Business Days
Second	Contract Consultant	CEO New Hampshire Hospital	Twenty-eight (28) Business Days
Third	Manager, Contracts	Deputy Commissioner	Thirty-five (35) Business Days

The allotted time for the first level negotiations shall begin on the date the Invoking Party's notice is received by the other Party. Subsequent allotted time is days from the date that the original Invoking Party's notice is received by the other Party.

2. ACCESS AND COOPERATION

Subject to the terms of this Agreement and applicable laws, regulations, and policies, the State will provide the Contractor with access to all program files, libraries, personal computer-based Systems, Software packages, Network Systems, security Systems, and hardware as required to complete the contracted Services.

3. RECORD RETENTION

Contractor and its Subcontractors shall maintain all Project records including but not limited to books, records, documents, and other evidence of accounting procedures and practices, which properly and sufficiently reflect all direct and indirect costs invoiced in the performance of their respective obligations under the Contract. Contractor and its Subcontractors shall retain all such records for three (3) years following termination of the Contract, including any extensions. Records relating to any litigation matters regarding the Contract shall be kept for

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EXHIBIT E – ADMINSTRATIVE SERVICES

one (1) year following the termination of all litigation, including the termination of all appeals or the expiration of the appeal period.

The Contractor shall allow the State to audit conformance to the contract terms no more than once every twelve (12) months during the Term of this Agreement; provided that the State provides Contractor with reasonable advance written request of no less than sixty (60) days and such audit is conducted electronically. The State may perform this electronic audit or contract with a third party at its discretion and at the State's expense. If the State uses a third party auditor, such auditor shall be subject to terms of confidentiality consistent with this Agreement. During such audit, Contractor will make available, through electronic means, the appropriate reports and/or documents reasonably necessary to verify that the prices and the calculation of fees payable by the State, over the past twelve (12) months ("Audit Period"), are accurate and in compliance with the provisions of this Agreement. The State shall exercise such right: (i) only during normal business hours, and (ii) in a manner not to unduly interfere with Contractor's operations. To minimize expenses and disruption to business operations, the State and Contractor agree to work together to complete any audit in an expeditious manner. Before initiating any audit, the State and Contractor must make commercially reasonable and good faith attempts to resolve any issues to avoid the audit., these audits shall not include any request made under paragraph 3(g) or (3)(e) of Exhibit I"

4. ACCOUNTING

Contractor shall maintain an accounting System in accordance with Generally Accepted Accounting Principles (GAAP). The costs applicable to the Contract shall be ascertainable from the accounting System.

5. AUDIT

The Contractor shall allow the State to audit conformance to the contract terms no more than once every twelve (12) months during the Term of this Agreement; provided that the State provides Contractor with reasonable advance written request of no less than sixty (60) days. The State may perform this audit or contract with a third party at its discretion and at the State's expense. If the State uses a third party auditor, such auditor shall be subject to terms of confidentiality consistent with this Agreement. During such audit, Contractor will make available, at mutually agreed upon locations, the appropriate reports and/or documents reasonably necessary to verify that the prices and the calculation of fees payable by the State, over the past twelve (12) months ("Audit Period"), are accurate and in compliance with the provisions of this Agreement. The State shall exercise such right: (i) only during normal business hours, and (ii) in a manner not to unduly interfere with Contractor's operations. To minimize expenses and disruption to business operations, the State and Contractor agree to work together to complete any audit in an expeditious manner. Before initiating any audit, the State and Contractor must make commercially reasonable and good faith attempts to resolve any issues to avoid the audit

6. MISCELLANEOUS WORK REQUIREMENTS

6.1 Access to State Systems

In consideration for receiving access to and use of the computer facilities, network,

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EXHIBIT E – ADMINSTRATIVE SERVICES

licensed or developed software, software maintained or operated by any of the State entities, systems, equipment, Documentation, information, reports, or data of any kind (hereinafter "Information"), Contractor understands and agrees to the following rules:

6.1.1. Computer Use

- a. Every Authorized User has the responsibility to assure the protection of information from unauthorized access, misuse, theft, damage, destruction, modification, or disclosure.
- b. That information shall be used solely for conducting official State business, and all other use or access is strictly forbidden including, but not limited to, personal, or other private and non-State use and that at no time shall Contractor access or attempt to access any information without having the express authority to do so.
- c. That at no time shall Contractor access or attempt to access any information in a manner inconsistent with the approved policies, procedures, and /or agreements relating to system entry/access.
- d. That all software licensed, developed, or being evaluated by the State cannot be copied, shared, distributed, sub-licensed, modified, reverse engineered, rented, or sold, and that at all times Contractor must use utmost care to protect and keep such software strictly confidential in accordance with the license or any other agreement executed by the State. Only equipment or software owned, licensed, or being evaluated by the State, can be used by Contractor. Personal software (including but not limited to palmtop sync software) shall not be installed on any equipment.
- e. That if Contractor is found to be in violation of any of the above-stated rules, the Contractor may face default and termination under the Agreement and the individual may face removal from the State Contract, and/or criminal or civil prosecution, if the act constitutes a violation of law.
- f. That computer use shall follow the State standard policy (Statewide Computer Use Policy is available upon request)

6.1.2. Email Use

Email and other electronic communication messaging systems are State of New Hampshire property and are to be used for business purposes only. Email is defined as "internal email systems" or "State-funded email systems." Contractor understands and agrees that use of email shall follow State standard policy (Statewide Computer Use Policy is available upon request).

6.1.3. Internet/Intranet Use

The Internet/Intranet is to be used for access to and distribution of information in direct support of the business of the State of New Hampshire according to State standard policy (Statewide Computer Use Policy is available upon request).

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EXHIBIT E – ADMINSTRATIVE SERVICES

- 6.2 State Website Copyright**
All right, title and interest in the State WWW site, including copyright to all Data and information, shall remain with the State. The State shall also retain all right, title and interest in any user interfaces and computer instructions embedded within the WWW pages. All WWW pages and any other Data or information shall, where applicable, display the State's copyright.
- 6.3 Workspace Requirement**
The State will work with Contractor to determine requirements for providing necessary workspace and office equipment for Contractor's staff.
- 6.4 Workplace Hours**
Unless otherwise agreed to by the State, the Contractor's personnel shall work forty (40) hour weeks between the hours of 8 am and 5 pm (Eastern Time), excluding State of New Hampshire holidays. Changes to this Schedule may be made upon agreement with the State Project Manager.

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STATE OF NEW HAMPSHIRE
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EXHIBIT F – TERMS AND DEFINITIONS

EXHIBIT F – TERMS AND DEFINITIONS

The following general contracting terms and definitions apply except as specifically noted elsewhere in this Contract.

TERM	DEFINITION
Acceptance	Notice from the State that a Deliverable has satisfied Acceptance Test or Review, or, as applicable to Products, completion of the applicable implementation services such that the Product is performing in accordance with the specifications of the applicable User Guide.
Agreement	A Contract duly executed and legally binding.
Contractor Confidential Information	Information the Contractor has clearly identified in writing to the State it claims to be confidential or proprietary.
Contract	An Agreement between the State of New Hampshire and a Vendor, which creates binding obligations for each party to perform as specified in the Contract Documents.
Deficiency (-ies)/Defects	A failure, shortcoming or error in a Deliverable resulting in a Deliverable, the Software, or the System, not conforming to its Specifications.

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TERM	DEFINITION
Deliverable	A Deliverable is any Written, Software, or Non-Software Deliverable (letter, report, manual, book, code, or other), provided by the Contractor to the State or under the terms of a Contract requirement, including the BD Pyxis™ Products leased by the State from Contractor under this Agreement.
Documentation	All information that describes the installation, operation, and use of the Software, either in printed or electronic format, including the applicable User Guide.
Enhancements	Updates, additions, modifications to, and new releases for the Software or System, and all changes to the Documentation as a result of improvement in quality, value, or extent.
Hosted Services	Applications, IT infrastructure components or functions that organizations access from external service providers, typically through an internet connection.
Hosting System	The combination of hardware, software and networking components used by the Application Service Provider to deliver the Hosted Services.
Identification and Authentication	Supports obtaining information about those parties attempting to log on to a system or application for security purposes and the validation of those users.
Implementation	The process for making the Products performing in accordance with the specifications of the applicable User Guide
Non-Public Information	Information, other than Personal Information, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the State because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.
Operational	Operational means that the System is ready for use and fully functional in accordance with the specifications of the applicable User Guide, all Data has been loaded; the System is available for use by the State in its daily operations, and the State has issued Acceptance.

STATE OF NEW HAMPSHIRE
Department of Health and Human Services
SS-2022-NHH-02-PHARM-01 - New Hampshire Hospital
EXHIBIT F – TERMS AND DEFINITIONS

TERM	DEFINITION
Personal Information	"Personally 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.
Product	All Contractors delivered products are defined in Exhibit B-1 Customer Order.
Rental Term	As defined in the P-37 Contract term.
Software	All Contractor-owned software (e.g., application software, embedded and/or integrated software, interface software, custom drivers) and any related software owned by a third party ("Third Party Software") provided by the Contractor under the Contract.
Software Deliverables	All SAAS and Software provided by CareFusion under the Contract.
Software License	Licenses provided to the State under this Contract.

STATE OF NEW HAMPSHIRE
Department of Health and Human Services
SS-2022-NHH-02-PHARM-01 - New Hampshire Hospital
EXHIBIT F – TERMS AND DEFINITIONS

TERM	DEFINITION
Software-as-a-Service (SaaS)	The capability provided to the State to use the Contractor's applications running on a cloud infrastructure. The applications are accessible from various client devices through a thin-client interface such as a Web browser (e.g., Web-based email) or a program interface. The State does not manage or control the underlying cloud infrastructure including network, servers, Operating Systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
Specifications	Written details that set forth the requirements which include, without limitation, the RFP, the Proposal, the Contract, any performance standards, Documentation, User Guide, applicable State and federal policies, laws and regulations, State technical standards, subsequent State-approved Deliverables, and other specifications and requirements described in the Contract Documents. The Specifications are, by this reference, made a part of the Contract as though completely set forth herein.
State Data	All data created or in any way originating with the State, whether such data or content is stored on the State's hardware, the Contractor's hardware or exists in any system owned, maintained or otherwise controlled by the State or by the Contractor.
State Fiscal Year (SFY)	The New Hampshire State Fiscal Year (SFY) runs from July 1 of the preceding calendar year through June 30 of the applicable calendar year.
Subcontractor	A person, partnership, or company not in the employment of, or owned by, the Contractor which is performing Services under this Contract under a separate Contract with or on behalf of the Contractor.
Support Term	Number of months stated in the applicable Customer Order, beginning on the Term Begin Date as stated in the applicable Implementation Timeline.
System	All Software, Products, specified hardware, interfaces and extensions provided by Contractor under this Contract, integrated and functioning together in accordance with the Specifications.

STATE OF NEW HAMPSHIRE
Department of Health and Human Services
SS-2022-NHH-02-PHARM-01 - New Hampshire Hospital
EXHIBIT F – TERMS AND DEFINITIONS

TERM	DEFINITION
Term	Period of the Contract from the Effective Date through the Completion Date identified in the P-37 General Provisions or termination.
Term Begin Date	The date stated in the applicable Implementation Timelines representing the first day of the month following the date the Implementation Services are completed, and the Product is Properly Performing and Accepted. For sake of clarity, the Term Begin Date follows the Effective Date of the Contract.
Verification	Supports the confirmation of authority to enter a computer system application or network.
Warranty	The conditions under, and period during, which the Contractor will repair or replace the Product that is not Properly Performing without cost to the buyer or user. It also delineates the rights and obligations of both parties in case of a claim or dispute.
Warranty Period	A period of coverage during which the Contractor is responsible for providing a guarantee for Products and Services delivered as defined in the Contract.

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EXHIBIT G – AGENCY ATTACHMENTS AND CONTRACTOR CERTIFICATES

1 AGENCY ATTACHMENTS

Exhibit B -1 Customer Orders

Exhibit B-2 Implementation Timeline

Exhibit B Business and Technical Requirements Spreadsheet – Attachment 1

Agency Compliance Documents – Attachment 2

2 CONTRACTOR CERTIFICATES

- a. Contractor's Certificate of Good Standing
- b. Contractor's Certificate of Vote/Authority
- c. Contractor's Certificate of Insurance

3 CONTRACTOR ATTACHMENTS

- a. Contractor's Certificate of Insurance

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Customer Information		Ship To:	Bill To
Sold To:			Same as (Circle) Sold To: Ship To:
Legal Name:	NEW HAMPSHIRE HOSPITAL	NEW HAMPSHIRE HOSPITAL	
DBA:	NEW HAMPSHIRE HOSPITAL	NEW HAMPSHIRE HOSPITAL	
Street Address:	36 CLINTON ST	36 CLINTON ST	
City, St., Zip:	CONCORD, NH 03301-2359	CONCORD, NH 03301-2359	
Customer No.:	10118667	10118667	

1. **Customer Orders.** Effective as of the date of both signatures below ("Effective Date"), this Customer Order is entered by and between CareFusion and Customer as separate and distinct agreements (combined for administrative convenience) for: (i) Rental Equipment and/or Software listed in the Product Schedule attached hereto and incorporated by this reference (each, a "Pyxis Product" and, collectively, the "Pyxis Products"); and (ii) Services applicable to the Pyxis Products (collectively, the "Customer Orders"). The Customer Orders will be governed by the latest Master Agreement and Schedule(s) in effect between the Parties and applicable to the Pyxis Products and Services ("Master Agreement"). Any reference to a "Rental Term(s)" or "Rental Fee(s)" in relation to Software will alternately refer to "Subscription Term(s)" or "Subscription Fee(s)", respectively. Notwithstanding the foregoing, if applicable to the Pyxis Products hereunder, any reference to (a) "Master Agreement" will alternately refer to the Master Rental Terms and Conditions or Master Support Terms and Conditions and (ii) "Customer Order" will alternately refer to "Rental Agreement" or "Support Agreement."

2. **Configurations.** Pricing set forth on the product schedules attached to these Customer Orders is based on the specific configuration, including type and quantities of drawers in the Products, as applicable. Any changes to the products or configurations may result in a change in pricing, subject to the applicable Group Purchasing Organization Agreement or other related pricing agreements between the Parties. Customer's execution of the Equipment Confirmation form shall be confirmation of the Customer's intended final configuration of the Products as Accepted.

3. **Footprint Modification Option.** The Parties understand and agree that the Pyxis Products hereunder will be subject to the following option (hereafter, "FMO Option").
 (a) **Definitions.** As used herein, (i) "FMO Products" will mean a subset of the Pyxis Products valued at up to twenty percent (20%) of the Modification Amount for each Contract Year; (ii) "Modification Amount" will mean the total annual Monthly Rental and/or Monthly Subscription Fees for the Pyxis Products hereunder; and (iii) "Contract Year" will mean the twelve (12) month period beginning on the Effective Date (or the anniversary of the Effective Date) of the Master Agreement ("Master Agreement Anniversary Date") and ending twelve (12) months thereafter and each subsequent twelve-(12) month period of the Rental and/or Subscription Terms hereunder.
 (b) **Terms and Conditions.** Provided that Customer is not then in breach of any agreement with CareFusion, Customer may terminate the Rental Term or Subscription Term for the FMO Products any time during a Contract Year. Termination shall be subject to Customer's execution of CareFusion's standard form amendment to the Customer Orders and Customer's compliance with the terms thereof, including, without limitation, return of the FMO Products at Customer's expense. Termination of the Rental or Subscription Term for the FMO Products shall be effective the first day of the month following the date CareFusion receives possession of the FMO Products. On the effective date of termination, the Rental, Subscription or Support Terms and Customer's obligation to pay Monthly Rental, Subscription or Support Fees for the FMO Products will terminate.

For the sake of clarity, the foregoing option shall not: (i) apply any Pyxis Products other than the FMO Products, (ii) apply to any "sold-to" or "ship-to" entity not designated above, (iii) apply to any Third Party Product or Third Party Software listed in the Customer Orders, or (iv) carry over to a subsequent Contract Year.

Will a Purchase Order be required for payment of the financial obligation proposed under this Customer Order? (Please Circle)

Yes No

Rental PO#: _____

Support PO#: _____

Copies of this Customer Order will be sent to Ship To signer listed above. When complete, additional copies will be sent to the following address:

Name: _____

Street Address: _____

City, St., Zip: _____

Each person signing this document represents that he/she intends to and has the authority to bind his/her respective Party to the Rental Customer Order and the separate Support Customer Order.

NEW HAMPSHIRE HOSPITAL

DocuSigned by:
 Sign: Heather M. Moquin
 Print: Heather M. Moquin
 Title: Chief Executive Officer, New Hampshire Hospital
 Date: 9/16/2021

CAREFUSION SOLUTIONS, LLC
 ATTN: CONTRACTS, 3750 TORREY VIEW CT, SAN DIEGO, CA 92130
 888.876.4287

DocuSigned by:
 Sign: Robert Schwalger
 Print: Robert Schwalger
 Title: Sr. Manager, Capital Contracting
 Date: 15-Sep-2021

This Customer Order is not valid until executed by both Customer and CareFusion Solutions, LLC.

SALES ASSOCIATE: Christopher Moore
 Email: chris.moore@bd.com



Customer Order
Pyxis Product Schedule
Customer Order : 1000198888

Sold To: NEW HAMPSHIRE HOSPITAL #10118667
 Ship To: NEW HAMPSHIRE HOSPITAL #10118667

Product Discounts:
 QTY: 15 %
 Non-Std Disc %: 29 %
 Support Discounts:
 QTY: 10 %
 Support Level: Comprehensive
 Rental and Support Term: 60 months

The fees stated in this Customer Order are offered by CareFusion for acceptance by the Customer for a period expiring on: 09/30/2021

New Products							Rental Terms			Support Terms		
Proposed Location	Product ID	Rx/ Prs	Product Name	P.Drws	Tr.Type	QTY	Monthly Rental Fee			Monthly Support Fee		
							List	Net	Extended	List	Net	Extended
IT	136607-01		Hosted Data Services OPT IN		NEW	1	\$ 0.01	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
IT	137409-01		Viewer Dispensing Subscription		SWN	1	\$ 0.01	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
IT	134056-01		CCE Basic Connectivity		SWN	1	\$ 0.01	\$ 0.00	\$ 0.00	\$ 0.01	\$ 0.00	\$ 0.00
IT	134800-01		Localized User/ Form Mgmt Lic 11-20Mains		SWN	1	\$ 184.00	\$ 110.00	\$ 110.00	\$ 51.00	\$ 46.00	\$ 46.00
IT	137673-02		ES VM TEST 2016 SERVER		SWN	1	\$ 0.01	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
IT	137689-02		ES VM SMALL 2016 SERVER W/ SQL <15 MAINS		SWN	1	\$ 627.00	\$ 443.00	\$ 443.00	\$ 232.00	\$ 232.00	\$ 232.00
APC	323	Rx	MEDSTATION,ES,MAIN,8DR	6	NEW	1	\$ 1,209.00	\$ 725.00	\$ 725.00	\$ 131.00	\$ 118.00	\$ 118.00
APC	345		MED,SRM,SLIMLINE,12FT,LT		NEW	1	\$ 97.00	\$ 58.00	\$ 58.00	\$ 21.00	\$ 21.00	\$ 21.00
CUNIT	323	Rx	MEDSTATION,ES,MAIN,8DR	6	NEW	1	\$ 1,209.00	\$ 725.00	\$ 725.00	\$ 131.00	\$ 118.00	\$ 118.00
CUNIT	345		MED,SRM,SLIMLINE,12FT,LT		NEW	1	\$ 97.00	\$ 58.00	\$ 58.00	\$ 21.00	\$ 21.00	\$ 21.00
DUNIT	323	Rx	MEDSTATION,ES,MAIN,8DR	6	NEW	1	\$ 1,209.00	\$ 725.00	\$ 725.00	\$ 131.00	\$ 118.00	\$ 118.00
DUNIT	345		MED,SRM,SLIMLINE,12FT,LT		NEW	1	\$ 97.00	\$ 58.00	\$ 58.00	\$ 21.00	\$ 21.00	\$ 21.00
EXPANSION	111-220		CIISAFE, TALL DBL AUX, SOLID DOORS		NEW	1	\$ 317.00	\$ 190.00	\$ 190.00	\$ 43.00	\$ 39.00	\$ 39.00
EXPANSION	107-252-01		CIISAFE,V9.X DESKTOP PC, BIO		NEW	1	\$ 1,038.00	\$ 623.00	\$ 623.00	\$ 110.00	\$ 99.00	\$ 99.00
EXPANSION	343		MEDSTATION,ES,AUX,TOWER, SC		NEW	1	\$ 215.00	\$ 129.00	\$ 129.00	\$ 45.00	\$ 41.00	\$ 41.00
FUNIT	323	Rx	MEDSTATION,ES,MAIN,8DR	6	NEW	1	\$ 1,209.00	\$ 725.00	\$ 725.00	\$ 131.00	\$ 118.00	\$ 118.00
FUNIT	345		MED,SRM,SLIMLINE,12FT,LT		NEW	1	\$ 97.00	\$ 58.00	\$ 58.00	\$ 21.00	\$ 21.00	\$ 21.00
GUNIT	345		MED,SRM,SLIMLINE,12FT,LT		NEW	1	\$ 97.00	\$ 58.00	\$ 58.00	\$ 21.00	\$ 21.00	\$ 21.00
GUNIT	323	Rx	MEDSTATION,ES,MAIN,8DR	6	NEW	1	\$ 1,209.00	\$ 725.00	\$ 725.00	\$ 131.00	\$ 118.00	\$ 118.00
HUNIT	345		MED,SRM,SLIMLINE,12FT,LT		NEW	1	\$ 97.00	\$ 58.00	\$ 58.00	\$ 21.00	\$ 21.00	\$ 21.00
HUNIT	323	Rx	MEDSTATION,ES,MAIN,8DR	6	NEW	1	\$ 1,209.00	\$ 725.00	\$ 725.00	\$ 131.00	\$ 118.00	\$ 118.00
ISU	345		MED,SRM,SLIMLINE,12FT,LT		NEW	1	\$ 97.00	\$ 58.00	\$ 58.00	\$ 21.00	\$ 21.00	\$ 21.00
ISU	323	Rx	MEDSTATION,ES,MAIN,8DR	6	NEW	1	\$ 1,209.00	\$ 725.00	\$ 725.00	\$ 131.00	\$ 118.00	\$ 118.00
IUNIT	345		MED,SRM,SLIMLINE,12FT,LT		NEW	1	\$ 97.00	\$ 58.00	\$ 58.00	\$ 21.00	\$ 21.00	\$ 21.00
IUNIT	323	Rx	MEDSTATION,ES,MAIN,8DR	6	NEW	1	\$ 1,209.00	\$ 725.00	\$ 725.00	\$ 131.00	\$ 118.00	\$ 118.00
J1UNIT	323	Rx	MEDSTATION,ES,MAIN,8DR	6	NEW	1	\$ 1,209.00	\$ 725.00	\$ 725.00	\$ 131.00	\$ 118.00	\$ 118.00
J2UNIT	345		MED,SRM,SLIMLINE,12FT,LT		NEW	1	\$ 97.00	\$ 58.00	\$ 58.00	\$ 21.00	\$ 21.00	\$ 21.00
J2UNIT	323	Rx	MEDSTATION,ES,MAIN,8DR	6	NEW	1	\$ 1,209.00	\$ 725.00	\$ 725.00	\$ 131.00	\$ 118.00	\$ 118.00
SPARE	345		MED,SRM,SLIMLINE,12FT,LT		NEW	1	\$ 97.00	\$ 58.00	\$ 58.00	\$ 21.00	\$ 21.00	\$ 21.00
Totals:									\$ 9,325.00			\$ 1,847.00

Total Monthly Rental & Support Fee: \$11,172.00

All fees mentioned are in USD

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9/16/2021

Customer Initials: _____



Implementation Timeline

Solution / Product(s): New Hampshire Hospital_4000 to ES

Conversion

Customer Name: New Hampshire Hospital

Customer Order Number: 1000198888

Timeline Create Date: 7/8/2021

Timeline Expiration Date: 9/24/2021

This Implementation Timeline applies to Products/Solutions identified in the applicable Customer Order (or, if applicable, Product Agreement, Rental Agreement or Purchase Agreement). Capitalized terms not defined in this Implementation Timeline shall have the same meanings as in the Customer Order and Master Agreement (or, if applicable, Master Terms and Conditions). CareFusion and Customer shall use commercially reasonable efforts to complete the services for each implementation Phase described below on or before the applicable Completion Date. Prior to the commencement of the first Implementation Phase, the timeline can be adjusted without penalty based upon mutually agreed upon dates.

Implementation Phase - Key Milestone	Milestone Description	Completion Date
Plan - Kick Off Project	CareFusion and Customer confirm project scope, governance methodology, project plan, resource plan, introduce design and training approach (super user and end user).	10/18/2021
Plan - Install Servers	CareFusion and Customer deploy the contracted servers based on the agreed upon specifications for production and test environments. Customer procures third-party hardware equipment (if necessary).	10/29/2021
Plan & Validate - Solution Design & Planning	CareFusion and Customer obtain greater than 80% system application design decisions through workshops, education discussions, workflow and policy and procedure assessment. CareFusion and Customer confirm that training and equipment deployment plans are created.	12/1/2021
Validate - Solution Validation	Customer completes system build, application, interface and workflow validation.	12/29/2021
Validate - Migrate to Production System	CareFusion and Customer completes production server and interface activation.	1/5/2022
Execute - Super User & End User Training	All CareFusion provided super user training completed. All Customer provided end user training completed.	1/27/2022
Execute - Confirm Infrastructure Ready	Customer completes all related construction or site preparation in order to accommodate product equipment. This includes physical (walls, shelving, etc.), electrical, and communications (network connections) infrastructure.	12/15/2021
Execute - Equipment Deployment Start	Start of Products/Solutions go live and equipment confirmation.	1/13/2022
Execute - Equipment Deployment End	Completion of Products/Solutions go live and equipment confirmation.	2/3/2022
Term Begin Date		3/1/2022
Implementation Timeline Assumptions	Description	
Scope Assumptions	Customer agrees to provide qualified resources, a complete IT infrastructure, and a staging area that supports the requirements to implement the Products/Solutions as defined by the Completion Dates.	
Additional Assumptions	Med ES Timeline Assumptions: • Customer Resources Committed to meet Critical Path Milestones & BD Onsite Dates • Staging Area with adequate (100 sq ft) working space available with network & power (11 ports) • Separate Training Area with adequate space for at least 2 Mains (2 ports) plus 8 people • 3-4 MedStations rolled out per day during deployment week	

Implementation Timeline is valid if signed by both Parties by the Timeline Expiration Date. Each person signing this Implementation Timeline represents that he/she intends to and has the authority to bind his/her respective Party to this Implementation Timeline.

Implementation will not commence nor products ship before this Implementation Timeline is processed with an executed Customer Order.

New Hampshire Hospital	CareFusion Solutions, LLC
Sign:	Sign:
Print:	Print:
Title:	Title:
Date:	Date:

Created by: Raquel DeCandio

Created on: 7/8/2021 4:38 PM

DocuSigned by:

Heather M. Moquin

46AF9C9C7389402...

Heather M. Moquin

Chief Executive Officer, New Hampshire 8/16/2021

DocuSigned by:

Robert Schwalger

6ABA59323606401...

Robert Schwalger

Sr. Manager, Capital 8/15/2021

APPLICATION REQUIREMENTS			
State Requirements			Vendor
Req #	Requirement Description	Criticality	Vendor Response
GENERAL SPECIFICATIONS			
A1.1	Ability to access data using open standards access protocol (please specify supported versions in the comments field).	M	Y
A1.2	Data is available in commonly used format over which no entity has exclusive control, with the exception of National or International standards. Data is not subject to any copyright, patent, trademark or other trade secret regulation.	M	Y
A1.3	Web-based compatible and in conformance with the following W3C standards: HTML5, CSS 2.1, XML 1.1	M	Y
APPLICATION SECURITY			
A2.1	Verify the identity or authenticate all of the system client applications before allowing use of the system to prevent access to inappropriate or confidential data or services.	M	Y
A2.2	Verify the identity and authenticate all of the system's human users before allowing them to use its capabilities to prevent access to inappropriate or confidential data or services.	M	Y
A2.3	Enforce unique user names.	M	Y
A2.4	Enforce complex passwords for Administrator Accounts in accordance with DoIT's statewide <i>User Account and Password Policy</i>	M	Y
A2.5	Enforce the use of complex passwords for general users using capital letters, numbers and special characters in accordance with DoIT's statewide <i>User Account and Password Policy</i> .	M	Y
A2.6	Encrypt passwords in transmission and at rest within the database.	M	Y
A2.7	Establish ability to expire passwords after a definite period of time in accordance with DoIT's statewide <i>User Account and Password Policy</i>	M	Y
A2.8	Provide the ability to limit the number of people that can grant or change authorizations	M	Y
A2.9	Establish ability to enforce session timeouts during periods of inactivity.	M	Y
A2.10	The application shall not store authentication credentials or sensitive data in its code.	M	Y
A2.11	Log all attempted accesses that fail identification, authentication and authorization requirements.	M	Y
A2.12	The application shall log all activities to a central server to prevent parties to application transactions from denying that they have taken place.	M	Y

Contractor Initials

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Date 9/15/2021

Date

Exhibit G: Attachment 1

A2.13	All logs must be kept for - six years.	M	Y
A2.14	The application must allow a human user to explicitly terminate a session. No remnants of the prior session should then remain.	M	Y
A2.15	Do not use Software and System Services for anything other than they are designed for.	M	Y
A2.16	The application Data shall be protected from unauthorized use when at rest	M	Y
A2.17	The application shall keep any sensitive Data or communications private from unauthorized individuals and programs.	M	Y
A2.18	Subsequent application enhancements or upgrades shall not remove or degrade security requirements	M	Y
A2.19	Utilize change management documentation and procedures	M	Y
A2.20	Web Services : The service provider shall use Web services exclusively to interface with the State's data in near real time when possible.	M	Y

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Contractor Initials _____

Date 9/15/2021

Exhibit G: Attachment 1

TESTING			
State Requirements			Vendor
Req #	Requirement Description	Criticality	Vendor Response
APPLICATION SECURITY TESTING			
T1.1	All components of the Software shall be reviewed and tested to ensure they protect the State's web site and its related Data assets.	M	Y
T1.2	The Vendor shall be responsible for providing documentation of security testing, as appropriate. Tests shall focus on the technical, administrative and physical security controls that have been designed into the System architecture in order to provide the necessary confidentiality, integrity and availability.	M	Y
T1.3	Provide evidence that supports the fact that Identification and Authentication testing has been recently accomplished; supports obtaining information about those parties attempting to log onto a system or application for security purposes and the validation of users	M	N
T1.4	Test for Access Control; supports the management of permissions for logging onto a computer or network	M	Y
T1.5	Test for encryption; supports the encoding of data for security purposes, and for the ability to access the data in a decrypted format from required tools.	M	Y
T1.6	Test the Intrusion Detection; supports the detection of illegal entrance into a computer system	M	N/A
T1.7	Test the Verification feature; supports the confirmation of authority to enter a computer system, application or network	M	Y
T1.8	Test the User Management feature; supports the administration of computer, application and network accounts within an organization.	M	Y
T1.9	Test Role/Privilege Management; supports the granting of abilities to users or groups of users of a computer, application or network	M	Y
T1.10	Test Audit Trail Capture and Analysis; supports the identification and monitoring of activities within an application or system	M	Y
T1.11	Test Input Validation; ensures the application is protected from buffer overflow, cross-site scripting, SQL Injection, and unauthorized access of files and/or directories on the server.	M	Y
T1.12	For web applications, ensure the application has been tested and hardened to prevent critical application security flaws. (At a minimum, the application shall be tested against all flaws outlined in the Open Web Application Security Project (OWASP) Top Ten (http://www.owasp.org/index.php/OWASP_Top_Ten_Project))	M	Y


 Contractor Initials _____
 Date: 9/15/2021

Exhibit G: Attachment 1

T1.13	Provide the State with validation of 3rd party security reviews performed on the application and system environment. The review may include a combination of vulnerability scanning, penetration testing, static analysis of the source code, and expert code review (please specify proposed methodology in the comments field).	M	N
T1.14	Prior to the System being moved into production, the Vendor shall provide results of all security testing to the Department of Information Technology for review and acceptance.	M	Y
T1.15	Vendor shall provide documented procedure for migrating application modifications from the User Acceptance Test Environment to the Production Environment.	M	Y
STANDARD TESTING			
T2.1	The Vendor must test the software and the system using an industry standard and State approved testing methodology.	M	Y
T2.2	The Vendor must perform application stress testing and tuning.	M	Y
T2.3	The Vendor must provide documented procedure for how to sync Production with a specific testing environment.	M	Y
T2.4	The vendor must define and test disaster recovery procedures.	M	Y

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Contractor Initials _____

Date: 9/15/2021 _____

Exhibit G: Attachment 1

HOSTING-CLOUD REQUIREMENTS				
State Requirements			Vendor	
Req #	Requirement Description	Criticality	Vendor Response	Comments
OPERATIONS				
H1.1	Vendor shall provide an ANSI/TIA-942 Tier 3 Data Center or equivalent. A tier 3 data center requires 1) Multiple independent distribution paths serving the IT equipment, 2) All IT equipment must be dual-powered and fully compatible with the topology of a site's architecture and 3) Concurrently maintainable site infrastructure with expected availability of 99.982%	M	Yes	Meets requirement for BD Knowledge Portal.
H1.2	Vendor shall maintain a secure hosting environment providing all necessary hardware, software, and Internet bandwidth to manage the application and support users with permission based logins.	M	Yes	Meets requirement for BD Knowledge Portal.
H1.3	The Data Center must be physically secured – restricted access to the site to personnel with controls such as biometric, badge, and others security solutions. Policies for granting access must be in place and followed. Access shall only be granted to those with a need to perform tasks in the Data Center.	M	Yes	Meets requirement for BD Knowledge Portal.
H1.4	Vendor shall install and update all server patches, updates, and other utilities within 60 days of release from the manufacturer.	M	Yes	Meets requirement for BD Knowledge Portal.
H1.5	Vendor shall monitor System, security, and application logs.	M	Yes	Meets requirement for BD Knowledge Portal.
H1.6	Vendor shall manage the sharing of data resources.	M	Yes	Meets requirement for BD Knowledge Portal.
H1.7	Vendor shall manage daily backups, off-site data storage, and restore operations.	M	Yes	Meets requirement for BD Knowledge Portal.
H1.8	The Vendor shall monitor physical hardware.	M	Yes	Meets requirement for BD Knowledge Portal.


 Contractor Initials _____
 Date 9/15/2021

Exhibit G: Attachment 1

H1.9	Remote access shall be customized to the State's business application. In instances where the State requires access to the application or server resources not in the DMZ, the Vendor shall provide remote desktop connection to the server through secure protocols such as a Virtual Private Network (VPN).	M	N/A	Remote access would not be required for the State to access the system. The state will access the application through a web portal
DISASTER RECOVERY				
H2.1	Vendor shall have documented disaster recovery plans that address the recovery of lost State data as well as their own. Systems shall be architected to meet the defined recovery needs.	M	Yes	Meets requirement for BD Knowledge Portal.
H2.2	The disaster recovery plan shall identify appropriate methods for procuring additional hardware in the event of a component failure. In most instances, systems shall offer a level of redundancy so the loss of a drive or power supply will not be sufficient to terminate services however, these failed components will have to be replaced.	M	Yes	Meets requirement for BD Knowledge Portal.
H2.3	Vendor shall adhere to a defined and documented back-up schedule and procedure.	M	Yes	Meets requirement for BD Knowledge Portal.
H2.4	Back-up copies of data are made for the purpose of facilitating a restore of the data in the event of data loss or System failure.	M	Yes	Meets requirement for BD Knowledge Portal.
H2.5	Scheduled backups of all servers must be completed regularly. The minimum acceptable frequency is differential backup daily, and complete backup weekly.	M	Yes	Meets requirement for BD Knowledge Portal.
H2.6	Tapes or other back-up media tapes must be securely transferred from the site to another secure location to avoid complete data loss with the loss of a facility.	M	Yes	Meets requirement for BD Knowledge Portal.
H2.7	Data recovery – In the event that recovery back to the last backup is not sufficient to recover State Data, the Vendor shall employ the use of database logs in addition to backup media in the restoration of the database(s) to afford a much closer to real-time recovery. To do this, logs must be moved off the volume containing the database with a frequency to match the business needs.	M	Yes	Meets requirement for BD Knowledge Portal.
HOSTING SECURITY				
H3.1	The Vendor shall employ security measures ensure that the State's application and data is protected.	M	Yes	Meets requirement for BD Knowledge Portal. <i>JS</i>

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H3.2	If State data is hosted on multiple servers, data exchanges between and among servers must be encrypted.	M	Yes	Meets requirement for BD Knowledge Portal.
H3.3	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 whole, shall have aggressive intrusion-detection and firewall protection.	M	Yes	Meets requirement for BD Knowledge Portal.
H3.4	All components of the infrastructure shall be reviewed and tested to ensure they protect the State's hardware, software, and its related data assets. Tests shall focus on the technical, administrative and physical security controls that have been designed into the System architecture in order to provide confidentiality, integrity and availability.	M	Yes	Meets requirement for BD Knowledge Portal.
H3.5	The Vendor shall ensure its complete cooperation with the State's Chief Information Officer in the detection of any security vulnerability of the hosting infrastructure.	M	Yes	As agreed between the parties in the applicable contract.
H3.6	The Vendor shall authorize the State to perform scheduled and random security audits, including vulnerability assessments, of the Vendor' hosting infrastructure and/or the application upon request.	M	Yes	Yes, vulnerability assessments can be completed within the State's environment.
H3.7	All servers and devices must have event logging enabled. Logs must be protected with access limited to only authorized administrators. Logs shall include System, Application, Web and Database logs.	M	Yes	Meets requirement for BD Knowledge Portal.
H3.8	Operating Systems (OS) and Databases (DB) shall be built and hardend in accordance with guidelines set forth by CIS, NIST or NSA	M	Yes	Meets requirement for BD Knowledge Portal.
H3.10	The Vendor shall be solely liable for costs associated with any breach of State data housed at their location(s) including but not limited to notification and any damages assessed by the courts.	M	Yes	As agreed between the parties in the applicable contract.
SERVICE LEVEL AGREEMENT				
H4.1	The Vendor's System support and maintenance shall commence upon the Effective Date and extend through the end of the Contract term, and any extensions thereof.	M	Yes	As agreed between the parties in the contract.
H4.2	The vendor shall maintain the hardware and Software in accordance with the specifications, terms, and requirements of the Contract, including providing, upgrades and fixes as required.	M	Yes	<div style="text-align: right;">  </div>

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H4.3	The vendor shall repair or replace the hardware or software, or any portion thereof, so that the System operates in accordance with the Specifications, terms, and requirements of the Contract.	M	Yes	
H4.4	All hardware and software components of the Vendor hosting infrastructure shall be fully supported by their respective manufacturers at all times. All critical patches for operating systems, databases, web services, etc, shall be applied within sixty (60) days of release by their respective manufacturers.		Yes	
H4.5	The State shall have unlimited access, via phone or Email, to the Vendor technical support staff between the hours of 8:30am to 5:00pm- Monday through Friday EST;	M	Yes	
H4.6	The Vendor shall conform to the specific deficiency class as described: <ul style="list-style-type: none"> o Class A Deficiency - Software - Critical, does not allow System to operate, no work around, demands immediate action; Written Documentation - missing significant portions of information or unintelligible to State; Non Software - Services were inadequate and require re-performance of the Service. o Class B Deficiency - Software - important, does not stop operation and/or there is a work around and user can perform tasks; Written Documentation - portions of information are missing but not enough to make the document unintelligible; Non Software - Services were deficient, require reworking, but do not require re-performance of the Service. o Class C Deficiency - Software - minimal, cosmetic in nature, minimal effect on System, low priority and/or user can use System; Written Documentation - minimal changes required and of minor editing nature; Non Software - Services require only minor reworking and do not require re-performance of the Service. 	M	Yes	

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H4.7	As part of the maintenance agreement, ongoing support issues shall be responded to according to the following: a. Class A Deficiencies - The Vendor shall have available to the State on-call telephone assistance, with issue tracking available to the State, eight (8) hours per day and five (5) days a week with an email / telephone response within two (2) hours of request; or the Vendor shall provide support on-site or with remote diagnostic Services, within four (4) business hours of a request; b. Class B & C Deficiencies - The State shall notify the Vendor of such Deficiencies during regular business hours and the Vendor shall respond back within four (4) hours of notification of planned corrective action; The Vendor shall repair or replace Software, and provide maintenance of the Software in accordance with the Specifications, Terms and	M	Yes	As agreed between the parties in the applicable contract.
H4.8	The hosting server for the State shall be available twenty-four (24) hours a day, 7 days a week except for during scheduled maintenance.	M	Yes	
H4.9	A regularly scheduled maintenance window shall be identified (such as weekly, monthly, or quarterly) at which time all relevant server patches and application upgrades shall be applied.	M	Yes	
H4.11	The Vendor shall use a change management policy for notification and tracking of change requests as well as critical outages.	M	Yes	
H4.12	A critical outage will be designated when a business function cannot be met by a nonperforming application and there is no work around to the problem.	M	Yes	
H4.13	The Vendor shall maintain a record of the activities related to repair or maintenance activities performed for the State and shall report quarterly on the following: Server up-time; All change requests implemented, including operating system patches; All critical outages reported including actual issue and resolution; Number of deficiencies reported by class with initial response time as well as time to close.	M	Yes	
H4.14	The Vendor will give two-business days prior notification to the State Project Manager of all changes/updates and provide the State with training due to the upgrades and changes.	M	Yes	Notifications would be provided on the BD Knowledge Portal

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SUPPORT & MAINTENANCE REQUIREMENTS				
State Requirements			Vendor	
Req #	Requirement Description	Criticality	Vendor Response	Comments
SUPPORT & MAINTENANCE REQUIREMENTS				
S1.1	The Vendor's System support and maintenance shall commence upon the Effective Date and extend through the end of the Contract term, and any extensions thereof.	M	Y	The support contract will begin upon customer's acceptance of the equipment and will run for the full term of the contract. If an extension is requested at the end of the initial term, that request will be reviewed at that time.
S1.2	Maintain the hardware and Software in accordance with the Specifications, terms, and requirements of the Contract, including providing, upgrades and fixes as required.	M	Y	Meet Requirement
S1.3	Repair Software, or any portion thereof, so that the System operates in accordance with the Specifications, terms, and requirements of the Contract.	M	Y	Meet Requirement
S1.4	The State shall have unlimited access, via phone or Email, to the Vendor technical support staff between the hours of 8:30am to 5:00pm- Monday through Friday EST;	M	Y	Meet Requirement - Our Technical Support Center is available by phone to the customer 24/7/365. Customer can also open self-serve tickets through our customer portal.
S1.5	The Vendor response time for support shall conform to the specific deficiency class as described below or as agreed to by the parties: o Class A Deficiency - Software - Critical, does not allow System to operate, no work around, demands immediate action; Written Documentation - missing significant portions of information or unintelligible to State; Non Software - Services were inadequate and require re-performance of the Service. o Class B Deficiency - Software - important, does not stop operation and/or there is a work around and user can perform tasks; Written Documentation - portions of information are missing but not enough to make the document unintelligible; Non Software - Services were deficient, require reworking, but do not require re-performance of the Service. o Class C Deficiency - Software - minimal, cosmetic in nature, minimal effect on System, low priority and/or user can use System; Written Documentation - minimal changes required and of minor editing nature; Non Software - Services require only minor reworking and do not require re-performance of the Service.	M	Y	Our Technical Support Center does not have response times associated to a deficiency class. Depending on the deficiency class, the customer should contact TSC directly by phone, available 24/7/365, so they can obtain immediate assistance. For non urgent issues, the customer can open a self service ticket.

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S1.6	The Vendor shall make available to the State the latest program updates, general maintenance releases, selected functionality releases, patches, and Documentation that are generally offered to its customers, at no additional cost.	M	Y	Meets Requirement. We will provide updates and upgrades, as defined in our Support Schedule, to the customer as they become generally available
S1.7	For all maintenance Services calls, The Vendor shall ensure the following information will be collected and maintained: 1) nature of the Deficiency; 2) current status of the Deficiency; 3) action plans, dates, and times; 4) expected and actual completion time; 5) Deficiency resolution information, 6) Resolved by, 7) identifying number i.e. work order number, 8) Issue Identified by;	P	Y	When cases are opened, the Agents will update the case with all the pertinent information as described. If the Agent is able to provide an expected completion time they will, however, depending on the issue, they may not have this information available at the time of the initial call and can provide after further troubleshooting is completed. The customer will be provided with a case # to reference if they call in for an update or if they want to review case status in the Customer Portal
S1.8	The Vendor must work with the State to identify and troubleshoot potentially large-scale System failures or Deficiencies by collecting the following information: 1) mean time between reported Deficiencies with the Software; 2) diagnosis of the root cause of the problem; and 3) identification of repeat calls or repeat Software problems.	P	Y	Meets Requirement
S1.9	As part of the Software maintenance agreement, ongoing software maintenance and support issues, shall be responded to according to the following or as agreed to by the parties: a. Class A Deficiencies - The Vendor shall have available to the State on call telephone assistance, with issue tracking available to the State, eight (8) hours per day and five (5) days a week with an email / telephone response within two (2) hours of request; or the Vendor shall provide support on-site or with remote diagnostic Services, within four (4) business hours of a request; b. Class B & C Deficiencies -The State shall notify the Vendor of such Deficiencies during regular business hours and the Vendor shall respond back within four (4) hours of notification of planned corrective action; The Vendor shall repair or replace Software, and provide maintenance of the Software in accordance with the Specifications, Terms and Requirements of the Contract; or as agreed between the parties	M	Y	Customer can contact our Technical Support Center by phone 24/7/365 for immediate assistance. There is no need to wait for a call back. After reaching an agent, if a call back is necessary, the agent will coordinate with the customer when to expect the call back. If the Technical Support Center is unable to resolve the issue, they will dispatch an on-site Field Technician for additional support. Our different support plans provide for guaranteed on-site response time based on the time Field Service is dispatched by the Technical Support Center. Our Comprehensive Support plan provides a guaranteed on-site response time of 24 hours from the time of dispatch by our Technical Support Center

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S1.10	The Vendor shall use a change management policy for notification and tracking of change requests as well as critical outages.	M	Y	Meets Requirement
S1.11	A critical outage will be designated when a business function cannot be met by a nonperforming application and there is no work around to the problem.	M	Y	Meets Requirement
S1.12	The Vendor shall maintain a record of the activities related to repair or maintenance activities performed for the State and shall report quarterly on the following: All change requests implemented; All critical outages reported including actual issue and resolution; Number of deficiencies reported by class with initial response time as well as time to close.	M	Y	Meets Requirement
S1.13	The hosting server for the State shall be available twenty-four (24) hours a day, 7 days a week except for during scheduled maintenance.	M	Y	Meets Requirement
S1.14	The Vendor will guide the State with possible solutions to resolve issues to maintain a fully functioning, hosted System.	M	Y	Meets Requirement

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S1.15	A regularly scheduled maintenance window shall be identified (such as weekly, monthly, or quarterly) at which time all relevant server patches and application upgrades shall be applied.	M	Y	Updates are typically released on a monthly basis. Devices can be configured to automatically reboot on a specific cadence, which will install the updates. If a device is not configured to automatically reboot, the customer can manage the timing on when they will do the manual reboots of the devices to install the updates. For upgrades, a Project Manager will be assigned to coordinate the project scope and timelines with the customer. All upgrade activity will be mutually agreed upon between Vendor and Customer.
S1.16	The Vendor will give two-business days prior notification to the State Project Manager of all changes/updates and provide the State with training due to the upgrades and changes.	M	Y	Meets Requirement: All upgrades included with your support plan will be coordinated directly with the customer and all project timelines will be mutually agreed upon. Training will be provided as part of the project.
S1.17	All hardware and software components of the Vendor hosting infrastructure shall be fully supported by their respective manufacturers at all times. All critical patches for operating systems, databases, web services, etc, shall be applied within sixty (60) days of release by their respective manufacturers.	M	Y	All hardware and software components of the Vendor hosting infrastructure shall be fully supported by their respective manufacturers at all times. All critical patches for operating systems, databases, web services, etc, shall be applied within thirty (30) days of validation by the vendor.

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S1.18	The Vendor shall provide the State with a personal secure FTP site to be used by the State for uploading and downloading files if applicable.	M	N	Not applicable as stated, can State please provide more information for verification
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PROJECT MANAGEMENT				
State Requirements			Vendor	
Req #	Requirement Description	Criticality	Vendor Response	Comments
PROJECT MANAGEMENT				
P1.1	Vendor shall participate in an initial kick-off meeting to initiate the Project.	M	Y	We provide a Kickoff presentation and collaborate with the customer on date/time, attendees and additional content they want included
P1.2	Vendor shall provide Project Staff as specified in the RFP.	M	Y	Please see BD's Pyxis ES System Implementation and Planning Guide
P1.3	Vendor shall submit a finalized Work Plan within ten (10) days after Contract award and approval by Governor and Council. The Work Plan shall include, without limitation, a detailed description of the Schedule, tasks, Deliverables, milestones/critical events, task dependencies, and payment Schedule. The plan shall be updated no less than <every two weeks.>	M	Y	BD supplies project plan, Tollgates (critical milestones), resource requirements, and other supporting documentation/tools such as Training Plan, Design/Build Workbook, etc.,
P1.4	Vendor shall provide detailed <bi-weekly or monthly> status reports on the progress of the Project, which will include expenses incurred year to date.	M	Y	Status reports are provided after weekly project status calls, includes: current project status, current work in progress, upcoming deliverables/milestones, risks and issues. Expenses are not provided.
P1.5	All user, technical, and System Documentation as well as Project Schedules, plans, status reports, and correspondence must be maintained as project documentation. (Define how- WORD format- on Line, in a common library or on paper)	M	Y	BD utilizes MS office tools including Outlook, Word, Excel, PowerPoint and OneNote templates.

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New Hampshire Department of Health and Human Services
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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 03301-6505

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 employee 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
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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:

9/15/2021

Date

DocuSigned by:

Name: Robert Schwalger

Title: Sr. Manager, Capital Contracting



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 to 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:

9/15/2021

Date

DocuSigned by:

Name: Robert Schwwalger

Title: Sr. Manager, Capital Contracting

Vendor Initials 
Date 9/15/2021



New Hampshire Department of Health and Human Services
Exhibit F

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

The Contractor 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
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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 (l)(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.

Contractor Name:

9/15/2021

Date

DocuSigned by:
Robert Schwalger

Name: Robert Schwalger

Title: Sr. Manager, Capital Contracting

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Contractor Initials

Date 9/15/2021

New Hampshire Department of Health and Human Services
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**CERTIFICATION OF COMPLIANCE WITH REQUIREMENTS PERTAINING TO
FEDERAL NONDISCRIMINATION, EQUAL TREATMENT OF FAITH-BASED ORGANIZATIONS AND
WHISTLEBLOWER PROTECTIONS**

The Contractor 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:

Contractor 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

Contractor Initials

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JS

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 Contractor 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 Contractor agrees to comply with the provisions indicated above.

Contractor Name:

9/15/2021

Date

DocuSigned by:
Robert Schwalger
Name: Robert Schwalger
Title: Sr. Manager, Capital Contracting

Exhibit G

Contractor Initials

DS
RS

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 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 Contractor 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 Contractor 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.

Contractor Name:

9/15/2021

Date

DocuSigned by:

Name: Robert Schwalger

Title: Sr. Manager, Capital Contracting

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 ("Agreement"), will be referred to herein as "Business Associate" and 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, 162, and 164 applicable to business associates and all terms of this Business Associate Agreement ("BAA").

To the extent that any of the protected health information, handled or otherwise dealt with on behalf of the Department, referred to herein as "Covered Entity" by the Business Associate, its subcontractors or business associates as part of the Scope of Work of the Agreement, are patient "records" as defined in 42 CFR Part 2.11, and protected by 42 CFR Part 2, the Business Associate, subcontractors, and business associates shall, if applicable, be bound by all provisions of and will meet the requirements of 42 USC s. 290 dd-2, 42 CFR Part 2, (Part 2).

(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.

DS

New Hampshire Department of Health and Human Services

Exhibit I



- 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. Protected Health Information may include records protected by 42 CFR Part 2 relating to substance use disorder evaluation, treatment, or referral for treatment.
- 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 Incident"** shall have the same meaning as the term "Security Incident" in 45 CFR Section 164.304.
- o. **"Security Rule"** shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C, and amendments thereto.
- p. **"Unsecured Protected Health Information"** 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.
- q. **Other Definitions** - All terms not otherwise defined herein shall have the meaning established under 45 C.F.R. Parts 160, 162 and 164, as amended from time to time, and the HITECH Act.

Business Associate Use and Disclosure of Protected Health Information.03
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3/2014

Exhibit I
Health Insurance Portability Act
Business Associate Agreement
Page 2 of 8

Contractor Initials _____

Date 9/15/2021

New Hampshire Department of Health and Human Services
Exhibit I



- 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 B 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;
 - III. For data aggregation purposes for the health care operations of Covered Entity;
 - IV. Business Associate may de-identify PHI solely to the extent permitted by and in accordance with HIPAA or other applicable State or Federal laws and regulations such that the PHI no longer meets the definition of PHI and use such de-identified information solely to provide the covered Products and Services; and
 - V. Other uses of PHI are permitted only with Covered Entity's express written permission.
- c. To the extent Business Associate is permitted under the BAA to disclose PHI to a third party, Business Associate must obtain in writing, prior to making any such disclosure, (i) reasonable assurances from the third party that such PHI will be held in accordance with HIPAA or other applicable State or Federal laws and regulations 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, and this BAA of any Security Incident and Breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such Security Incident and Breach, and (iii) to be held to privacy and information security standards to allow Business Associate to satisfy its obligations under this BAA.
- d. The Business Associate shall not, 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 determine how to best protect the PHI. If Covered Entity objects to the disclosure, the Business Associate agrees to refrain from disclosing the PHI until Covered Entity has exhausted all reasonable remedies solely to the extent that such delay in disclosure does not result in Business Associate's failure to comply with any legally required disclosure(s). If applicable, in any judicial proceeding, Business Associate shall resist any efforts to access any records protected by 42 CFR Part 2.

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New Hampshire Department of Health and Human Services

Exhibit I



(3) Obligations and Activities of Business Associate.

a. The Business Associate must notify Covered Entity at the email address provided DHHSInfoSec@dhhs.nh.gov of any Breach or known Security Incident immediately, or in the case of a suspected Security Incident, use commercially reasonable efforts to notify Covered Entity as soon as practicable given the circumstances, after the Business Associate has determined that the aforementioned has occurred and that PHI may have been exposed or compromised.

1. Parties acknowledge and agree that unless notice to the contrary is provided by Covered Entity to Business Associate, this paragraph constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence or attempts of unsuccessful Security Incidents for which no additional notice to Covered Entity shall be required. "Unsuccessful Security Incidents" means, without limitation, pings and other broadcast attacks on Business Associate's firewalls, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.

b. The Business Associate shall comply with all applicable state and federal suspected or known protected health information loss laws and regulations.

c. Business Associate agrees that its internal Security Incident and Breach response policies and procedures address must address how the Business Associate will:

1. Identify Security Incidents and Breaches;
2. Determine if protected health information is involved in incidents;
3. Report Security Incidents and Breaches to the Covered Entity as required herein and in the information security exhibit. The Covered Entity will provide the Business Associate with a NH DHHS Security Contractor Incident Risk Assessment Report ("Report") for completion.
4. Acknowledge that within 24-hours of receipt of the Report from Covered Entity, Business Associate agrees to promptly complete the Report with available information and email it to the Covered Entity's Information Security Officer at DHHSInfoSec@dhhs.nh.gov;
5. Identify and convene a core response group to determine the risk level of incidents and determine risk-based responses to incidents and mitigation measures. Business Associate's core response team agrees to regularly communicate ^{with} Covered Entity throughout the incident response investigation;

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New Hampshire Department of Health and Human Services
Exhibit I



6. Identify incident/breach notification method and timing;
 7. Promptly following the conclusion of Business Associate's Incident/Breach response investigation, Business Associate agrees to provide a final written incident response report and mitigation plan to the Covered Entity's Information Security Officer at DHHSInfoSec@dhhs.nh.gov; and
 8. To the extent required by law, address and report Security Incidents and/or Breaches according to the HIPAA Breach Notification Rule, the Federal Trade Commission's Health Breach Notification Rule 16 CFR Part 318, and as applicable relating to personal information (PI), in accordance with NH RSA 359-C:20 and the Agreement; and
 9. Require all legal notifications required as a result of a breach of PHI or potential breach, collected pursuant to the BAA and the Agreement be coordinated with the Covered Entity. The Business Associate shall ensure that any subcontractors used by the Business Associate shall similarly notify the Covered Entity of a breach or potential breach immediately upon discovery, shall make a full disclosure, including providing the Covered Entity with all available information, and shall cooperate fully with the Covered Entity as defined above.
- 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 subcontractors, or business associates that receive, use or have access to PHI under this BAA, to agree in writing to adhere to 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) that permit Business Associate and Covered Entity to comply with this Agreement and any applicable law or regulation.
- f. In addition to the applicable provisions of the P-37 of the Agreement, and the information security exhibit, following Covered Entity's reasonable written request, Business Associate agrees to provide a confidential summary of an audit conducted by a qualified third party selected by Business Associate, such as a SOC2 audit.
- 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.

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New Hampshire Department of Health and Human Services

Exhibit I



- 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 instruct the Individual to contact Covered Entity directly and shall within (10) days of receipt of the request Business Associate shall provide a copy of the request to the Covered Entity which shall have the responsibility of responding to the Individual's request as required by law. 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 thirty business days of termination of the Agreement, for any reason, the Business Associate shall return or destroy, as mutually agreed to by the Parties, 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 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 promptly and in writing of any changes or limitation(s) in its

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Contractor Initials _____

Date 9/15/2021

New Hampshire Department of Health and Human Services

Exhibit I



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 and in writing 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 and in writing 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 9 of the standard terms and conditions (P-37) of the Agreement, upon Covered Entity's knowledge of a material breach by Business Associate of the BAA, the Covered Entity may immediately terminate the applicable Agreement that granted access to the data that gave rise to the material breach. The Covered Entity may either immediately terminate the applicable Agreement or provide an opportunity for Business Associate to cure the alleged breach within a reasonable timeframe specified by Covered Entity.

(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 the BAA, 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 reasonably necessary to amend the BAA, from time to time as is necessary for Covered Entity and Business Associate 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 BAA shall be resolved to permit Covered Entity and Business Associate to comply with HIPAA, the Privacy and Security Rule.

3/2014

Contractor Initials _____

Date 9/15/2021

New Hampshire Department of Health and Human Services
Exhibit I



- e. Segregation. If any term or condition of the BAA 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 the BAA are declared severable.
- f. Survival. Provisions in the BAA 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 Business Associate Agreement.

NHH

CAREFUSION SOLUTIONS, LLC

The State
DocuSigned by:

Heather M. Moquin

Signature of Authorized Representative

Heather M. Moquin

Name of Authorized Representative

Chief Executive Officer, New Hampshire Hospital

Title of Authorized Representative

9/16/2021

Date

Name of the Business Associate

DocuSigned by:

Robert Schwalger

Signature of Authorized Representative

Robert Schwalger

Name of Authorized Representative

Regional Manager, Capital Contracting

Title of Authorized Representative

16-Sep-2021

Date

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Appendix G-2

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 \$25M 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:

9/15/2021

Date

DocuSigned by:

Name: Robert Schwatger

Title: Sr. Manager, Capital Contracting

Contractor Initials

Date 9/15/2021

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: 801397204

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 x 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 x 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: _____

Contractor Initials DS
Date 9/15/2021

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



The New Hampshire Department of Health and Human Services has legal, contractual, and ethical obligations to protect the confidentiality, integrity, and availability of its systems and data. The Information Security Requirements herein strike a balance between protecting Department systems and data while maintaining an information security posture that enables the Department to meet business needs. The Department promotes and supports an institutional culture that elevates its overall information security posture and requires its contractors to adhere, when applicable, to NH Department of Health and Human Services 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 that would result in unauthorized 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.

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New Hampshire Department of Health and Human Services

Exhibit K

DHHS Information Security Requirements



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 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 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 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.

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



I. RESPONSIBILITIES OF DHHS AND THE CONTRACTOR

A. Business Use and Disclosure of Confidential Information/Data.

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 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. Omitted.
4. The Contractor agrees that Confidential 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 Confidential 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 provide, to the authorized representatives of DHHS, minimal necessary systems log files and remote access logs, specifically related to Confidential Data for systems deployed at DHHS for the purpose of inspecting to confirm compliance with the terms of this Contract. The Contractor agrees to provide the Department's Information Security Officer with an annual SOC2 report as an attestation of its policies and processes upon request

II. METHODS OF SECURE TRANSMISSION OF DATA

1. Application Encryption. If End User is transmitting DHHS data containing Confidential Data between applications, the Contractor agrees the applications have been evaluated by Contractor and that said application's encryption capabilities are designed to 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 Confidential 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.

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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 or other delivery service with document/parcel tracking and receipt signature systems, such as UPS or FedEx, 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 wireless network, unless employing a secure method of transmission or remote access, which complies with the terms and conditions of this Information Security Requirements Exhibit, such as a virtual private network (VPN) or secure encrypted IP sec channel. . .
9. Remote User Communication. If End User is employing remote communication to access or transmit Confidential Data a secure method of transmission or remote access, which complies with the terms and conditions of this Information Security Requirements Exhibit, must be used.
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 90 day auto-deletion cycle (i.e. Confidential Data will be deleted every 90 days) or, in the event of a support case, deleted promptly after the case has been completed by Contractor.
11. Transport Layer Security Protocol (TLS). Contractor shall ensure that the connection is encrypted in transmission as well as configure the connection to meet State of New Hampshire DoIT standards.
12. Wireless Devices. If End User is transmitting Confidential Data via wireless devices, Confidential 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. If it is infeasible to return or destroy the Confidential Data, protections pursuant

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to this Information Security Requirements Exhibit survive 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. However, with the aforementioned security requirements in mind the Contractor may access such data, using contractor issued devices only, from outside the United States as required for Contractor to provide remote support services to DHHS under a Customer Order. Access to the State's network from outside of the continental United States must be approved by the Department's Deputy Information Security Officer and the DoIT CISO or designee. At no time will Department data be saved on a device outside of the continental United States.
2. If Contractor hosted, 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 Confidential Information.
4. The Contractor agrees, if it retains, electronic and hard copies of Confidential Data it will do so in a secure location.
5. The Contractor agrees Confidential Data stored in a Cloud must be in a FedRAMP or 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, antihacker, anti-spam, anti-spyware, and anti-malware utilities. The environment, as a whole, must have aggressive intrusion-detection and firewall protection.
6. The Contractor agrees to and ensures its 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

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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 Confidential 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 ninety (90) 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 if feasible. If destruction is not feasible, Contractor shall continue to extend the protections of the Agreement, to such Confidential Data and limit further uses and disclosures of such Confidential Data to those purposes that make the return or destruction infeasible, for so long as Contractor maintains Confidential Data.

IV. PROCEDURES FOR SECURITY

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

1. The Contractor will maintain proper security controls to protect Confidential Information collected, processed, managed, and/or stored in the delivery of contracted services.
2. The Contractor will maintain policies and procedures to protect 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.).
3. The Contractor will maintain appropriate authentication and access controls to Contractor systems that collect, transmit, or store Confidential Information, where applicable..

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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 Confidential Information for Contractor provided systems.
5. The Contractor will provide regular security awareness and education for its End Users in support of protecting 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 ensure End User(s) will maintain an internal process or processes that defines specific security expectations, and monitoring compliance to security requirements that are substantially similar with the obligations imposed on the Contractor by this Contract. Contractor shall remain responsible for all obligations, services, and functions performed by subcontractors to the same extent as if such obligations, services and functions were performed by Contractor and for purpose of this Agreement, such work shall be deemed work performed by Contractor.
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 provided in advance and agreed upon by Contractor 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 agrees to conduct an annual penetration testing of hosted databases, website, web-based portals, or hosted systems developed, implemented, managed, or supported as a deliverable for this contract. A summary of penetration testing results will be provided to DHHS Information Security The objective of said Penetration Testing is to identify design and/or functionality issues in infrastructure of systems that could expose Confidential Data, as well as, computer and network equipment and systems to risks from malicious activities. Upon DHHS request, the Contractor will provide DHHS Information Security with applicable product security whitepapers.
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. To the extent a successful Incident Computer Security Incident, or Breach is due to the Contractor's and/or End Users' failure to safeguard,

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Confidential Data, as required by this Agreement, the State shall recover incurred actual and reasonable costs resulting from such Incident, Computer Security Incident, or Breach for credit monitoring services to the extent there is reasonable risk of identity theft, mailing costs for legally-required notifications, and costs associated with website and telephone call center services.

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. Each Party 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 that is not less than the level and scope of security requirements that is set forth in the principles of NIST 800-53 (Rev.4 or later).
14. Contractor agrees to maintain a documented breach notification and Incident response process.
15. Contractor must restrict access to the Confidential Data obtained under this Contract to only those authorized End Users who need such Confidential 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 Confidential 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.
 - e. Limit disclosure of the Confidential Information to the extent permitted by law.

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- 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, provided DHHS enables such encryption during implementation.
- 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, using a method mutually agreed upon by the Parties, monitor compliance with this Contract, including the privacy and security requirements provided 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

- A. The Contractor must notify NHDHHS Information Security via the email address provided in this Exhibit, of any known or suspected Incident, Computer Security Incident or Breaches immediately after the Contractor has determined that the aforementioned has occurred and that Confidential Data been exposed or compromised.
 1. Parties acknowledge and agree that unless notice to the contrary is provided by Department in its sole discretion to Contractor, this Section V.1 constitutes notice by Contractor to Department of the ongoing existence and occurrence or attempts of Unsuccessful Security Incidents for which no additional notice to Department shall be required. "Unsuccessful Security Incidents" means, without limitation, pings and other broadcast attacks on Contractor's firewalls, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.
- B. Comply with all applicable state and federal suspected or known Confidential Data loss

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laws and regulations. Per the terms of this Exhibit the Contractors and End User's security incident and breach response procedures must also address how the Contractor will:

1. Identify incidents;
 2. Determine if Confidential Data is involved in incidents;
 3. Report suspected or confirmed incidents to the Department as required in this Exhibit. The Department will provide the Contractor with a NH DHHS Security Contractor Incident Risk Assessment Report (the "Report") for completion.
 4. Within 24-hrs of initial notification to the Department, complete the NH DHHS Security Contractor Incident Risk Assessment Report and email it to the Department's Information Security Office at the email address provided herein;
 5. Identify and convene a core response group to determine the risk level of incidents and determine risk-based responses to incidents and mitigation measures. Throughout the incident response investigation;
 6. Identify incident/breach notification method and timing;
 7. Within one business week of the conclusion of the Incident/Breach response investigation a final written Incident Response Report and Mitigation Plan is submitted to the Department's Information Security Office at the email address provided herein;
 8. Address and report incidents and/or Breaches that implicate personal information (PI) to the Department in accordance with NH RSA 359-C:20 and this Agreement;
 9. Address and report incidents and/or Breaches per the HIPAA Breach Notification Rule, and the Federal Trade Commission's Health Breach Notification Rule 16 CFR Part 318 and this Agreement.
- VI. All legal notifications required as a result of a breach of information, or potential breach, collected pursuant to this Contract shall be coordinated with the State. The Contractor shall ensure that any subcontractors used by the Contractor shall similarly notify the State of a Breach, or potential Breach immediately upon discovery, shall make a full disclosure, including providing the State with all available information, and shall cooperate fully with the State, as defined above.
- VII. PERSONS TO CONTACT
- A. DHHS Privacy Officer:
- DHHSPrivacyOfficer@dhhs.nh.gov

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B. DHHS Security Officer:

DHHSInformationSecurityOffice@dhhs.nh.gov

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