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

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

Lori A. Weaver
Interim Commissioner

January 24, 2023

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

REQUESTED ACTION

1) Authorize the Department of Health and Human Services, Office of the Commissioner, to enter into **Sole Source, Retroactive** provider aid agreements with an unspecified number of Nursing Facilities (Providers), for the purpose of paying uncompensated costs associated with accepting individuals discharged from hospitals to increase hospital bed capacity; and

2) Contingent on approval of Request #1, authorize the Department of Health and Human Services, Office of the Commissioner, to make unencumbered payments to Providers, not to exceed a shared price limitation of \$100,000 across all participating Providers.

Both requests shall be effective retroactively to February 1, 2023, upon Governor and Council approval, through February 28, 2023. 100% General Funds.

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

**05-95-47-470010-79370000 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS
DEPT OF HHS: DIVISION OF MEDICAID SERVICES: OFC OF MEDICAID SERVICES,
MEDICAID ADMINISTRATION**

State Fiscal Year	Class / Account	Class Title	Job Number	Total Amount
2023	101-500729	Medical Payments to Providers	47000054	\$100,000
			Total	\$100,000

EXPLANATION

This request is **Sole Source** because the participating Providers are identified based on emergent need, and the Department is therefore unable to competitively select Providers in advance. This request is **Retroactive** as the Department had to move swiftly to meet the needs of New Hampshire residents.

New Hampshire's healthcare system is currently experiencing significant strain due to increasing hospitalization rates. The purpose of this request is to allow the Department to enter into the attached provider aid agreement with an unspecified number of Providers to pay for uncompensated costs associated with moving patients from hospital care settings to appropriate

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lower levels of care in Nursing Facilities prior to having a final Medicaid determination. The use of a standard agreement template will allow the Department to efficiently enter into agreements with participating Providers as needed to increase hospital capacity as quickly as possible. This action will provide monetary guarantees for Providers to accept patients from hospitals, which will help to increase hospital bed capacity and reduce strain on hospital workforces. The Department will provide a final report upon completion of the program to the Governor and Council regarding this action.

The Department is also requesting authority to make unencumbered payments to participating Providers up to the shared price limitation. The Department is making this request because the number of participating Providers and the costs associated with each Provider cannot be determined in advance of this request. Cost will be impacted by the number of individuals moved from hospital settings to Providers and the associated uncompensated costs. Providers will be paid at their facility-specific Medicaid rate, in accordance with the Department's Medicaid Manual - Appendix A, for each received individual who meets the criteria specified in the agreement.

The population served includes residents statewide. The exact number of New Hampshire residents who will be served will depend on hospitalization rates.

Should the Governor and Council not authorize this request, the Department will be unable to address the current strain on New Hampshire hospitals.

Area served: Statewide

Respectfully submitted,


for:

Lori A. Weaver
Interim Commissioner



**New Hampshire State of Health and Human Services
Provider Aid Agreement**

TERMS OF PROVIDER AID AGREEMENT

This document sets forth the terms of this Provider Aid Agreement (Agreement) entered into between the **State of New Hampshire, Department of Health and Human Services** (hereinafter referred to as the "DHHS" or "State"), and _____ (Provider), with a principal place of business of _____, for the provision of care and diversion from hospitals for eligible clients. This Agreement is effective February 1, 2023, upon the signature of the parties, and the Completion Date is February 28, 2023, unless terminated earlier in accordance with section 10 below.

WHEREAS, DHHS seeks to work with providers and stakeholders to identify additional immediate actions and resources available under state and federal law necessary to increase healthcare capacity statewide;

WHEREAS, the patient has applied for Medicaid and coverage is not in place at the time of transfer, does not have insurance or coverage for such services under their current benefits, and there is no other source of payment for the service and has been medically cleared and accepted for transfer to a nursing facility, and the provider shall serve the patient in accordance with the terms and conditions set forth below;

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

- 1. **Qualifying Provider:** For the purposes of this Agreement, a qualifying Provider must possess a valid license issued by DHHS in accordance with the following regulations:

Type of Provider	New Hampshire Administrative Rule
Nursing Facilities	Hc-P 803

- 2. **Patient Transfer Procedures:** The Provider must adhere to the following patient transfer procedures to be eligible for reimbursement:

- 2.1 The Provider must obtain authorization from DHHS, Bureau of Elderly and Adult Services (BEAS), prior to transferring patients by:
 - 2.1.1 Completing a Provider Aid Prior Authorization form provided to the Provider.
 - 2.1.2 Completing the BEAS Form 3820 Change of Status Notification form located in the forms section of NH Easy at nheasy.nh.gov.
 - 2.1.3 Submitting both completed forms to beasltcprovideraide@dhhs.nh.gov.
 - 2.1.4 Receiving approval from DHHS, which, once approved, the transfer of the patient may occur.
- 2.2 The Provider agrees to work with DHHS in a timely manner to resolve and work through Medicaid eligibility for identified patients.
- 2.3 The Provider shall submit a final report in a format approved by the Department.

- 3. **Payment:** Payment shall be made to the Provider for qualifying patients as follows:
 - 3.1 Funding for this Agreement is a shared Price Limitation of \$100,000 across all qualifying Providers statewide from the Effective Date through the Completion Date.
 - 3.2 DHHS shall pay the Provider at the rates stipulated below for costs associated with patients who meet the following criteria and are approved in accordance with section 2:



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Type of Provider	Payment Criteria	Daily Rate
1) Nursing Facilities	Accepts individuals prior to Medicaid financial eligibility being determined for any Medicaid pending days that are not later reimbursed by Medicaid.	Payment shall be made in accordance with the Medicaid Daily Rate for the facility specified here: https://www.dhhs.nh.gov/sites/g/files/chbemt476/files/documents/2022-02/beas-nf-rates-appendix-a.pdf

- 3.3 The Provider shall submit an invoice with supporting documentation to DHHS and ensure each invoice:
- 3.3.1 Includes the Provider's Vendor Number issued upon registering with the New Hampshire Department of Administrative Services.
 - 3.3.2 Is submitted in a form acceptable to DHHS.
 - 3.3.3 Identifies and requests payment for costs allowable under this Agreement.
 - 3.3.4 Includes supporting documentation of allowable costs for each invoice that includes the following information for each patient:
 - 3.3.4.1 Prior Authorization number.
 - 3.3.4.2 Admission date.
 - 3.3.4.3 Discharge date, if applicable.
- 3.4 The Provider shall upload all invoices via a secure file transfer protocol (SFTP) site administered by DHHS. Upon signature of the parties, DHHS shall provide detailed invoicing instructions to the Provider.
- 3.5 The Provider shall submit documentation supporting the billing period in question with invoices.
- 3.6 Upon request of DHHS, the Provider shall furnish additional documentation as necessary to support the days and level of care being invoiced for under this agreement.
- 3.7 DHHS shall make payment to the Provider within thirty (30) days of receipt of each invoice, subsequent to approval of the submitted invoice and if sufficient funds are available, subject to section 6, Conditional Nature of Agreement.
- 3.8 The Provider shall not bill DHHS until Medicaid Eligibility has been determined and billing for the pending days has occurred.
- 3.9 The Provider shall retain all supporting documentation of expenses incurred for up to five (5) years from the Agreement period.
- 3.10 Final invoices shall be submitted to DHHS no later than six (6) months after the Completion Date of this Agreement.

4. CONFIDENTIALITY

- 4.1 Any and all confidential information obtained or received by the Provider shall be kept confidential and shall not be disclosed to anyone for any reason, unless required by law. "Confidential Information" means all information owned, managed, created, or received from the Individuals served under this Agreement, the DHHS, any other agency of the State, or any medical provider, that is protected by Federal or State information security, privacy or confidentiality laws or rules.

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Confidential Information includes, but is not limited to, Derivative Data, protected health information (PHI), personally identifiable information (PII), federal tax information (FTI), Social Security Administration information (SSA) and criminal justice information services (CJIS) and any other sensitive confidential information provided under the Agreement. This covenant shall survive the termination of the Agreement.

- 4.2 The Provider shall use and disclose Protected Health Information in compliance with the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) (45 CFR Parts 160, 161, and 164) under the Health Insurance Portability and Accountability Act (HIPAA) of 1996, and in accordance with the attached Exhibit A, Business Associate Agreement, which has been executed by the parties.

5. IMPACTS RESULTING FROM COURT ORDERS OR LEGISLATIVE CHANGES

- 5.1 The Provider agrees that, to the extent future state or federal legislation or court orders may have an impact on the Services described herein, DHHS has the right to modify Service priorities and expenditure requirements under this Agreement so as to achieve compliance therewith.

6. CONDITIONAL NATURE OF AGREEMENT

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

7. PERSONNEL

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

8. COMPLIANCE WITH LAWS AND REGULATIONS

- 8.1 In connection with the performance of the Services, the Provider shall comply with all statutes, laws, regulations and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Provider, including but not limited to, the Health Insurance Portability and Accountability Act, HIPAA; Pub. L. 104-191, 110 Stat. 1936 (1996), the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160, 161, and 164, and civil rights and equal opportunity laws.
- 8.2 During the term of this Agreement, the Provider 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.
- 8.3 The Provider agrees to permit the State or United States access to any of the Provider'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.

9. ASSIGNMENT/DELEGATION/SUBCONTRACTS

- 9.1 The Provider 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 written consent of the State.

**New Hampshire State of Health and Human Services
Provider Aid Agreement**



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

10. RIGHT OF TERMINATION/EVENT OF DEFAULT

10.1 This Agreement may be terminated by either party for any reason by providing a fifteen (15) day written notice to the other party.

11. INDEMNIFICATION

11.1 Unless otherwise exempted by law, the Provider shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the Provider, 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 Provider arising under this paragraph 11.1. 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 11.1 shall survive the termination of this Agreement.

12. INSURANCE

12.1 The Provider shall, at its sole expense, obtain and continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, 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.

12.2 The policies described in paragraph 12.1 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.

12.3 The Provider shall furnish to the State a certificate(s) of insurance for all insurance required under this Agreement. Provider shall also furnish to the State, 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.

13. CHOICE OF LAW AND FORUM

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

14. PROVIDER'S RELATION TO THE STATE

14.1 In the performance of this Agreement the Provider is neither an agent nor an employee of the State, provided, however, that nothing in this agreement shall limit or otherwise prohibit the State's authority to designate as an agent of the state any of the officers, employees, agents or members of the Provider pursuant to RSA 508:17-a. Neither the Provider nor any of its officers, employees, agents or members shall have authority to bind the State or, except as provided in RSA 508:17-a (if applicable) to receive any benefits, worker's compensation or other emoluments provided by the State to its employees. It is expressly agreed, pursuant to RSA 281-A:2, VII (a) (6), that the Provider shall solely be responsible for any worker's compensation benefits for any services or duties performed by its officers, employees, agents or members provided in



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connection with this agreement.

15. AMENDMENT

- 15.1 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.

16. ENTIRE AGREEMENT

- 16.1 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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PROVIDER

Print Name:
Print Title:
Provider Name:
Duly Authorized

Date

NH DEPARTMENT OF HEALTH AND HUMAN SERVICES

Print Name:
Print Title:
NH Department of Health of Human Services

Date

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

OFFICE OF THE ATTORNEY GENERAL

Date

Name:
Title:



New Hampshire Department of Health and Human Services

Exhibit A

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT
BUSINESS ASSOCIATE AGREEMENT

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

(1) Definitions.

- a. "Breach" shall have the same meaning as the term "Breach" in section 164.402 of Title 45, Code of Federal Regulations.
- b. "Business Associate" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- c. "Covered Entity" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- d. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR Section 164.501.
- e. "Data Aggregation" shall have the same meaning as the term "data aggregation" in 45 CFR Section 164.501.
- f. "Health Care Operations" shall have the same meaning as the term "health care operations" in 45 CFR Section 164.501.
- g. "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act, Title XIII, Subtitle D, Part 1 & 2 of the American Recovery and Reinvestment Act of 2009.
- h. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160, 162 and 164 and amendments thereto.
- i. "Individual" shall have the same meaning as the term "individual" in 45 CFR Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.501(g).
- j. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.
- k. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR Section 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.



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

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

- a. Business Associate shall not use, disclose, maintain or transmit Protected Health Information (PHI) except as reasonably necessary to provide the services outlined under Exhibit A of the Agreement. Further, Business Associate, including but not limited to all its directors, officers, employees and agents, shall not use, disclose, maintain or transmit PHI in any manner that would constitute a violation of the Privacy and Security Rule.
- b. Business Associate may use or disclose PHI:
- I. For the proper management and administration of the Business Associate;
 - II. As required by law, pursuant to the terms set forth in paragraph d. below; or
 - III. For data aggregation purposes for the health care operations of Covered Entity.
- c. To the extent Business Associate is permitted under the Agreement to disclose PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from the third party that such PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party; and (ii) an agreement from such third party to notify Business Associate, in accordance with the HIPAA Privacy, Security, and Breach Notification Rules of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.
- d. The Business Associate shall not, unless such disclosure is reasonably necessary to provide services under Exhibit A of the Agreement, disclose any PHI in response to a request for disclosure on the basis that it is required by law, without first notifying Covered Entity so that Covered Entity has an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, the Business



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

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

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

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

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

- c. The Business Associate shall comply with all sections of the Privacy, Security, and Breach Notification Rule.
- d. Business Associate shall make available all of its internal policies and procedures, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of Covered Entity to the Secretary for purposes of determining Covered Entity's compliance with HIPAA and the Privacy and Security Rule.
- e. Business Associate shall require all of its business associates that receive, use or have access to PHI under the Agreement, to agree in writing to adhere to the same restrictions and conditions on the use and disclosure of PHI contained herein, including the duty to return or destroy the PHI as provided under Section 3 (l). The Covered Entity shall be considered a direct third party beneficiary of the Contractor's business associate agreements with Contractor's intended business associates, who will be receiving PHI



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

- f. Within five (5) business days of receipt of a written request from Covered Entity, Business Associate shall make available during normal business hours at its offices all records, books, agreements, policies and procedures relating to the use and disclosure of PHI to the Covered Entity, for purposes of enabling Covered Entity to determine Business Associate's compliance with the terms of the Agreement.
- g. Within ten (10) business days of receiving a written request from Covered Entity, Business Associate shall provide access to PHI in a Designated Record Set to the Covered Entity, or as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR Section 164.524.
- h. Within ten (10) business days of receiving a written request from Covered Entity for an amendment of PHI or a record about an individual contained in a Designated Record Set, the Business Associate shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under 45 CFR Section 164.526.
- i. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.
- j. Within ten (10) business days of receiving a written request from Covered Entity for a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill its obligations to provide an accounting of disclosures with respect to PHI in accordance with 45 CFR Section 164.528.
- k. In the event any individual requests access to, amendment of, or accounting of PHI directly from the Business Associate, the Business Associate shall within two (2) business days forward such request to Covered Entity. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or the Business Associate to violate HIPAA and the Privacy and Security Rule, the Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable.
- l. Within ten (10) business days of termination of the Agreement, for any reason, the Business Associate shall return or destroy, as specified by Covered Entity, all PHI received from, or created or received by the Business Associate in connection with the Agreement, and shall not retain any copies or back-up tapes of such PHI. If return or destruction is not feasible, or the disposition of the PHI has been otherwise agreed to in the Agreement, Business Associate shall continue to extend the protections of the Agreement, to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business



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

(4) Obligations of Covered Entity

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

(5) Termination for Cause

In addition to Paragraph 10 of the standard terms and conditions (P-37) of this Agreement the Covered Entity may immediately terminate the Agreement upon Covered Entity's knowledge of a breach by Business Associate of the Business Associate Agreement set forth herein as Exhibit I. The Covered Entity may either immediately terminate the Agreement or provide an opportunity for Business Associate to cure the alleged breach within a timeframe specified by Covered Entity. If Covered Entity determines that neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(6) Miscellaneous

- a. Definitions and Regulatory References. All terms used, but not otherwise defined herein, shall have the same meaning as those terms in the Privacy and Security Rule, amended from time to time. A reference in the Agreement, as amended to include this Exhibit I, to a Section in the Privacy and Security Rule means the Section as in effect or as amended.
- b. Amendment. Covered Entity and Business Associate agree to take such action as is necessary to amend the Agreement, from time to time as is necessary for Covered Entity to comply with the changes in the requirements of HIPAA, the Privacy and Security Rule, and applicable federal and state law.
- c. Data Ownership. The Business Associate acknowledges that it has no ownership rights with respect to the PHI provided by or created on behalf of Covered Entity.
- d. Interpretation. The parties agree that any ambiguity in the Agreement shall be resolved to permit Covered Entity to comply with HIPAA, the Privacy and Security Rule.



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

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

Department of Health and Human Services
The State

Name of the Contractor

Signature of Authorized Representative

Signature of Authorized Representative

Name of Authorized Representative

Name of Authorized Representative

Title of Authorized Representative

Title of Authorized Representative

Date

Date