



State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES

25 Capitol Street - Room 120
Concord, New Hampshire 03301
(603) 271-3201 | Office@das.nh.gov

181

MAN

Charles M. Arlinghaus
Commissioner

Catherine A. Keane
Deputy Commissioner

Sheri L. Rockburn
Assistant Commissioner

February 21, 2024

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

REQUESTED ACTION

Authorize the Department of Administrative Services to enter into a **Retroactive Sole Source** contract with Affinity Global Solutions, LLC (AGS) (Vendor code 209648), Bismarck, ND in the amount up to and not to exceed \$80,000 for consulting and technical services to modify the State's Budgeting and Reporting System, with the option to renew for an additional one year period, effective February 1, 2024 upon Governor and Council approval through September 30, 2024.

Funds are available in account Commissioner-Administration as follows:

	<u>FY2024</u>
01-14-14-140010-10420000-103-502664-Contracts for Operations Services	\$80,000

EXPLANATION

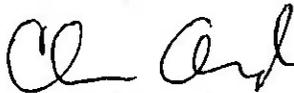
The Department of Administrative Services is requesting to enter into a **Retroactive Sole Source** contract with AGS. AGS is the software developer of the State's current Budget and Reporting System (BARS) which is used to develop the State's biennial budget in accordance with RSA 9 as well as to process daily appropriation changes administered through the Division of Accounting Services. AGS's software is propriety and software modifications to BARS is needed to accommodate changes to the State's personnel classification system as well as to improve efficiencies in system readiness for the budget. Only AGS can make the needed modifications. The modifications will allow the State's Budget Office to properly project payroll and benefits for the upcoming FY2026-FY2027 biennium. This contract is sole source because only AGS, as the software publisher, can provide the services necessary to ensure continued system functionality and to develop software application modifications and functionality enhancements required due to changes in the State's employee classification system and other enhancements to improve efficiencies. This request is **Retroactive** to ensure that AGS can start the technical analysis and software modifications to meet the statutory deadlines for the budget in RSA 9.

The Department wants to ensure that we have sufficient time to test the changes prior to opening the budget for agencies in August.

In 2009, the State completed Phase 1 of the NH FIRST project which replaced the State's budgeting system. This system has been used to prepare 8 biennial budgets since its implementation. The system has withstood the test of time. AGS has modified BARS slightly over the years to incorporate various changes to the budget law and changes resulting from Collective Bargaining Agreements. Under this contract, AGS will provide services to modify the budgeting system to accurately and efficiently calculate payroll and benefit projections by position for use in budget preparation for the FY2026-2027 biennial operating budget, including, but not limited to: changes to software, coding, architecture, inbound and outbound loads and interfaces, staging tables, and reporting. The primary focus will be on modifications necessary as a result of the changes to the State's employee classification system and Collective Bargaining Agreements. The following categorical changes are anticipated: job codes, pay schedules, pay progression, and in-band advancements. Other enhancements are expected to include modifications to allow for budget interfaces, allowing for a streamlined data keying experience.

This contract is the only viable option to make modifications to the budgeting system to ensure accurate payroll and benefits projections as well as improve efficiencies for system readiness. Your consideration of this request is greatly appreciated.

Respectfully submitted,



Charles M. Arlinghaus
Commissioner



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

January 29, 2024

Charles M. Arlinghaus, Commissioner
Department of Administrative Services
State of New Hampshire
25 Capitol Street – Room 100
Concord, NH 03301

Dear Commissioner Arlinghaus:

This letter represents formal notification that the Department of Information Technology (DoIT) has approved your agency's request to enter into a contract with Affinity Global Solution, LLC. as described below and referenced as DoIT No. 2024-078.

The purpose of this request is to enter into a contract with Affinity Global Solution, LLC (AGS). AGS is the software developer of the State's current Budget and Reporting System (BARS) which is used to develop the State's biennial budget in accordance with RSA 9 as well as to process daily appropriation changes administered through the Division of Accounting Services. AGS's software is proprietary and software modifications to BARS is needed to accommodate changes to the State's personnel classification system as well as to improve efficiencies in system readiness for the budget.

The Total Price Limitation will be \$80,000 effective upon Governor and Executive Council approval through September 30, 2024.

A copy of this letter must accompany the Department of Administrative Services' submission to the Governor and Executive Council for approval.

Sincerely,

Denis Goulet

DG/RA
DoIT #2024-078

cc: Mathew Stanton, Deputy Director

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

IDENTIFICATION

1.1 State Agency Name Department of Administrative Services		1.2 State Agency Address 25 Capitol Street, Room 102 Concord, NH 03301	
1.3 Contractor Name Affinity Global Solutions, LLC		1.4 Contractor Address 812 Burlington Drive, Suite 300, Bismarck, ND 58504	
1.5 Contractor Phone Number 701-223-3565	1.6 Account Unit and Class 10420000-103	1.7 Completion Date September 30, 2024	1.8 Price Limitation \$80,000
1.9 Contracting Officer for State Agency Gary Lunetta		1.10 State Agency Telephone Number 603-271-3606	
1.11 Contractor Signature  Date: Jan 24 / 2024		1.12 Name and Title of Contractor Signatory BRENT LEVINSON VICE PRESIDENT	
1.13 State Agency Signature  Date: 1/24/24		1.14 Name and Title of State Agency Signatory Charles M. Arlinghaus, Commissioner	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable): By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable): By: <i>Duncan A. Edgar</i> On: February 5, 2024			
1.17 Approval by the Governor and Executive Council (if applicable): G&C Item number: _____ G&C Meeting Date: _____			

Contractor Initials 
Date *Jan 24 / 2024*

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, 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.

3.3 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. 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 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, 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 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. 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.

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 The State's liability under this Agreement shall be limited to monetary damages not to exceed the total fees paid. 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.

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 and the Governor's order on Respect and Civility in the Workplace, Executive Order 2020-01. 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 age, sex, sexual orientation, race, color, marital status, physical or mental disability, religious creed, national origin, gender identity, or gender expression, and will take affirmative action to prevent such discrimination, unless exempt by state or federal law. The Contractor shall ensure any subcontractors comply with these nondiscrimination requirements.

6.3 No payments or transfers of value by Contractor or its representatives in connection with this Agreement have or shall be made which have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business.

6.4 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 this Agreement and all rules, regulations and orders pertaining to the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

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

7.2 The Contracting Officer specified in block 1.9, or any successor, shall be the State's point of contact pertaining to this Agreement.

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) calendar days from the date of the notice, and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) calendar 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.

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) calendar 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) calendar 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. In addition, at the State's discretion, the Contractor shall, within fifteen (15) calendar days of notice of early termination, develop and submit to the State a transition plan for Services under the Agreement.

10. PROPERTY OWNERSHIP/DISCLOSURE.

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

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

10.3 Disclosure of data, information and other records shall be governed by N.H. RSA chapter 91-A and/or other applicable law. Disclosure requires prior written approval of the State.

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

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

12.1 Contractor shall provide the State written notice at least fifteen (15) calendar days before any proposed assignment, delegation, or other transfer of any interest in this Agreement. No such assignment, delegation, or other transfer shall be effective without the written consent of the State.

12.2 For purposes of paragraph 12, 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.

12.3 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State.

12.4 The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

13. **INDEMNIFICATION.** The Contractor shall indemnify, defend, and hold harmless the State, its officers, and employees from and against all actions, claims, damages, demands, judgments, fines, liabilities, losses, and other expenses, including, without limitation, reasonable attorneys' fees, arising out of or relating to this Agreement directly or indirectly arising from death, personal injury, property damage, intellectual property infringement, or other claims asserted against the State, its officers, or employees caused by the acts or omissions of negligence, reckless or willful misconduct, or fraud by the Contractor, its employees, agents, or subcontractors. 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 State's sovereign immunity, 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 any successor, a certificate(s) of insurance for all insurance required under this Agreement. At the request of the Contracting Officer, or any successor, the Contractor shall provide certificate(s) of insurance for all renewal(s) of insurance required under this Agreement. 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 any 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. WAIVER OF BREACH. A State's failure to enforce its rights with respect to any single or continuing breach of this Agreement shall not act as a waiver of the right of the State to later enforce any such rights or to enforce any other or any subsequent breach.

17. 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.

18. 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.

19. CHOICE OF LAW AND FORUM

19.1 This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire except where the Federal supremacy clause requires otherwise. 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.

19.2 Any actions arising out of this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be brought and maintained in the Merrimack County Superior Court of New Hampshire which shall have exclusive jurisdiction thereof.

20. CONFLICTING TERMS. In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and any other portion of this Agreement including any attachments thereto, the terms of the P-37 (as modified in EXHIBIT A) shall control.

21. THIRD PARTIES. This Agreement is being entered into for the sole benefit of the parties hereto, and nothing herein, express or implied, is intended to or will confer any legal or equitable right, benefit, or remedy of any nature upon any other person.

22. 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.

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

24. FURTHER ASSURANCES. The Contractor, along with its agents and affiliates, shall, at its own cost and expense, execute any additional documents and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby.

25. 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.

26. 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.

EXHIBIT A - SPECIAL PROVISIONS

Modify P-37 section 3. EFFECTIVE DATE/COMPLETION OF SERVICES, by replacing sections 3.1 and 3.3 with the following:

3.1 The Contract shall be effective retroactively to February 1, 2024 upon approval by the Governor and Executive Council through September 30, 2024.

3.3 The Contract may be extended for up to an additional one (1) year thereafter upon the same terms, conditions, and pricing structure and subject to subsequent approval by the Governor and Executive Council.

EXHIBIT B - SCOPE OF SERVICES

1. INTRODUCTION:

- 1.1 Affinity Global Solutions, LLC (hereinafter referred to as the "Contractor") hereby agrees to provide the State of New Hampshire (hereinafter referred to as the "State"), Department of Administrative Services, with consulting and technical services to modify the State's Budgeting and Reporting software system (hereinafter referred to as "BARS") to accommodate recent and upcoming changes to the State's Classification System, Collective Bargaining Agreements, Legislation, and upgrades from the State's INFOR on-premise financial and payroll software product to INFOR's latest cloud version platform. Services anticipated from the Contractor are described herein.

2. CONTRACT DOCUMENTS:

- 2.1 This Contract consists of the following documents ("Contract Documents")
 - 2.1.1 State of New Hampshire Terms and Conditions, General Provisions Form P-37
 - 2.1.2 EXHIBIT A, Special Provisions
 - 2.1.3 EXHIBIT B, Scope of Services
 - 2.1.4 EXHIBIT C, Method of Payment
- 2.2 In the event of any conflict among the terms or provisions of the documents listed above, the following order of priority shall indicate which documents control: (1) Form Number P-37, as modified by EXHIBIT A "Special Provisions," (2) EXHIBIT B "Scope of Services," (3) EXHIBIT C "Method of Payment."

3. SCOPE OF WORK:

- 3.1 Affinity Global Solutions, LLC will provide services to modify the State of New Hampshire BARS in order to accurately and efficiently calculate payroll and benefit projections by position for use in budget preparation for the FY 2026-27 biennial operating budget, including but not limited to: changes to software, code, architecture, inbound and outbound loads and interfaces, reporting, etc. In addition, the Contractor will modify/enhance the export and upload capabilities through changes to the "Budget Column" interfaces.
- 3.2 The primary focus is on the loading of positions and projection of payroll and benefits costs performed at the start of the biennial budget process but may not be strictly limited to those specific changes.
- 3.3 The Contractor's services anticipate modifications to BARS to accommodate the following categorical change: (see Appendix A for more information about the types listed below)
 - A. **Job Code** – ability for BARS to utilize the "job code" field for changes in name, description, and increased character length.
 - B. **Pay Schedule** – ability for BARS to calculate pay by position and employee, based upon format changes to existing pay schedules including changes in terminology (replacing "grade-step" with "pay bands"), increased number of "steps", changes to the time interval for advancement between "steps", and an increase in the number of different pay schedules.
 - C. **In-Band Advancements** – ability for BARS calculate pay by employee that has an "approved in-band advancement", which allows the employee to receive a salary and progression at a different rate than the prescribed pay schedule for that position.
 - D. **Longevity** – ability to modify the position load to differentiate positions by type (i.e. classified vs. unclassified) and apply different "longevity" benefit amounts by position types.
 - E. **Union Affiliation** – ability to assign a union affiliation by position in order to accurately account for pay and benefits that are awarded to selective unions.
 - F. **Budget Column Interfaces** – modify the export and load interfaces to allow for budget changes to a designated "column" without requiring a "change package"

G. Additional Support – the Contractor shall perform adequate testing of any modification made to BARS; ensure all budget reports currently in production will be available to be run and the results are accurate; assist with the successful extracts and loads of all applicable tables (including but not limited to the position load, pay code, salary, etc.) for the initial agency phase of the FY 2026-27 biennial budget; and provide on-going support and maintenance as needed.

- 3.4 The State has provided historical information as to the current architecture of BARS and the load extract file layouts and relationships. These references are provided to assist the Contractor with various connection points, as they handle modifications to any of the tables and procedures listed, while ensuring functionality is maintained.
- 3.5 The Contractor must be available for consultation via email, phone, and/or through the TEAMS platform during the hours of 8:00 A.M. and 4:00 P.M. eastern standard time (referred herein as "normal workday"). The State accepts that technical development work and testing may be done by the Contractor outside of the normal workday but that does not replace the availability of the Contractor during the normal workday. The State may require the Contractor to be on-site, agreed upon in advance, which will require a minimum 5 work-day advance knowledge in order to provide security and access to respective work areas.
- 3.6 The work staff shall consist of qualified persons completely familiar with the products and equipment that they will use. The Contracting Officer may require the Contractor to dismiss from the work such employees as the Contracting Officer deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work is deemed to be contrary to the public interest or inconsistent with the best interest of security and the State.
- 3.7 Neither the Contractor nor its employees or subcontractors shall represent themselves as employees or agents of the State.
- 3.8 While on State property the Contractor, its employees, and its sub-contractors shall be subject to the authority and control of the State, but under no circumstances shall such persons be deemed to be employees of the State.
- 3.9 All personnel shall observe all regulations or special restrictions in effect at any State agency location at which services are to be provided.
- 3.10 If sub-contractors are to be utilized, Contractor shall provide information regarding the proposed sub-contractors including the name of the company, their address, contact person and three references for clients they are currently servicing. Approval by the State must be received prior to a sub-contractor starting any work.
- 3.11 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 of data shall be restricted to information technology systems within the Continental United States. The Contractor shall not allow its personnel or sub-contractors to store data on personal portable devices, including personal computers, except as specified and allowed by the contract, and then only on devices that are used and kept at its data centers within the Continental United States. The Contractor shall permit its personnel and Contractors to access data remotely only to provide technical support and as specified or required by the Agreement. The State acknowledges that the Contractor shall from time to time provide confidential translation services from outside of the Continental United States. Under no circumstances shall the provision of such translation services include access to systems containing plan data that is required to be housed and remain within the Continental United States.
- 3.12 Confidential Information - In performing its obligations under this Agreement, each party may gain access to Confidential Information of the other party. Confidential Information includes all information owned or managed by either party - created, received from or on behalf of either party or accessed while performing contracted Services including any information provided by either party - or which collection, disclosure, protection, and disposition is governed by state or federal law or regulation. Each party shall not use the Confidential Information developed or obtained during the performance of, or acquired, or developed by reason of the Agreement, except as directly connected to and necessary for the performance of the Agreement. Each party shall maintain the confidentiality of and protect from unauthorized use, disclosure, publication, and reproduction (collectively "release"), all Confidential Information.

- 3.12.1 In the event of the unauthorized release of Confidential Information, each party shall make all commercially reasonable efforts to promptly notify the other party.
- 3.12.2 Subject to applicable federal or State laws and regulations, Confidential Information shall not include information which:
 - 3.12.3 Shall have otherwise become publicly available other than because of disclosure by the receiving party in breach hereof.
 - 3.12.4 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.
 - 3.12.5 Is developed by the receiving party independently of, or was known by the receiving party prior to, any disclosure of such information made by the disclosing party; or
 - 3.12.6 Is disclosed with the written consent of the disclosing party.
 - 3.12.7 A receiving party also may disclose the disclosing party's Confidential Information to the extent required by an order of a court of competent jurisdiction. Any disclosure of the Confidential Information shall require the prior written approval of the State. Contractor shall immediately notify the State if any request, subpoena or other legal process is served upon Contractor regarding the Confidential Information, and Contractor shall cooperate with the State in any effort the State undertakes to contest the request, subpoena or other legal process, at no additional cost to the State.
- 3.12.8 Contractor Confidential Information - The 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, 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.
- 3.12.9 In the event of a security incident or data breach, Contractor shall follow the notification and mitigation procedures outlined in the attached Appendix B, Business Associate Agreement.
- 3.12.10 The above covenants regarding data and confidential information shall survive the termination of this Agreement.
- 3.13 Access to State Systems - In consideration for receiving access to and use of the computer facilities, network, 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:
 - 3.13.1 Every authorized user has the responsibility to assure the protection of information from unauthorized access, misuse, theft, damage, destruction, modification, or disclosure.
 - 3.13.2 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.
 - 3.13.3 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.

- 3.13.4 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 always 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.
- 3.13.5 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.
- 3.13.6 That computer use shall follow the State standard policy (Statewide Computer Use Policy is available upon request).
- 3.13.7 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).
- 3.13.8 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).
- 3.13.9 Workspace Requirement - The State will work with Contractor to determine requirements for providing necessary workspace and office equipment for Contractor's staff.

4. PROGRESS REPORTING:

- 4.1 Bi-weekly summary progress reports shall be provided to the State by the 15th and 30th each month including, but not limited to, a summary of the meetings held and participants; tasks completed during the previous 2 weeks and expected tasks for the upcoming 2 weeks; and identified risks regarding scope, completion time and/or budget.

5. OBLIGATIONS AND LIABILITY OF THE CONTRACTOR:

- 5.1 The Contractor shall provide all services strictly pursuant to, and in conformity with, the specifications described in the scope of work as described herein, and under the terms of this Contract.
- 5.2 It is the responsibility of the Contractor to maintain this contract and New Hampshire Vendor Registration with up to date contact information.
- 5.3 Contract specific contact information (Sales contact, Contractor contract manager, etc.) shall be sent to the State's Contracting Office listed in Box 1.9 of Form P-37.
- 5.4 Additionally, all updates i.e., telephone numbers, contact names, email addresses, W9, tax identification numbers are required to be current through a formal electronic submission to the Bureau of Purchase and Property at [https://das.nh.gov/purchasing/vendorregistration/\(S\(q0fzcv55qhnqs45jnyo5i45\)\)/welcome.aspx](https://das.nh.gov/purchasing/vendorregistration/(S(q0fzcv55qhnqs45jnyo5i45))/welcome.aspx)
- 5.5 The Contractor shall agree to hold the State of NH harmless from liability arising out of injuries or damage caused while performing this work. The Contractor shall agree that any damage to building(s), materials, equipment or other property during the performance of the service shall be repaired at its own expense, to the State's satisfaction.

6. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS:

- 6.1 The Contractor certifies, by signature of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal Department or Agency.

7. CONFIDENTIALITY & CRIMINAL RECORD:

7.1 If requested by the using agency, the Contractor and its employees, and Sub-Contractors (if any), shall be required to sign and submit a Confidential Nature of Department Records Form and a Criminal Authorization Records Form. These forms shall be submitted to the individual using agency prior to the start of any work.

Contractor Initials

Date


January 24, 2024

EXHIBIT C - METHOD OF PAYMENT

8. CONTRACT PRICE:

8.1 The Contractor hereby agrees to provide services to modify the State's budgeting software in complete compliance with the terms and conditions specified in Exhibit B for an amount up to and not to exceed a price of \$80,000; this figure shall not be considered a guaranteed or minimum figure; however, it shall be considered a maximum figure from the effective date through the expiration date as indicated in Form P-37:Block 1.7.

9. PRICING STRUCTURE:

9.1 Estimated hours by Service are noted below. Monthly billing shall be supported by actual developer time. Hours by service area may be more or less than estimated, but the total accumulated hours for the project, is limited to the Not to Exceed hours and cost.

Item	Service Area Description	Estimated Not to Exceed Hours	Not to Exceed Cost
1	Job Code Changes	120	
2	Pay Schedule Changes	100	
3	In-Band Advancements	80	
4	Longevity	100	
5	Union Affiliations	60	
6	Budget Column Interfaces	80	
	Base Total Hours	540	
	Subtotal Cost		\$67,500
7	Additional Support (If Applicable)	100	
	Total Hours	640	
	Grand Total Cost		\$80,000

9.2 Fixed hourly rate of \$125.00/hour.

9.3 Prior to any work being performed and billed by the Contractor under Item 7 – Additional Support, both parties must agree in writing in advance as to the scope of work and hours.

9.4 Retention – a “cost withheld” equal to 10% of the NTE total by Service Items 1-6 noted above (\$6,750) will be withheld until the State has determined and accepted that all services have been met and BARS can successfully project salaries and benefits by position for use at the inception of the agency phase of the 2026-27 biennial budget.

9.5 Costs associated with travel will be the responsibility of Contractor and not reimbursed by the State.

Contractor Initials: *R*

Date: *Jan 24/2024*

10. INVOICES:

10.1 Itemized invoices shall be submitted to the agency monthly for actual hours worked less the 10% withheld as noted in section 9.4 above. Invoices shall utilize an agreed upon standard template, that shall include at a minimum, the hours worked by the contractor's employee for each Service Item noted in 9.1 above, the percentage completed to date, and the expected completion date.

Example of Invoice Template

Month: February 1-29, 2024

Item	Service Description	Contractor Employee Name	Hours Worked	Cost	% Completed	Expected Completion Date
1	Job Code Changes	Mary Smith	10	\$100/hr		
		John Doe	10	\$120/hr		
		Subtotal	20	\$2,200	15%	March 31, 2024
2	Pay Schedule Changes	Mary Smith	40	\$100/hr		
		Subtotal	50	\$5,000	50%	March 31, 2024

10.2 Upon receipt of a properly documented and undisputed invoice, the State will pay the correct and undisputed invoice within thirty (30) days of invoice receipt.

10.3 The invoices shall be sent to: Attn: Michelle Caraway; Department of Administrative Services, Budget Office, State House Annex - Room 118, 25 Capitol St, Concord, NH 03301

11. PAYMENT:

11.1 Payments may be made via ACH. Use the following link to enroll with the State Treasury for ACH payments: <https://www.nh.gov/treasury>

Contractor Initials *RD*

Date Jan 24/2024

APPENDIX A – ADDITIONAL INFORMATION ON MODIFICATION CATEGORIES

The State has conducted a preliminary review of the changes anticipated to BARS and has noted those changes in the appendix herein. It is not intended to detail the scope or tasks required of the Contractor, but rather provide additional information to the Contractor.

A. JOB CODE CHANGES:

Currently, the Budget and Reporting System (BARS) has only 6 characters for Job Code, however the State has made changes to the code and they vary to 8-9 characters. An update to allow a minimum of 9 characters in length is needed. The State's preliminary analysis anticipates the following would be impacted:

- Positions load staging tables and associated interfaces.
- Based production tables storing these codes in a column.
- Stored procedure used by the interface (Run GHRS Interface) to load the position information.
- Any reports such as the custom report DtProj impacted by this change.
- Additional Information about the objects associated with this change is in the Appendices.
 - Appendix 1 provides an overview of the current data extracted for load into the budget system and the potential changes.
 - Appendix 2 provides an overview of the position load and BARS standard tables, as well as other dependencies for these tables.
 - Adjust position import processes to account for the longer job code.
 - Any associated reporting impacted by the longer code.
 - Internal programming logic

B. PAY SCHEDULE—changes to existing pay schedules including changes in format, terminology for advancement between “steps”, and an increase in the number of different pay schedules.

STEPS: Currently BARS has only needed to utilize 1 character for each step but an increase to 12 steps would mean usage of two characters. The application supports 20 steps and load table and the POS_INFO table supports a 2-character step value.

PROGRESSIONS: Step progressions will be changed for all positions. Timing of yearly step advancement intervals will change for these positions and requesting AGS modify the stored procedure to accommodate positions under new design, 1 year 1-7, 2 years 8-11. Some positions based on union affiliation will at this point remain under the existing rules, and a contingency to handle will be needed. It may be possible to handle based on the salary schedule presented as these positions will continue to use existing schedules. All classified positions will have new wage scales.

C. IN-BAND ADVANCEMENTS (IBA)- This is new concept effective for FY24 impacting classified employees. Under certain conditions an employee can receive a salary and progression at a different rate than the prescribed pay schedule for that position. Consideration should be given to determine if an available date field could be utilized with a date to override the standard advancement rules for year two in loading positions.

D. LONGEVITY —the longevity benefit is applied differently by position types. Currently in BARS, the stored procedure for loading positions, called by the “Run GHRS Interface” only allows one Longevity assignment of one type “LONG” which is the longevity code for Classified Employees (POS_TYPE_CD=10). Initially, this may have been used for all positions but now there is a

separate benefit for Unclassified Employees (LONGEVITY UNCLSSFD) and a benefit code LNxx (where xx is 11-15 based on the POS_TYPE_CD of the position being loaded). This may require the position load procedure to handle choosing the proper longevity benefit and subsequent code based on position type.

E. UNION– ability to assign a union affiliation by position in order to accurately account for pay and benefits that are awarded to selective unions. Currently, in the BARS system there is no direct method of tracking a position's union affiliation. In the past, this did not impact how positions were mapped to pay and benefits. Effective for FY24, pay schedules and associated benefits have multiple positions and unions crossing schedules and a one for one relationship that the current system relied upon is no longer valid. As such, BARS needs to have the ability to load the position's union affiliation.

F. BUDGET COLUMN INTERFACES – the current budget column export and load interfaces do not support the needs of the State of New Hampshire because of its reporting level format and no consideration for expense class to funding account usage. It may require the modification to these interfaces or create new versions, which functions similar to the "Load Chg PKG Column" interface AGS was contracted to provide several years ago. The ability to export and load a column to the budget request sub schedule without requiring a change package will have significant benefits during budget development.

Appendix B

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 and those parts of the HITECH Act applicable to business associates. As defined herein, "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean (name of Business Associate). "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this Agreement shall mean the State of New Hampshire Department of Administrative Services Employee and Retiree Health Benefit Program. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

Business Associate Agreement

1. Definitions

- a. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
- b. All terms not otherwise defined herein shall have the same meaning as those set forth in the HIPAA Rules.

2. Use and Disclosure of Protected Health Information (PHI)

- a. Business Associate shall not use, disclose, maintain or transmit PHI except as reasonably necessary to provide the services set forth in this Agreement or as required by law.
- b. Business Associate agrees to make uses and disclosures and requests for PHI consistent with Covered Entity's minimum necessary policies and procedures.
- c. Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth below:
- d. Business Associate may use protected health information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate. To the extent Business Associate discloses PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (a) 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 (b) an agreement from such third party to notify Business Associate of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.
- e. Business Associate may provide data aggregation services relating to the health care operations of Covered Entity.
- f. Business Associate is authorized to use PHI to de-identify the information in accordance with 45 CFR 164.514(a)-(c). Business Associate shall de-identify the PHI in a manner agreed upon by Business Associate and Covered Entity. Uses and disclosures of the de-identified information shall be limited to those consistent with the provisions of this Agreement.

- g. Business Associate shall not, unless such disclosure is reasonably necessary to provide services outlined in the Agreement, disclose any PHI in response to a request for disclosure on the basis it is required by law without first notifying Covered Entity. In the event Covered Entity objects to the disclosure it shall seek the appropriate relief and the Business Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all remedies.
- h. Covered Entity may from time to time agree, pursuant to 45 CFR 164.522, to be bound by additional restrictions over and above those uses, disclosures and security safeguards of PHI outlined in the HIPAA Rules. Covered Entity shall notify Business Associate, in writing, of any such agreements. Business Associate agrees to be bound by any such additional restrictions.

3. Obligations and Activities of Business Associate

- a. Business Associate shall use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement.
- b. Business Associate shall report to the designated Privacy Officer of Covered Entity, in writing, any use or disclosure of PHI in violation of the Agreement, including any security incident involving PHI, ePHI, or Unsecured PHI as required by 45 CFR 164.410.
- c. Business Associate shall report a breach or a potential breach to Covered Entity upon discovery of any such incident. Business Associate will handle breach notifications to individuals, the United States Department of Health and Human Services Office for Civil Rights, and, where applicable, the media. Should it be necessary to notify the media of any such breach, Business Associate will ensure that Covered Entity will receive notice of the breach prior to such incident being reported to the media.
- d. Business Associate shall, in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure, as evidenced in writing, that any subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions and requirements that apply to Business Associate with respect to such information, including the duty to return or destroy PHI. Covered Entity shall be considered a direct third party beneficiary of Business Associate's corresponding business associate agreements with any of its contracted business associates, who will be receiving PHI pursuant to this Agreement, with rights of enforcement and indemnification from such business associates.
- e. To the extent Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).
- f. Business Associate shall make available all of its internal practices, policies and procedures, books and records to the Secretary for the purpose of determining Covered Entity's compliance with the HIPAA Rules.
- g. Within five (5) business days of receiving a written request from Covered Entity, Business Associate shall make available to the Covered Entity during normal business hours at its offices all records, books, agreements, policies and procedures relating to the use and disclosure of PHI for the purpose of enabling Covered Entity to determine Business Associate's compliance with the terms of the Agreement.

Individual Rights and PHI

h. Access

- i. Business Associate shall respond to an individual's request for access to his or her PHI as part of Business Associate's normal customer service function, if the request is communicated to Business Associate directly by the individual or the individual's personal representative. Business Associate shall respond to the request with regard to

PHI that Business Associate and/or its subcontractors maintain in a manner and time frame consistent with requirements specified in the HIPAA Privacy Regulation.

ii. In addition, Business Associate shall assist Covered Entity in responding to requests made to Covered Entity by individuals to invoke a right of access under the HIPAA Privacy Regulation by performing the following functions:

1. Upon receipt of written notice (including fax and email) from Covered Entity, Business Associate shall make available to Covered Entity, or at Covered Entity's direction to the individual (or the individual's personal representative), any PHI about the individual created or received for or from Covered Entity in Business Associate's custody or control (and/or the custody or control of its subcontractors), for inspection and obtaining copies so that Covered Entity may meet its access obligations under 45 CFR 164.524 and, where applicable, the HITECH Act. Business Associate shall make such information available in an electronic format where required by the HITECH Act.

L. Amendment

i. Business Associate shall respond to an individual's request to amend his or her PHI as part of Business Associate's normal customer service functions, if the request is communicated to Business Associate directly by the individual or the individual's personal representative. Business Associate shall respond to the request with respect to the PHI Business Associate and its subcontractors maintain in a manner and time frame consistent with requirements specified in the HIPAA Privacy Regulation.

ii. In addition, Business Associate shall assist Covered Entity in responding to requests made to Covered Entity to invoke a right to amend under the HIPAA Privacy Regulation by performing the following functions:

1. Upon receipt of written notice (including fax and email) from Covered Entity, Business Associate shall amend any portion of the PHI created or received for or from Covered Entity in Business Associate's custody or control (and/or the custody or control of its subcontractors), so that Covered Entity may meet its amendment obligations under 45 CFR 164.526.

J. Disclosure Accounting

i. Business Associate shall respond to an individual's request for an accounting of disclosures of his or her PHI as part of Business Associate's normal customer service function, if the request is communicated to the Business Associate directly by the individual or the individual's personal representative. Business Associate shall respond to a request with respect to the PHI Business Associate and its subcontractors maintain in a manner and time frame consistent with requirements specified in the HIPAA Privacy Regulation.

ii. In addition, Business Associate shall assist Covered Entity in responding to requests made to Covered Entity by individuals or their personal representatives to invoke a right to an accounting of disclosures under the HIPAA Privacy Regulation by performing the following functions so that Covered Entity may meet its disclosure accounting obligation under 45 CFR 164.528:

iii. Disclosure Tracking

1. Business Associate shall record each disclosure that Business Associate makes of individuals' PHI, which is not excepted from disclosure accounting under Section II.C.2.b.
2. The information about each disclosure that Business Associate must record ("Disclosure Information") is (a) the disclosure date, (b) the name and (if known) address of the person or entity to whom Business Associate made the disclosure, (c) a brief description of the PHI disclosed, and (d) a brief statement of the purpose of the disclosure or a copy of any written request for disclosure under 45 Code of Federal Regulations §164.502(a)(2)(ii) or §164.512. Disclosure Information also includes any information required to be provided by the HITECH Act.
3. For repetitive disclosures of individuals' PHI that Business Associate makes for a single purpose to the same person or entity (including to Covered Entity or Employer), Business Associate may record (a) the Disclosure Information for the first of these repetitive disclosures, (b) the frequency, periodicity or number of these repetitive disclosures, and (c) the date of the last of these repetitive disclosures.

iv. Exceptions from Disclosure Tracking

1. Business Associate shall not be required to record Disclosure Information or otherwise account for disclosures of individuals' PHI (a) for Treatment, Payment or Health Care Operations, (except where required by the HITECH Act, as of the effective dates of such requirements) (b) to the individual who is the subject of the PHI, to that individual's personal representative, or to another person or entity authorized by the individual (c) to persons involved in that individual's health care or payment for health care as provided by 45 Code of Federal Regulations § 164.510, (d) for notification for disaster relief purposes as provided by 45 Code of Federal Regulations § 164.510, (e) for national security or intelligence purposes, (f) to law enforcement officials or correctional institutions regarding inmates, (g) that are incident to a use or disclosure that is permitted by this Agreement or the ASO Agreement, (h) as part of a limited data set in accordance with 45 CFR 164.514(e), or (i) that occurred prior to Covered Entity's compliance date.

v. Disclosure Tracking Time Periods

1. Unless otherwise provided by the HITECH Act and/or any accompanying regulations, Business Associate shall have available for Covered Entity the Disclosure Information required by Section 3.j.iii.2 above for the six (6) years immediately preceding the date of Covered Entity's request for the Disclosure Information.

k. Provision of Disclosure Accounting

1. Upon receipt of written notice (including fax and email) from Covered Entity, Business Associate will make available to Covered Entity, or at Covered Entity's direction to the individual (or the individual's personal representative), the Disclosure Information regarding the individual, so Covered Entity may meet its disclosure accounting obligations under 45 CFR 164.528 and the HITECH Act.

l. Confidential Communications

- i. Business Associate shall respond to an individual's request for a confidential communication as part of Business Associate's normal customer service function, if the request is communicated to Business Associate directly by the individual or the individual's personal representative. Business Associate shall respond to the request with respect to the PHI Business Associate and its subcontractors maintain in a manner and time frame consistent with requirements specified in the HIPAA Privacy Regulation. If an individual's request, made to Business Associate, extends beyond information held by Business Associate or Business Associate's subcontractors, Business Associate shall refer individual to Covered Entity. Business Associate assumes no obligation to coordinate any request for a confidential communication of PHI maintained by other business associates of Covered Entity.
- ii. In addition, Business Associate shall assist Covered Entity in responding to requests to it by individuals (or their personal representatives) to invoke a right of confidential communication under the HIPAA Privacy Regulation by performing the following functions:
 1. Upon receipt of written notice (including fax and email) from Covered Entity, Business Associate will begin to send all communications of PHI directed to the individual to the identified alternate address so that Covered Entity may meet its access obligations under 45 CFR 164.524.

m. Restrictions

- i. Business Associate shall respond to an individual's request for a restriction as part of Business Associate's normal customer service function, if the request is communicated to Business Associate directly by the individual (or the individual's personal representative). Business Associate shall respond to the request with respect to the PHI Business Associate and its subcontractors maintain in a manner and time frame consistent with requirements specified in the HIPAA Privacy Regulation.
- ii. In addition, Business Associate shall promptly, upon receipt of notice from Covered Entity, restrict the use or disclosure of individuals' PHI, provided the Business Associate has agreed to such a restriction. Covered Entity agrees that it will not commit Business Associate to any restriction on the use or disclosure of individuals' PHI for treatment, payment or health care operations without Business Associate's prior written approval.

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 § 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 to use or disclose his or her PHI to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- 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. Term and Termination

5. Term and Termination

- a. The term of this Agreement shall be effective as of February 1, 2024, or Governor and Executive Council approval, and shall terminate on September 30, 2024 or on the date covered entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.
- b. In addition to standard provision #10 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 Appendix B. 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.
- c. Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained or received by Business Associate on behalf of Covered Entity, shall:
 - i. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - ii. Return to Covered Entity (or, if agreed to by Covered Entity, destroy) the remaining PHI that Business Associate still maintains in any form;
 - iii. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
 - iv. Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out in this Agreement which applied prior to termination; and
 - v. Return to Covered Entity (or, if agreed to by Covered Entity, destroy) the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
- d. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

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 HIPAA Rules 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 compliance with the requirements of the HIPAA Rules and any other applicable 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 interpreted to permit compliance with the HIPAA Rules.
- e. Segregation. If any term or condition of this Appendix B 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 Appendix B are declared severable.
- f. Survival. Provisions in this Appendix B regarding the use and disclosure of PHI, return or destruction of PHI, extensions of the protections of the Agreement, the defense and indemnification provisions and provision #13 of the standard contract P-37, shall survive the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Appendix B.

The State of New Hampshire

[Handwritten Signature]

Signature of Authorized Representative

CHARLES ARLINGHAUS

Name of Authorized Representative

COMMISSIONER

Title of Authorized Representative

1/26/24

Date

AFFINITY GLOBAL SOLUTIONS, LLC

Contractor

[Handwritten Signature]

Signature of Authorized Representative

BRENT LEVINSON

Name of Authorized Representative

VICE PRESIDENT

Title of Authorized Representative

JANUARY 24, 2024

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 AFFINITY GLOBAL SOLUTIONS, LLC is a North Dakota Limited Liability Company registered to transact business in New Hampshire on June 03, 2010. 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: 631673

Certificate Number: 0006550454



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 23rd day of January A.D. 2024.

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

David M. Scanlan
Secretary of State

Certificate of Authority # 6

*(Limited Partnership or LLC- Corporate General Partner
or Manager)*

Corporate Resolution

I, Mathew Burpee, hereby certify that I am duly elected Clerk/Secretary of
(Name)
Affinity Global Solutions, LLC. I hereby certify the following is a true copy of a vote taken at a
(Name of Company)

meeting of the Board of Managers/Members, duly called and held on January 30, 2024

at which a quorum of the Directors/shareholders were present and voting.

Brent Levinson, Vice President

VOTED: That _____ is duly authorized to enter a
(Name and Title)

contract on behalf of Affinity Global Solutions, LLC a limited liability company,
(Name of Company)

Department Administrative Services

with the _____, State of New Hampshire and
(Name of State Agency)

further is authorized to execute any documents which may in his/her
judgment be desirable or necessary to effect the purpose of this vote.

I hereby certify that said vote has not been amended or repealed and remains in full
force and effect as of the January 30, 2024. I further certify that it is understood that the
State of New Hampshire will rely on this certificate as evidence that the person listed above
currently occupies the position indicated and that they have full authority to bind the
company to the specific contract indicated. This authority **shall remain valid for thirty**
(30) days from the date of this Corporate Resolution.

DATED: January 30, 2024

ATTEST:



(Name & Title)

Mathew Burpee, Manager



AFFIGLO-01

KTHOMAS

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
3/27/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Kramer Agency 232 West Century Avenue Bismarck, ND 58503	CONTACT NAME McKenzie Thomas
	PHONE (AC, No, Ext): FAX (AC, No):
	E-MAIL ADDRESS: kenziet@krameragency.com
	INSURER(S) AFFORDING COVERAGE
INSURED Affinity Global Solutions 812 Burlington Dr Ste 300 Bismarck, ND 58504	INSURER A: Hartford Underwriters Insurance Company
	INSURER B: Hartford Fire Insurance Company
	INSURER C:
	INSURER D:
	INSURER E:
	INSURER F:

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT 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 CERTIFICATE 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.

INSR LTR	TYPE OF INSURANCE	ADDL PRSD	SUBR LVYD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR			41SBAAR5HYW	3/29/2023	3/29/2024	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COM/OP AGG \$ 4,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO JECT <input type="checkbox"/> LOC OTHER:						
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			41SBAAR5HYW	3/29/2023	3/29/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE			41SBAAR5HYW	3/29/2023	3/29/2024	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 Prod/Comp Op Ag \$ 1,000,000
	DED <input checked="" type="checkbox"/> RETENTION \$						
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N N/A	41WECAR5J62	3/29/2023	3/29/2024	PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Business Owners Pack			41SBAAR5HYW	3/29/2023	3/29/2024	Each Glitch 2,000,000
B	Workers' Comp			41WECAR5J62	3/29/2023	3/29/2024	ND Stop Gap 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Workers compensation coverage applies for the state of Maine.

CERTIFICATE HOLDER

CANCELLATION

State of New Hampshire 107 N Main St Concord, NH 03301-4989	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE