



State of New Hampshire

184 mac

DEPARTMENT OF ADMINISTRATIVE SERVICES

25 Capitol Street

Concord, New Hampshire 03301

(603) 271-3201 | Office@das.nh.gov

Charles M. Arlinghaus
Commissioner

Catherine A. Keane
Deputy Commissioner

Sheri L. Rockburn
Assistant Commissioner

September 6, 2024

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

REQUESTED ACTION

Authorize the Department of Administrative Services (DAS), Division of Risk and Benefits (Risk), to exercise their option to extend the existing contract with Milliman, Inc., (Milliman) (VC# 173344), 1301 5th Avenue, Suite 3800, Seattle, WA 98101 in the approximate amount of \$275,500, increasing the total amount of the contract from \$510,100 to an amount not to exceed **\$785,600** and extending the completion date from December 31, 2024 to December 31, 2026 for Pharmacy Benefit Manager Technology Services pursuant to RSA 21-I:98, the New Hampshire Prescription Drug Competitive Marketplace, effective upon approval of Governor and Executive Council. The original contract was approved by the Governor and Executive Council on February 3, 2021, (item #41) attached. Approximately 35% General Funds, 17% Federal Funds, 3% Enterprise Funds, 10% Highway Funds, and 1% Turnpike Funds and 34% Other Funds.

Funds to support this request are available in the following accounts in FY2025 and are anticipated to be available in FY2026 and FY2027 upon the availability and continued appropriation of funds in the future operating budgets, with the ability to adjust encumbrances between State Fiscal Years through the Budget Office, if needed and justified:

Pharmacy Costs

01-14-14-140560-66000000 – Actives; Class 100 - Prescription Drug Expenses

State Fiscal Year	Current Contract	Amendment 2: Extension Increase / (Decrease) Amount	Total
2022	\$85,700	-	\$85,700
2023	\$98,200	-	\$98,200
2024	\$98,200	-	\$98,200
2025	\$42,700	\$133,516	\$176,216
2026	-	\$75,019	\$75,019
2027	-	\$37,510	\$37,510

Total	\$324,800	\$246,045	\$570,845
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01-14-14-140560-66600000 -Troopers; Class 100 - Prescription Drug Expenses

State Fiscal Year	Current Contract	Amendment 2: Extension Increase / (Decrease) Amount	Total
2022	\$3,000	-	\$3,000
2023	\$3,400	-	\$3,400
2024	\$3,400	-	\$3,400
2025	\$1,500	\$3,932	\$5,432
2026	-	\$2,209	\$2,209
2027	-	\$1,105	\$1,105
Total	\$11,300	\$7,246	\$18,546

01-14-14-140560-66500000 - Retirees; Class 100 - Prescription Drug Expenses

State Fiscal Year	Current Contract	Amendment 2: Extension Increase / (Decrease) Amount	Total
2022	\$45,900	-	\$45,900
2023	\$52,600	-	\$52,600
2024	\$52,600	-	\$52,600
2025	\$22,900	\$12,052	\$34,952
2026	-	\$6,772	\$6,772
2027	-	\$3,385	\$3,385
Total	\$174,000	\$22,209	\$196,209

Total All Groups

State Fiscal Year	Current Contract	Amendment 2: Extension Increase / (Decrease) Amount	Total
2022	\$134,600	-	\$134,600
2023	\$154,200	-	\$154,200
2024	\$154,200	-	\$154,200
2025	\$67,100	\$149,500	\$216,600
2026	-	\$84,000	\$84,000
2027	-	\$42,000	\$42,000
Grand Total	\$510,100	\$275,500	\$785,600

EXPLANATION

The DAS Commissioner is authorized, pursuant to RSA 21-1:28, to enter into contracts with "any organization necessary to administer and provide a health plan." As stated above, this amendment is for DAS to exercise their option to extend the current pharmacy benefit manager (PBM) technology services contract with Milliman, formerly called SkySail Concepts, LLC.

The original contract, approved by Governor and Executive Council on February 3, 2021, (item #41) attached, was the result of a 2020 amendment to RSA 21-I sections 96-98, the New Hampshire Prescription Drug Competitive Marketplace. The amendment dictates the process that DAS must undergo in order to procure for a PBM if DAS chooses to conduct a reverse auction. A reverse auction is a negotiation strategy where vendors bid against each other over multiple rounds to win a contract. In addition to conducting the reverse auction online, the technology services software must be repurposed to conduct line-by-line claims invoice reviews to ensure the PBM is following the terms of the State's contract.

Per RSA 21-I:98, "the technology platform used to conduct the reverse auction shall be repurposed *over the duration* of the PBM services contract as an automated pharmacy claims adjudication engine to perform real-time, electronic, line-by-line, claim-by-claim review of 100 percent of invoiced PBM prescription drug claims and identify all deviations from the specific terms of PBM services contracts." The current PBM services contract with Express Scripts, Inc. is set to expire on December 31, 2024. In another item on the September 25th G&C agenda, DAS is exercising its option to extend the Express Scripts contract two additional years through December 31, 2026. Therefore, DAS is also exercising its option to extend the Milliman contract in accordance with RSA 21-I:98.

As part of DAS' standard health benefit plan operations, DAS monitors PBM compliance on an on-going basis to contain healthcare costs and ensure contract terms and definitions are current with the everchanging industry trends. With the assistance from Segal, one hundred percent (100%) of all pharmacy claims are audited every year. In addition, in accordance with RSA 21-I:98, also referred to as the New Hampshire Prescription Drug Competitive Marketplace, bi-weekly claims invoice audits are performed with the assistance from Milliman.

This extension enables DAS to comply with current legislation while maintaining the most current and competitive contract terms. Based on the foregoing, I am respectfully recommending approval of the contract amendment with Milliman, Inc.

Respectfully submitted,



Charles M. Arlinghaus
Commissioner
Administrative Services

**FIRST AMENDMENT TO THE CONTRACT
BETWEEN MILLIMAN, INC.
AND THE STATE OF NEW HAMPSHIRE, DEPARTMENT OF ADMINISTRATIVE SERVICES,
FOR PBM TECHNOLOGY PLATFORM SERVICES**

This Amendment to the PBM Technology Platform Services Agreement (“Agreement”) approved by the Governor and Executive Council on February 3, 2021, item #41, is entered into by and between Milliman, Inc. (“Contractor”), and the State of New Hampshire (“State”), collectively referred to as the “Parties”.

RECITALS

WHEREAS, the State previously entered into the Agreement setting forth the terms and conditions under which SkySail Concepts, LLC would provide PBM technology platform services for the State’s self-insured pharmacy benefit management contract with Express Scripts; and

WHEREAS, SkySail Concepts, LLC was subsequently acquired by Milliman, Inc. to whom all terms and conditions of the Agreement were assigned; and

WHEREAS, pursuant to Exhibit B, Section B – Term and Termination, the Agreement may be extended for up to two years to coincide with the PBM contract and subject to the approval of the Governor and Executive Council of the State of New Hampshire; and

WHEREAS, pursuant to Section 18 of the P-37 of the Agreement, the Agreement may be amended only by an instrument in writing signed by the Parties hereto and only after approval of such amendment by the Governor and Executive Council of the State of New Hampshire; and

WHEREAS, the Parties desire to exercise the extension option and amend the Agreement as provided in this Amendment;

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

TERMS OF AMENDMENT

Section 1.3 of the P-37.

Amend Section 1.3 of the P-37 by changing the contractor’s name to Milliman, Inc.

Section 1.4 of the P-37.

Amend Section 1.4 of the P-37 by changing the contractor address to 1301 5th Avenue, Suite 3800, Seattle, WA 98101

Section 1.7 of the P-37.

Amend Section 1.7 of the P-37 by changing the completion date to December 31, 2026.

Contractor Initials: BK
Date: August 14, 2024

Section 1.8 of the P-37.

Amend Section 1.8 of the P-37 by changing the Price Limitation to \$785,600.

Exhibit B: Term and Scope of Services

Section B – Term and Termination

Amend Section B by adding the following:

The term of the extension period shall be the period commencing on the January 1, 2025, and ending December 31, 2026, subject to the approval of the Governor and Executive Council.

Section E – PBM Reverse Auction

Amend Section E by adding the following:

If the State decides to conduct a PBM reverse auction during the extension period, the Contractor shall take the necessary actions as specified in this Agreement to implement and conduct the PBM reverse auction in compliance with all State requirements, so that the resulting PBM contract is approved and implemented in accordance with the State’s required timelines.

Exhibit C: Price and Method of Payment

Section C – Contract Fees

Amend Section C by deleting it and placing with the following:

Requested Service	Fee Basis	Contract Fee
PBM Reverse Auction and Related Services, initial term	Flat Fee	\$67,500
PBM Reverse Auction and Related Services, Extended term, if applicable	Flat Fee	\$67,500
Invoice Reviews - invoices from Year 1 of the PBM contract	Per Paid Claim*	\$0.20 cents
Invoice Reviews - invoices from Year 2 of the PBM contract	Per Paid Claim*	\$0.20 cents
Invoice Reviews - invoices from Year 3 of the PBM contract	Per Paid Claim*	\$0.20 cents
Invoice Reviews - invoices from Year 4 of the PBM contract	Per Paid Claim*	\$0.20 cents

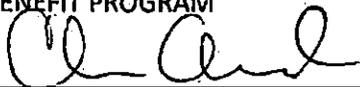
Contractor Initials: BK
Date: August 14, 2024

Invoice Reviews - invoices from Year 5 of the PBM contract	Per Paid Claim*	\$0.20 cents
Market Check – during Year 2 of the PBM contract	Flat Fee	\$40,000
Market Check – during Year 4 of the PBM contract, if applicable	Flat Fee	\$40,000

* Paid Claim is defined as a prescription for a covered drug for an eligible member that results in a payment from the State and/or the member, excluding adjustments and net of reversals.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Amendment #1.

THE STATE OF NEW HAMPSHIRE
EMPLOYEE & RETIREE HEALTH
BENEFIT PROGRAM



Signature of Authorized Representative

Charles Arlinghaus

Name of Authorized Representative

Commissioner

Title of Authorized Representative

9-10-24

Date

MILLIMAN, INC.



Signature of Authorized Representative

Brandon Kessler

Name of Authorized Representative

Principal

Title of Authorized Representative

August 14, 2024

Date

Approval by the Attorney General (Form, Substance and Execution)

Christen Lavers

Department of Justice

Christen Lavers, Assistant AG

Name and Title of DOJ Signatory

September 10, 2024

Date

Approved by the Governor and Executive Council of the State of New on the ___ day of _____, 2024, Item # _____.

Office of the Secretary of State

Name and Title of SOS Signatory

Contractor Initials: BK
Date: August 14, 2024

State of New Hampshire

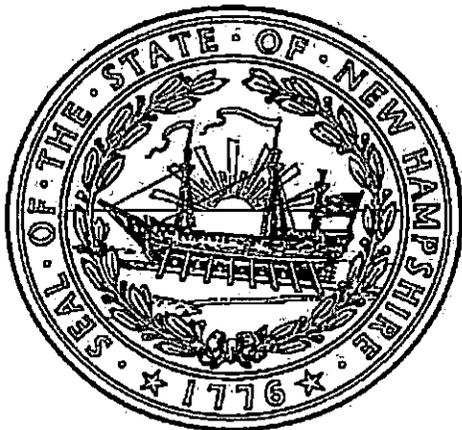
Department of State

CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that MILLIMAN, INC. is a Washington Profit Corporation registered to transact business in New Hampshire on September 15, 1988. 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: 134216

Certificate Number: 0006746462



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 2nd day of August A.D. 2024.

A handwritten signature in black ink, appearing to read "D. Scanlan", is written over a faint circular outline.

David M. Scanlan
Secretary of State



Certification of Corporate Secretary

I, Mary C. Clare, am the duly qualified and acting Corporate Secretary of Milliman, Inc. and I hereby affirm that:

1. On December 3, 2002, the following resolution was duly adopted by the Board of Directors of the corporation and remains in effect.

BE IT HEREBY RESOLVED, that each Principal of the firm and any consultant meeting requirements established by the Board of Directors are hereby granted the authority to individually negotiate and enter into proposals, engagement letters, contracts, letters of intent, and other documents on behalf of the corporation for the purpose of providing consulting, actuarial, and other professional services.

2. Brandon Kessler

is a duly elected and acting Principal of the firm.

is a consultant of the firm who meets the requirements established by the Board of Directors.

3. 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 and that this authorization shall remain valid for thirty (30) days from the date of this certificate.

DATED this 5th day of August 2024.



A handwritten signature in cursive script, appearing to read 'Mary C. Clare'.

Mary C. Clare
Corporate Secretary, Senior Vice President



State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES

25 Capitol Street - Room 120
Concord, New Hampshire 03301
Office@dass.nh.gov

Charles M. Arlinghaus
Commissioner
(603) 271-3201

Joseph B. Bouchard
Assistant Commissioner
(603) 271-3204

Catherine A. Keane
Deputy Commissioner
(603) 271-2059

January 20, 2021

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

REQUESTED ACTION

Authorize the Department of Administrative Services (DAS), Division of Risk and Benefits enter into a contract with SkySail Concepts, LLC (SkySail) (VC#341927), 29425 Chagrin Blvd., Suite 140, Pepper Pike, OH 44122, in the amount of \$510,100 for the Pharmacy Benefit Manager Technology Services per RSA 21-1:96 for a period of thirty-six (36) months upon Governor and Executive Council approval for the period effective upon approval through December 31, 2024, with the option to renew for up to two additional years subject to the approval of the Governor and Executive Council. Approximately 42% General Funds, 17% Federal Funds, 3% Enterprise Funds, 14% Highway Funds, 1% Turnpike Funds and 22% Other Funds.

Funding is available in SFY 2022, and is anticipated to become available in SFY 2023, SFY 2024 and SFY 2025 with the authority to adjust encumbrances between state fiscal years if necessary and justified through the Business Office, in the following accounts:

Pharmacy Administrative Costs	<u>SFY2022</u>	<u>SFY2023</u>	<u>SFY2024</u>	<u>SFY2025</u>
01-14-14-140560-66000000 ACTIVES				
100-500642 Pharmacy Admin Fees	\$85,700	\$98,200	\$98,200	\$42,700
01-14-14-140560-66600000 TROOPERS				
100-500642 Pharmacy Admin Fees	\$3,000	\$3,400	\$3,400	\$1,500
01-14-14-140560-66500000 RETIREE				
100-500642 Pharmacy Admin Fees	\$9,000	\$10,300	\$10,300	\$4,500
102-500673 Pharmacy Admin Fee - Retirees O65	\$36,900	\$42,300	\$42,300	\$18,400
FISCAL YEAR TOTALS	\$134,600	\$154,200	\$154,200	\$67,100
Grand Total	\$510,100			

EXPLANATION

The State provides prescription drug coverage for state employees, retirees, spouses and eligible dependents in accordance with the provisions of RSA 21-1:30 and the Collective Bargaining Agreements. The current Pharmacy Benefit Management (PBM) Services contract with Express Scripts, Inc. is set to expire on December 31, 2021. RSA 21-1 was recently amended to include sections 96-98, the New Hampshire Prescription Drug Competitive Marketplace that describes the process that DAS must undergo in order to procure for the next PBM if DAS chooses to conduct a reverse auction. A reverse auction is a negotiation strategy where vendors bid against each other with lower prices to win a contract. In addition to reverse auction technology services, the software must be repurposed to conduct a line-by-line claims invoice review to ensure the PBM is in compliance with the terms of the State contract.

DAS, with the assistance of Segal, the State's health benefit consultant, issued a Request for Proposal (RFP) for PBM Technology Services on October 30, 2020. Approximately 1,000 individuals and/or firms received direct notification of this solicitation and the proposal was posted on the DAS, Division of Procurement and Support Services website. On December 1, 2020, proposals were received from SkySail Concepts, LLC and Truveris, Inc. Both proposals were evaluated.

The scoring of the proposals was based upon the following areas and corresponding weights: Financial (50%), Technical Questionnaire (45%) and Performance Guarantees (5%). The technical questionnaire included the following points categories: Company Information, Experience, and Stability (9 points), Reverse Auction Process/Capabilities (13 points), Claims Review Capabilities (13 points), Account Management (5 points), and Implementation Program/Transition (5 points) totaling 45 points. Based on the foregoing, the proposal submitted by SkySail received the highest ranking score and was recommended by a unanimous decision of the evaluation team. The evaluation team members were: Joyce Pitman (Director of Risk and Benefits, DAS, Division of Risk and Benefits), Christina Muniz, (Health Benefit Policy and Compliance Administrator, DAS, Division of Risk and Benefits), and Gary Lunetta (Director, DAS, Division of Procurement and Support Services).

As stated above and referenced in the attached Executive Summary of Overall Results, the financial score encompassed fifty percent (50%) of the total proposal score. In accordance with the RFP, the financial proposals were scored on the projected costs as determined by the State for the three-year period from Governor and Council approval to December 31, 2024. The lowest cost proposal received 100% of the 50 points allocated for the Financial Section of the RFP. The other financial proposal was scored on a sliding scale, losing 1 point for every percentage point higher than the lowest cost proposal. Since the projected cost for the other proposal exceeded 50% higher than SkySail, the second bidder received a financial score of zero (0) per the RFP financial scoring methodology.

The remaining fifty percent (50%) of the allocated points were distributed amongst the Technical Questionnaire and Performance Guarantees. In these categories, scoring criteria were applied and bidder responses were evaluated based on the extent to which the bidder documents conformance with specifications, as well as the completeness, soundness, and creativity of the response, all as evaluated by the State. In accordance with the State's procurement rules, non-financial section scoring was based on the quality of each bidder's response and not based on any outside knowledge of the programs and/or services offered by each bidder. Both proposals were competitive, making the financial section of the proposal the determining factor for recommendation by the evaluation team.

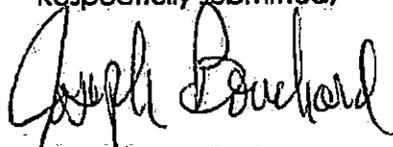
SkySail submitted the most financially competitive proposal in terms of projected costs. SkySail's projected costs were \$480,100 or 219% lower than the second proposal's projected cost of approximately \$1,531,500 over the three-year contract. Through negotiations, the State was able to increase the total amount at risk in performance guarantees approximately seventeen percent (17%). The price limitation for this agreement includes a six percent (6%) contingency to accommodate a potential increase in pharmacy claims as well as ad hoc reporting requests.

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
January 20, 2021
Page 3 of 3

In summary, upon Council approval, DAS will begin working to draft the RFP for the State's PBM Services contract utilizing SkySail's reverse auction technology platform. Once the new PBM contract is in place, Skysail's technology platform will be repurposed as a real-time claims invoice review audit system. Although DAS has used similar reverse auction methodology to procure for commodities, this will be the first time for PBM Services. DAS looks forward to partnering with SkySail and Segal to continue DAS' practice of auditing healthcare claims to ensure contractor compliance and providing innovative cost containment strategies.

Based on the foregoing, I am respectfully recommending approval of the contract with SkySail Concepts, LLC.

Respectfully submitted,

 Asst. Comm.
Charles M. Arlinghaus
for Commissioner

Attachment: PBM Technology Services RFP Executive Summary

Executive Summary

Overall Results

Total Score

Category	Allocated Points	SkySall		Truavis	
		Percent	Points	Percent	Points
Financial - Total Projected Costs	50	100%	50.0	0%	0.0
Performance Guarantees	5	92%	4.6	75%	3.8
Company Information, Experience and Stability	9	69%	6.2	98%	8.8
Reverse Auction Process/Capabilities	13	80%	10.4	90%	11.7
Claims Review Capabilities	13	84%	10.9	91%	11.9
Account Management	5	92%	4.6	81%	4.0
Implementation Program / Transition	5	100%	5.0	100%	5.0
Total Score*	100	91.6		45.1	
Total Rank		[1]		[2]	

* The sum of category scores may not tie back to total score due to rounding.

Proposal Analysis – Financial

Total Projected Cost

	Cost Basis	Proposals	
		SkySail	Truveris
PBM Reverse Auction	Flat Fee	\$67,500	\$600,000
Invoice Reviews – PBM Contract Year 1	Per Paid Claim	123,000	307,500
Invoice Reviews – PBM Contract Year 2	Per Paid Claim	124,200	310,500
Invoice Reviews – PBM Contract Year 3	Per Paid Claim	125,400	313,500
Market Check – During PBM Contract Year 2	Flat Fee	40,000	<i>Included</i>
Total Projected Costs		\$480,100	\$1,531,500
Difference from Lowest Cost Proposal - \$		\$0	\$1,051,400
Difference from Lowest Cost Proposal - %		0.0%	219.0%
Financial Score*		50.0	0.0
Financial Rank		1	2

* The most competitive proposal's Financial Score equals 50 points. All other financial proposals were scored on a sliding scale where the bidder's score was reduced by 1 point for every percentage point it was higher than the lowest cost proposal.

Notes:

1. SkySail proposes an invoice review fee of \$0.20 per paid claim for all three contract years.
2. Truveris proposes an invoice review fee of \$0.50 per paid claim for all three contract years.
3. Invoice Reviews projected costs assume paid claims of 615,000 in year 1, 621,000 in year 2, and 627,000 in year 3.
4. Paid Claim is defined as a prescription for a covered drug for an eligible member that results in a payment from the State and/or the member, excluding adjustments and net of reversals.

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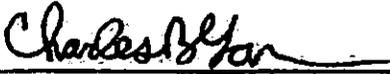
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name Department of Administrative Services		1.2 State Agency Address State House Annex Building, Room 412 25 Capitol Street Concord, NH 03301	
1.3 Contractor Name SkySail Concepts, LLC		1.4 Contractor Address 29425 Chagrin Blvd., Suite 140 Pepper Pike, OH. 44122	
1.5 Contractor Phone Number (203) 927-7275	1.6 Account Number 60-6600-500638, 60-6660-500638, 60-6650-500638, 60-6650-500659	1.7 Completion Date December 31, 2024	1.8 Price Limitation \$510,100
1.9 Contracting Officer for State Agency Joyce I. Pitman, Director Risk and Benefits		1.10 State Agency Telephone Number (603) 271-3080	
1.11 Contractor Signature  Date: 1/6/21		1.12 Name and Title of Contractor Signatory Charles Gamsu, Principal	
1.13 State Agency Signature  Date: 1/21/21		1.14 Name and Title of State Agency Signatory JOSEPH BAUGHARD Assistant 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: /s/Christen Lavers On: 1/21/21			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: FEB 03 2021			

 **DEPUTY SECRETARY OF STATE**

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

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

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

4. CONDITIONAL NATURE OF AGREEMENT.

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

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

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

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

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

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

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

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

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

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

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

7. PERSONNEL.

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

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

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

8. EVENT OF DEFAULT/REMEDIES.

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

8.1.1 failure to perform the Services satisfactorily or on schedule;

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

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

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

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

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

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

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

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

9. TERMINATION.

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

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

shall, within 15 days of notice of early termination, develop and submit to the State a Transition Plan for services under the Agreement.

10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

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

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

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

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS:

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

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

13. **INDEMNIFICATION.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against

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

14. INSURANCE.

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

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

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

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

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

15. WORKERS' COMPENSATION.

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit A – Special Provisions

In addition to Contractor's insurance obligations as set forth in the form contract P-37 Provision 14 – Insurance, the Contractor shall carry Data Security & Privacy Cyber Liability Insurance coverage for unauthorized access, use, acquisition, disclosure, failure of security, breach of Data or Confidential Information, privacy perils, in an amount not less than \$10 million per annual aggregate, covering all acts, errors, omissions, at minimum, during the full term of this Agreement per Exhibit D of this Agreement.

Exhibit B – Term and Scope of Services

This PBM Technology Platform Services Agreement (the Agreement) is made and entered into by and between the State of New Hampshire, Department of Administrative Services, Division of Risk and Benefits (hereinafter State) and SkySail Concepts, LLC (hereinafter Contractor).

A. EFFECTIVE DATE

This Agreement is effective upon Governor and Executive Council approval. The parties agree that the PBM Technology Platform Services to be provided under this Agreement shall commence upon approval of Governor and Executive Council.

B. TERM AND TERMINATION

The term shall be the period commencing on the Effective Date and ending December 31, 2024, with the option to extend to coincide with a resulting PBM contract, subject to the approval of the Governor and Executive Council. The State may terminate pursuant to Section 9 TERMINATION under the General Provisions of Form P-37. More specifically, the State may terminate this Agreement in whole, or may terminate the use of specific services outlined in this Agreement, in response to any changes to State law affecting the State's procurement and/or management of its PBM.

C. TRANSITION UPON CONTRACT TERMINATION OR EXPIRATION

Should a subsequent contract for ongoing claims invoice review be awarded to a provider other than the Contractor, the Contractor shall, to the greatest extent possible and reasonable, cooperate with the State in executing those actions necessary to facilitate a smooth and orderly transition to the next service provider. If deemed necessary by the State, upon approval from the Governor and Executive Council, the parties may execute any contract extension necessary to ensure there is no lapse or decline of service at the start of the subsequent contract.

D. ACCOUNT MANAGEMENT

The Contractor shall provide a dedicated implementation team for the State.

The Contractor shall provide an ongoing dedicated account management team including a senior IT/Systems consultant for the State.

The Contractor shall attend regularly scheduled meetings to discuss ongoing findings, performance and any concerns the State may have. Meetings will be set with the State in advance.

The Contractor must self-report on the Performance Guarantees outlined in this Agreement as defined in the Plan Performance Measurement Report Card to the State on a calendar quarter basis, in an agreed upon format. This report shall be in the form and format approved by the State.

E. PBM REVERSE AUCTION

Reverse Auction Implementation and Schedule

The Contractor shall begin reverse auction implementation activities upon Governor and Executive Council contract approval. The State and Contractor shall agree on a timeline and project plan.

The PBM reverse auction planning shall take place February to March 2021. The PBM reverse auction RFP process and subsequent contract development shall take place April to July 2021. The resulting PBM Contract will become effective January 1, 2022.

Reverse Auction Technology Platform

The Contractor shall provide a secure, online platform to host and conduct a PBM reverse auction. The platform shall have the capability to automate repricing of diverse and complex PBM prescription drug pricing proposals to enable direct comparisons of the price of bids using historical claims data from the State.

Participant Bidding Agreement

The Contractor shall assist the State in producing a participant bidding agreement (PBA). All PBMs must complete a PBA in order to participate in the reverse auction.

System Access to State & PBM Bidders

The Contractor shall provide the State and the State's project consultants and/or authorized representatives access to the reverse auction platform in accordance with the mutually agreed upon implementation schedule in order to test system readiness and to demonstrate the process by which the State and PBM Bidders access the system and by which information is entered and viewed.

The Contractor shall provide any software/hardware licensing requirements, to the extent required, to the State and PBM bidders at no cost.

The Contractor shall provide participating PBMs access to and, if necessary, training on the reverse auction platform in accordance with the mutually agreed upon implementation schedule prior to the reverse auction start date and to ensure accessibility, functionality, identification of their financial offer relative to other bidders and to input revised financial pricing terms for each subsequent rounds of bidding.

Reverse Auction Accessibility Report

The Contractor shall produce a report that demonstrates accessibility to the Reverse Auction Platform for each PBM registered to participate. The report shall include, but not be limited to, name of registered PBM, date PBM registered, date instructions provided to PBM, date accessibility confirmed with PBM, and date functionality confirmed with the PBM. The Contractor shall submit the report to the State in accordance with the mutually agreed upon timeline.

Reverse Auction Dashboard

The Contractor shall provide an online dashboard for the State to monitor at a minimum the PBM bidders who have registered to bid, accessed the reverse auction platform, and when they have entered and finalized their bids.

PBM Financial Bid Analysis for Each Round of Bidding

The Contractor shall provide a comparative financial analysis report for each round of bidding within 48 hours of the completion of the bidding round. The comparative financial analysis shall include total projected prescription drug costs for each bidding PBM; projected costs before and after guaranteed rebate amounts; dollar and percentage difference from current terms; side-by-side reporting of all proposed pricing components, and all methodologies and assumptions used to develop the financial analysis.

Summary Report of Reverse Auction Results

The Contractor shall provide a comprehensive report after the end of the reverse auction, in addition to the comprehensive financial analysis of bids.

Training and System Support

The Contractor shall provide the State, as necessary, secure access to the data platform system prior to and during the PBM reverse auction process.

The Contractor shall provide the State *draft* step-by-step instructions on how PBMs access the system and enter bid information in order to bid on the PBM contract. The draft shall be submitted to the State for approval in accordance with the mutually agreed upon implementation schedule prior to the reverse auction start date.

The Contractor shall provide step-by-step instructions to PBMs bidding on the PBM contract on how to access the system and enter bid information. The Contractor shall be available to provide technical support to PBMs, as needed, prior to and throughout each round of the reverse auction bidding process to ensure timely and accurate bid submissions.

F. ONGOING CLAIMS INVOICE REVIEW

Ongoing Claims Invoice Review Implementation Schedule

The State and Contractor shall agree on a timeline and project plan for the ongoing claims invoice review implementation.

Invoice Review Process

The Contractor shall utilize an automated process to receive and review claims files underlying each PBM invoice and shall provide an analysis to identify any deviations from the PBM contract terms, including but not limited to discounts; dispensing fees; brand/generic categorization; coverage exclusions; adjustments; and eligibility, within 12-hours of receipt of the claims data.

The Contractor shall provide assistance to the State with regard to resolution of any discrepancies identified as a result of the PBM invoice review.

If available, the Contractor shall perform comparisons of the financial effects on the State of alternative drug-pricing metrics, such as the National Average Drug Acquisition Cost and Average Wholesale Price.

G. INVOICE DISCREPANCY REPORTING

The Contractor shall provide monthly PBM invoice review summary reports identifying any pricing discrepancies from each invoice from the month, including specific dollar amounts associated with any disputed claims, plus the status of prior findings. The report shall be provided not more than fifteen (15) days following each month.

The Contractor shall provide the State a standard list of reports including access, frequency of delivery and format as approved by the State. The Contractor shall provide customized or ad hoc reports as requested by the State at no additional cost.

H. MARKET CHECKS

If requested by the State, the Contractor shall perform a market check analysis to evaluate the PBM contract's prescription drug pricing in comparison to benchmark pricing for comparable plans. The Contractor's responsibilities will include the comparison of the terms, any required negotiations with the PBM, and a detailed report of any estimated savings.

Exhibit C – Price and Method of Payment

A. BILLING AND PAYMENT

Reverse Auction: The Contractor shall invoice the State for the flat fee listed below for the PBM reverse auction and related services under this Agreement. Payment is due within 30-days from Governor and Executive Council approval of the resulting new or renewed Pharmacy Benefit Management (PBM) Services contract.

Ongoing Claims Invoice Review: The Contractor shall invoice the State on a monthly basis for ongoing claims invoice review services performed. The Contractor shall invoice the State for each month no later than the end of the following month. For example, the Contractor will invoice the State for January 2022 ongoing invoice claims review services no later than February 28, 2022. The invoice amounts shall include State approved detailed backup including dates and number of claims reviewed.

Payment for the ongoing claims invoice review and related services shall not commence prior to January 1, 2022. The State shall issue payment to the Contractor via wire transfer to a bank account specified by the Contractor no later than 30 days from the State's receipt of each invoice. If the State disputes any item on any invoice, the State shall pay the invoice in full and shall notify the Contractor, in writing, of the specific reason and amount of any dispute. The Contractor and the State shall work together, in good faith, to resolve any dispute as soon as reasonably practicable.

Market Check: The Contractor shall invoice the State for the Market Check flat fee listed below immediately following the presentation of the final results of the Market Check to the State. Payment is due within 30-days from the State receiving the final results of the Market Check.

B. CONTRACT PRICE LIMITATION

The Contractor hereby agrees to provide the services in complete compliance with the terms and conditions specified in this Agreement at the fees below for the term of the contract. The contract price limitation is \$510,100. The price limitation is the maximum payment amount for services provided under this contract. It is not a guaranteed or minimum payment amount.

C. CONTRACT FEES

Requested Service	Fee Basis	Contract Fee
PBM Reverse Auction and Related Services	Flat Fee	\$67,500
Invoice Reviews - invoices from Year 1 of the PBM contract	Per Paid Claim*	\$0.20 cents
Invoice Reviews - invoices from Year 2 of the PBM contract	Per Paid Claim*	\$0.20 cents
Invoice Reviews - invoices from Year 3 of the PBM contract	Per Paid Claim*	\$0.20 cents
Market Check – during Year 2 of the PBM contract	Flat Fee	\$40,000

* Paid Claim is defined as a prescription for a covered drug for an eligible member that results in a payment from the State and/or the member, excluding adjustments and net of reversals.

D. PERFORMANCE GUARANTEES

The Contractor agrees to the performance standards and guarantees/penalties at risk each year, or as frequently as indicated, outlined below, for the duration of the contract based on actual performance. The Contractor will self-report results and the State may utilize its partners and internal staff to validate reported baseline and results for these outcomes. The Contractor agrees to the State's right to independently audit and confirm all results. All measurements and standards are specific to the State's services, and not to be based on the Contractor's performance for its book of business, or any other group that includes non-State members.

Contractor will report results on all performance measurements quarterly per the requirements of the Report Card. Performance results may be audited annually by the State's contract auditor. The quarterly Report Cards will include, but are not limited to, performance guarantee descriptions, performance goals, actual performance measurement, variance details of each non-compliant component and detailed supporting documentation for each Performance Guarantee ("Report Cards"). Report cards shall be submitted to the State within seventy-five (75) calendar days following the end of the preceding quarter. Contractor shall not be deemed to have failed to meet any performance guarantee if the data or supporting documentation required to perform the measured service is not received by Contractor from the source of the data or supporting documentation.

The total amount per contract year at risk for performance guarantees.

Performance Guarantee		Total Penalty/ Amount at Risk
Implementation	The Total Implementation Performance Guarantee Amount.	\$ <u>35,000.00</u>
Ongoing (annual)	The Total Ongoing Annual Performance Guarantee Amount.	\$ <u>70,000.00</u>

The amount at risk for each performance guarantee:

IMPLEMENTATION				
	Service/Task	Target	Reporting Measurement (subject to audit by State and/or contract auditors)	Penalty Amount
1.	Reverse Auction Implementation	Reverse Auction Implementation completed within time requirements noted in the agreed upon Implementation Schedule as determined by the State.	One time measurement, after the completion of the Reverse Auction, by State using performance to complete evaluation.	\$ <u>6,000.00</u> Payment due within 30 calendar days of notification from the State.

2.	Ongoing Invoice Review Implementation	Ongoing Invoice Review Implementation completed within time requirements noted in the agreed upon Implementation Schedule, as determined by the State.	One time measurement, after the first quarter of the initial plan year, by State using performance to complete evaluation.	\$ <u>6,000.00</u> Payment due within 30 calendar days of notification from the State.
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REVERSE AUCTION

	Service/Task	Target	Reporting Measurement (subject to audit by State and/or contract auditors)	Penalty Amount
3.	System Downtime	Reverse auction tool system downtime less than 1% during Reverse Auction process.	Supporting data to be submitted by Contractor.	\$ <u>1,000.00</u> per percentage point over 1%
4.	Delivery of Reverse Auction Round Reports	Delivery to the State, an automated report and analysis of bids, including the ranking of bids based on the comparative costs and qualitative aspects of the costs within forty-eight (48) hours of each round of reverse auction bidding (demo reports provided to State in advance for approval).	One time measurement for each round.	\$ <u>6,000.00</u> for each round.
5.	Delivery of Reverse Auction Overall Reporting	Delivery to the State, a comprehensive report after the end of the reverse auction, including a comprehensive financial analysis of bids, within five (5) Business Days after the reverse auction end date (demo reports provided to State in advance for approval).	One time measurement	\$ <u>6,000.00</u> for missed deadline.

ACCOUNT MANAGEMENT

	Service/Task	Target	Reporting Measurement (subject to audit by State and/or contract auditors)	Penalty Amount
6.	Delivery of Quarterly Plan	Delivery to the State by 5:00 pm on the following dates:	Date-stamp of receipt by the State.	\$ <u>1,000.00</u> for each week, or fraction thereof

	Performance Measurement Report Card to the State	<p>First Quarter (Jan – Mar) Due: June 15th or 30-days after receipt of data from PBM.</p> <p>Second Quarter (Apr – Jun) Due: September 15th or 30-days after receipt of data from PBM.</p> <p>Third Quarter (Jul – Sep) Due: December 15th or 30-days after receipt of data from PBM.</p> <p>Fourth Quarter (Oct – Dec) Due: March 15th or 30-days after receipt of data from PBM.</p>	Frequency of report: Quarterly	that the Report Card is not received.
7.	Account Management	Contractor representatives will return all messages received from the State (i.e.: voice mail, e-mail or other communication method) promptly. Messages sent before 12 Noon will be replied to the same day. Messages received after 12 Noon will be replied to by 12 noon of the following business day.	Report Card – Contractor to maintain log for submission with Report. Frequency of report: Quarterly	\$ <u>1,000.00</u> for each delayed response.
CLAIMS REVIEW				
	Service/Task	Target	Reporting Measurement (subject to audit by State and/or contract auditors)	Penalty Amount

8.	Invoice Claim Review Frequency and Timing	PBM invoice review summary report identifying claim adjudication errors and discrepancies from the most recent invoice, including specific dollar amounts associated with any disputed claims. The report shall be provided to the State not more than twelve (12) hours following receipt of the PBM invoice and required supporting documentation from the PBM.	Report Card and supporting documentation to be submitted by the Contractor. Frequency of report: Per Invoice	\$ <u>1,000.00</u> for each missed deadline.
9.	Monthly Claim Review Frequency and Timing	PBM invoice monthly review summary report identifying claim adjudication errors and discrepancies from each invoice during the month, including specific dollar amounts associated with any disputed claims, plus the status of prior findings. The report shall be provided not more than fifteen (15) calendar days following the last calendar date of the month.	Report Card and supporting documentation to be submitted by the Contractor. Frequency of report: Monthly	\$ <u>1,000.00</u> for each missed deadline.
10.	Invoice Claim Review	Perform 100% of claims reviews, reviewed line-by-line,	Report Card and supporting documentation to be submitted by the Contractor. Frequency of report: Per Invoice	\$ <u>1,000.00</u> for each report that does not meet the standard.

Exhibit D - Required Protection of Confidential Information and Data Security

In performing its obligations under the Agreement, Contractor, inclusive of any subsidiaries and related entities shall gain access to State data and information and with respect to such will comply with the following terms and conditions. Protection of State data and information shall be an integral part of the business activities of Contractor. Contractor shall ensure that there is no inappropriate or unauthorized use of State data and information at any time.

1. Definitions

- a. **Confidential Information.** Protected health information (PHI), personally identifiable information (PII), and other personal private, and/or sensitive information.
- b. **Data.** All information and things developed or obtained during the performance of, or acquired or developed by reason of, this agreement, including but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

2. Contractor Responsibilities

- a. Confidential Information obtained by Contractor shall remain the property of the State and shall at no time become the property of Contractor unless otherwise explicitly permitted under the Agreement.
- b. Contractor shall develop and implement policies and procedures to safeguard the confidentiality, integrity and availability of the State's information.
- c. Contractor shall not use the State's Confidential Information developed or obtained during the performance of, or acquired or developed by reason set forth within the Agreement, except as is directly connected to and necessary for Contractor's performance under the Agreement, or unless otherwise permitted under the Agreement.
- d. In the event Contractor stores Data and/or Confidential Information, such information shall be encrypted by Contractor both at rest and in motion.
- e. Contractor shall have, and shall ensure that any subcontractors or related entities have, proper security measures in place for protection of the State's data. Such security measures shall comply with HIPAA and all other applicable State and federal data protection and privacy laws.

3. Controls. Contractor shall, and shall ensure that any subcontractors or related entities use at all times proper controls for secured storage of, limited access to, and rendering unreadable prior to discarding, all records containing the State's Confidential Information. Contractor shall not store or transfer Confidential Information collected in connection with the services rendered under this Agreement outside of the North America. This includes backup data and disaster recovery locations.

4. Breach Notification.

- a. Contractor shall notify the State of any security breach, or potential breach of Contractor or any subcontractors or related entities, that jeopardizes, or may jeopardize the State's Data, Confidential Information, or processes. For purposes of reporting under this Section, security breach or potential breach shall be limited to the successful or attempted unauthorized access, use, disclosure, modification, or destruction of information, or the successful or attempted interference with system operations in an information system.
- b. Contractor shall notify the State of a security breach, or potential breach of Contractor or any subcontractors or related entities upon discovery. Contractor will treat a security breach or potential breach as being discovered as of the first day on which such incident is known to Contractor, or by exercising reasonable diligence, would have been known to Contractor. Contractor shall be deemed to have knowledge of a security breach or potential breach if such incident is known, or by exercising

reasonable diligence would have been known, to any person, other than the person committing the breach, who is an employee, officer or other agent of Contractor.

- c. Full disclosure of the security breach or potential breach of Contractor or any subcontractors or related entities shall be made and include all available information resulting from investigation of the security breach or potential breach. Contractor shall make efforts to investigate the causes of the security breach or potential breach; promptly take measures to prevent any future breach; and mitigate any damage or loss. In addition, Contractor shall inform the State of the actions it is taking, or will take, to reduce the risk of further loss to the State.
 - d. All legal notifications required as a result of a breach of information, or potential breach, collected pursuant to this Agreement shall be coordinated with the State.
5. **Liability and Damages.** In addition to Contractor's liability as set forth elsewhere in the Agreement, if Contractor or any of its subcontractors or related entities is determined by forensic analysis or report, to be the likely source of any loss, disclosure, theft or compromise of State's data or Confidential Information, the State shall recover from Contractor all costs of response and recovery resulting from the security breach or potential breach, including but not limited to: credit monitoring services, mailing costs and costs associated with website and telephone call center services. A security breach or potential breach may cause the State irreparable harm for which monetary damages would not be adequate compensation. In the event of such an incident, the State is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which the State may be entitled at law or in equity. Such remedies shall not be deemed exclusive, but shall be in addition to all other remedies available at law or in equity, subject to any express exclusion or limitations in the Agreement to the contrary.
6. **Data Breach Insurance.** In addition to Contractor's insurance obligations as set forth in the form contract P-37, Contractor shall carry Data Security & Privacy Cyber Liability Insurance coverage for unauthorized access, use, acquisition, disclosure, failure of security, breach of Data or Confidential Information, privacy perils, in an amount not less than \$10 million per annual aggregate, covering all acts, errors, omissions, at minimum, during the full term of this Agreement. Such coverage shall be maintained in force at all times during the term of the Agreement and during any period after the termination of this Agreement during which Contractor maintains State Data or Confidential Information.
7. **Data Recovery.** Contractor shall be responsible for ensuring backup and redundancy of the State's Data and Confidential Information for recovery in the event of a system failure or disaster event within Contractor's data storage systems. Contractor shall ensure that its subcontractor or related entities provide similar backup and redundancy of the State's Data and Confidential Information.
8. **Return or Destruction of Data and Confidential Information.** Upon termination of the Agreement for any reason, Contractor shall:
- a. Return or destroy the Data or Confidential Information Contractor still maintains in any form. Whether the information is returned or destroyed is determined at the sole discretion of the State. Information that is destroyed shall be permanently deleted and not recoverable according to National Institute of Standards and Technology approved methods. Contractor shall provide the State with certificates of destruction and/or certificates verifying that all information has been returned and none retained. If it is not feasible for Contractor to return or destroy portions of such confidential data or information in its possession, Contractor shall inform the State as to the specific reasons that make such return or destruction infeasible and may retain such data or information with approval of the State, which shall not be unreasonably withheld.
 - b. Certain types of information which must be retained for the State's benefit, such as records of actuarial determinations, will be maintained as agreed upon by the State.

- c. Continue to use appropriate safeguards as identified above with respect to any Data or Confidential Information that is retained
 - d. Not use or disclose Data or Confidential Information retained other than for purposes for which such information has been retained, and subject to the same terms and conditions as set forth in the original Agreement.
9. Access to System Logs. Contractor shall allow the State access to system security logs, latency statistics, etc., that affect the Agreement, the State's data and/or processes. This includes the ability of the State to request a report of the records that a specified user accessed over a specified period of time.
10. Import/Export Data. The State shall have the ability to import or export data in piecemeal manner or in its entirety at its discretion without interference from the BA and with the BA's assistance, at no additional cost to the State.
11. Survival. This Exhibit *Required Protection of Confidential Information and Data Security* shall survive termination or conclusion of the Agreement.

Exhibit E - 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 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 Contractor. "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. Privacy and Security of Protected Health Information (PHI)

a. Permitted Uses and Disclosures

- i. Business Associate shall not use, disclose, maintain or transmit PHI except as reasonably necessary to provide the services set forth in this Agreement or any agreement between the parties, or as required by law.
- ii. 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 consistent with HIPAA Rules. Uses and disclosures of the de-identified information shall be limited to those consistent with the provisions of this Agreement.
- iii. Business Associate may use PHI as necessary to perform data aggregation services, and to create Summary Health Information and/or Limited Data Sets. Contractor shall use appropriate safeguards to prevent use or disclosure of the information other than as provided for herein, shall ensure that any agents or subcontractors to whom it provides such information agree to the same restrictions and conditions that apply to Contractor, and not identify the Summary Health Information and/or Limited Data Sets or contact the individuals other than for the management, operation and administration of the Plan.
- iv. Business Associate may use and disclose PHI (a) for the management, operation and administration of the Plan, (b) for the services set forth in the Agreement, which include (but are not limited to) Treatment, Payment activities, and/or Medical Benefits Administration as these terms are defined in this Agreement and 45 C.F.R. § 164.501, and (c) as otherwise required to

perform its obligations under this Agreement, or any other agreement between the parties provided that such use or disclosure would not violate the HIPAA Regulations.

- v. Business Associate may disclose, in conformance with the HIPAA Rules, PHI to make disclosures of De-Identified Health Information, Limited Data Sets, and Summary Health Information. Contractor shall use appropriate safeguards to prevent use or disclosure of the information other than as provided for herein, ensure that any agents or subcontractors to whom it provides such information agree to the same restrictions and conditions that apply to Contractor, and not identify the De-Identified Health Information, Summary Health Information and/or Limited Data Sets or contact the individuals. Business Associate may also disclose, in conformance with the HIPAA Regulations, PHI to Health Care Providers for permitted purposes including health care operations.
 - vi. Business Associate may use PHI 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.
 - vii. To the extent practicable, 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.
- b. **Minimum Necessary.** Business Associate will, in its performance of the functions, activities, services, and operations specified above, make reasonable efforts to use, to disclose, and to request only the minimum amount of PHI reasonably necessary to accomplish the intended purpose of the use, disclosure, or request, except that Business Associate will not be obligated to comply with this minimum-necessary limitation if neither Business Associate or Covered Entity is required to limit its use, disclosure, or request to the minimum necessary under the HIPAA Rules. Business Associate and Covered Entity acknowledge that the phrase "minimum necessary" shall be interpreted in accordance with the HITECH Act and the HIPAA Rules.
 - c. **Prohibition on Unauthorized Use or Disclosure.** Business Associate may not use or disclose PHI except (1) as permitted or required by this Agreement, or any other agreement between the parties, (2) as permitted in writing by Covered Entity, or (3) as authorized by the individual or (4) as Required by Law. This agreement does not authorize Business Associate to use or disclose Covered Entity's PHI in a manner that would violate the HIPAA Rules if done by Covered Entity, except as permitted for Business Associate's proper management and administration as described herein.

3. Information Safeguards

- a. **Privacy of Protected Health Information.** Business Associate will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to protect the privacy of PHI. The safeguards must reasonably protect PHI from any intentional or unintentional use or disclosure in violation of the Privacy Rule and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Agreement. To the extent the parties agree that the Business Associate will

carry out directly one or more of Covered Entity's obligations under the Privacy Rule, the Business Associate will comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligations.

- b. **Security of Covered Entity's Electronic Protected Health Information.** Business Associate will comply with the Security Rule and will use appropriate administrative, technical and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI that Business Associate creates, receives, maintains or transmits on Covered Entity's behalf.
- c. **No Transfer of PHI Outside United States.** Business Associate will not transfer PHI outside the United States without the prior written consent of the Covered Entity. In this context a "transfer" outside the United States occurs if Business Associate's workforce members, agents, or Subcontractors physically located outside the United States are able to, store, copy or disclose PHI.
- d. **Subcontractors.** Business Associate will require each of its Subcontractors to agree, in a written agreement with Business Associate, to comply with the provisions of the Security Rule; to appropriately safeguard PHI created, received, maintained, or transmitted on behalf of the Business Associate; and to apply the same restrictions and conditions that apply to the Business Associate with respect to such PHI.
- e. **Prohibition on Sale of Protected Health Information.** Business Associate shall not engage in any sale (as defined in the HIPAA rules) of PHI.
- f. **Prohibition on Use or Disclosure of Genetic Information.** Business Associate shall not use or disclose Genetic Information for underwriting purposes in violation of the HIPAA rules.
- g. **Penalties for Noncompliance.** Business Associate acknowledges that it is subject to civil and criminal enforcement for failure to comply with the HIPAA Rules, to the extent provided with the HITECH Act and the HIPAA Rules.

4. Compliance With Electronic Transactions Rule

- a. **If Business Associate conducts in whole or part electronic Transactions on behalf of Covered Entity for which HHS has established standards, Business Associate will comply, and will require any Subcontractor it involves with the conduct of such Transactions to comply, with each applicable requirement of the Electronic Transactions Rule and of any operating rules adopted by HHS with respect to Transactions.**

5. Individual Rights and PHI

a. 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. 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 the control of Business Associate's and/or 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.

b. 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. 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 the custody or control of Business Associate and/or its Subcontractors so that Covered Entity may meet its amendment obligations under 45 CFR 164.526.

c. 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. Business Associate shall record each disclosure that Business Associate makes of individuals' PHI, which is not excepted from disclosure accounting under 45 CFR 164.528(a)(1).
 - iv. Disclosure Information. 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.
 - v. Repetitive Disclosures. 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.

- vi. **Exceptions from Disclosure Tracking.** Business Associate will not be obligated to record Disclosure Information or otherwise account for disclosures of PHI if Covered Entity need not account for such disclosures under the HIPAA Rules.
- vii. **Disclosure Tracking Time Periods.** 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.

d. 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. 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.

e. 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.

6. Breach

- a. Business Associate shall report to Covered Entity, in writing, any use or disclosure of PHI in violation of the Agreement promptly upon discovery of such incident, including any Security Incident involving PHI, ePHI, or Unsecured PHI as required by 45 CFR 164.410. Such report shall not include instances where Business Associate inadvertently misroutes PHI to a provider, as long as the disclosure is not a Breach as defined under 45 CFR §164.402. The parties acknowledge and agree that attempted but Unsuccessful Security Incidents (as defined below) that occur on a daily basis will not be reported. "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on Business

Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.

- b. Business Associate shall report a Breach or a potential Breach to Covered Entity upon discovery of any such incident. Business Associate will treat a Breach or potential Breach as being discovered as of the first day on which such incident is known to Business Associate, or by exercising reasonable diligence, would have been known to Business Associate. Business Associate shall be deemed to have knowledge of a Breach or potential Breach if such incident is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer or other agent of Business Associate. If a delay is requested by a law-enforcement official in accordance with 45 CFR § 164.412, Business Associate may delay notifying Covered Entity for the applicable time period. Business Associate's report will include at least the following, provided that absence of any information will not be cause for Business Associate to delay the report:
- i. Identify the nature of the Breach, which will include a brief description of what happened, including the date of any Breach and the date of the discovery of any Breach;
 - ii. Identify the scope of the Breach, including the number of Covered Entity members involved as well as the number of other individuals involved;
 - iii. Identify the types of PHI that were involved in the Breach (such as whether full name, Social Security number, date of birth, home address, account number, diagnosis, or other information were involved);
 - iv. Identify who made the non-permitted use or disclosure and who received the non-permitted disclosure;
 - v. Identify what corrective or investigational action Business Associate took or will take to prevent further non-permitted uses or disclosures, to mitigate harmful effects, and to protect against any further Breaches;
 - vi. Identify what steps the individuals who were subject to a Breach should take to protect themselves;
 - vii. Provide such other information as Covered Entity may reasonably request.
- c. Security Incident. Business Associate will promptly upon discovery of such incident report to Covered Entity any Security Incident of which Business Associate becomes aware. Business Associate will treat a Security Incident as being discovered as of the first day on which such incident is known to Business Associate, or by exercising reasonable diligence, would have been known to Business Associate. Business Associate shall be deemed to have knowledge of a Security Incident if such incident is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Security Incident, who is an employee, officer or other agent of Business Associate. If any such Security Incident resulted in a disclosure not permitted by this Agreement or Breach of Unsecured PHI, Business Associate will make the report in accordance with the provisions set forth above.
- d. Mitigation. Business Associate shall mitigate, to the extent practicable, any harmful effect known to the Business Associate resulting from a use or disclosure in violation of this Agreement.
- e. Breach Notification to Third Parties. 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 such notification be necessary, Business Associate will ensure that Covered Entity will receive notice of the breach prior to such incident being reported.

7. Term and Termination

- a. The term of this Agreement shall be effective as of Governor and Executive Council approval, and shall terminate consistent with the underlying Agreement or on the date covered entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.
- b. In addition to the general provisions outlined in the P-37 of this Agreement the Covered Entity may, as soon as administratively feasible, terminate the Agreement upon Covered Entity's knowledge of a material breach by Business Associate of this Business Associate Agreement. Prior to terminating the Agreement, the Covered Entity may provide an opportunity for Business Associate to cure the alleged breach within a reasonable timeframe specified by Covered Entity. If Covered Entity determines that neither termination nor cure is feasible, Covered Entity may 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. Destroy, in accordance with applicable law and Business Associate's record retention policy that it applies to similar records, 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. Destroy in accordance with applicable law and Business Associate's record retention policy that it applies to similar records, 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 above provisions shall apply to PHI that is in the possession of any Subcontractors of Business Associate. Further Business Associate shall require any such Subcontractor to certify to Business Associate that it has returned or destroyed all such information which could be returned or destroyed.
- e. Business Associate's obligations under this Section 7.c. shall survive the termination or other conclusion of this Agreement.

8. Covered Entity's Responsibilities

- a. Covered Entity shall be responsible for the preparation of its Notice of Privacy Practices ("NPP"). To facilitate this preparation, upon Covered Entity's request, Business Associate will provide Covered Entity with its NPP that Covered Entity may use as the basis for its own NPP. Covered Entity will be solely responsible for the review and approval of the content of its NPP, including whether its content accurately

reflects Covered Entity's privacy policies and practices, as well as its compliance with the requirements of 45 C.F.R. § 164.520. Unless advance written approval is obtained from Business Associate, Covered Entity shall not create any NPP that imposes obligations on Business Associate that are in addition to or that are inconsistent with the HIPAA Rules.

- b. Covered Entity shall bear full responsibility for distributing its own NPP.
- c. Covered Entity shall notify Business Associate of any change(s) in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such change(s) may affect Business Associate's use or disclosure of such PHI.

9. 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 action to amend the Agreement as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- c. **Business Associate shall make available all of its internal practices, policies and procedures, books, records and agreements relating to its use and disclosure of Protected Health Information to the United States Department of Health and Human Services as necessary, to determine compliance with the HIPAA Rules and with this Business Associate Agreement.**
- d. **Interpretation.** The parties agree that any ambiguity in the Agreement shall be interpreted to permit compliance with the HIPAA Rules.
- e. **Severability.** If any term or condition of this Business Associate Agreement 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 Business Associate Agreement are declared severable.
- f. **Survival.** Provisions in this Business Associate Agreement regarding the use and disclosure of PHI, return or destruction of PHI, confidential communications and restrictions shall survive the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Business Associate Agreement.

The State of New Hampshire Employee and Retiree Health Benefit Program

Joseph Bouchard
Signature of Authorized Representative

Joseph Bouchard
Name of Authorized Representative

Assistant Commissioner
Title of Authorized Representative

Jan. 21, 2021
Date

Contractor

Charles Gamsu
Signature of Authorized Representative

Charles Gamsu
Name of Authorized Representative

Principal
Title of Authorized Representative

1/6/21
Date

