



STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF ECONOMIC STABILITY

Lori A. Weaver
Commissioner

Karen E. Hebert
Director

129 PLEASANT STREET, CONCORD, NH 03301
603-271-9474 1-800-852-3345 Ext. 9474
Fax: 603-271-4230 TDD Access: 1-800-735-2964 www.dhhs.nh.gov

February 4, 2025

Her Excellency, Governor Kelly A. Ayotte
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Health and Human Services, Division of Economic Stability, to amend an existing contract with TDB Communications, Inc. (VC# 469507), Washington, DC, to continue determination and review of individual eligibility for disability benefits, by exercising a contract renewal option, by extending the completion date from June 30, 2025, to June 30, 2027, and increasing the price limitation by \$2,429,939 from \$777,453 to \$3,207,392, effective upon Governor and Council approval. 50% Federal Funds. 50% General Funds.

The original contract was approved by Governor and Council on December 20, 2023, item #24, and amended on September 25, 2024, item #5E.

Funds are available in the following accounts for State Fiscal Year 2025 and are anticipated to be available in State Fiscal Years 2026 and 2027, upon the availability and continued appropriation of funds in the future operating budget, with the authority to adjust budget line items within the price limitation and encumbrances between state fiscal years through the Budget Office, if needed and justified.

05-95-45-451010-7997 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SERVICES, HHS: HUMAN SERVICES-DEHS, BUREAU OF FAMILY ASSIST FIELD, DISABILITY DETERMINE UNIT

State Fiscal Year	Class / Account	Class Title	Job Number	Current Budget	Increased (Decreased) Amount	Revised Budget
2024	046-500462	Consultants	45142101	\$353,306	\$0	\$353,306
2025	046-500462	Consultants	45142101	\$424,147	\$273,119	\$697,266
2026	046-500462	Consultants	45142101	\$0	\$1,078,410	\$1,078,410
2027	046-500462	Consultants	45142101	\$0	\$1,078,410	\$1,078,410
			Subtotal	\$777,453	\$2,429,939	\$3,207,392

EXPLANATION

The purpose of this request is to exercise an available contract renewal option for the Contractor to continue to clinically assess, determine and review individual eligibility for disability benefits through Aid to the Permanently and Totally Disabled; Aid to the Needy Blind; Medicaid for Employed Adults with Disabilities, Medicaid for Employed Older Adults with Disabilities, and Home Care for Children with Severe Disabilities. Additionally, the Contractor provides expert vocational and medical witness testimony at Administrative Appeal Hearings on behalf of the Department.

The Contractor will continue to provide services to clinically determine medical eligibility for individuals applying for cash assistance and Medicaid through one of the Department's disability programs outlined above. The medical, psychological, and/or psychiatric assessment is required by the Federal Centers for Medicare and Medicaid Services to evaluate individual claims of disability for Medicaid eligibility purposes.

Approximately 4,000 individuals will be served during State Fiscal Years 2025, 2026 and 2027.

The Department will continue monitor services by conducting a random case sampling to ensure timeliness and quality standards are met in accordance with the scope of work, program policy, state law, and federal regulations.

As referenced in Exhibit A, Revisions to Standard Agreement Provisions, Subsection 1.1., of the original agreement, the parties have the option to extend the agreement for up to four (4) additional years, contingent upon satisfactory delivery of services, available funding, agreement of the parties and Governor and Council approval. The Department is exercising its option to renew services for two (2) of the four (4) years available.

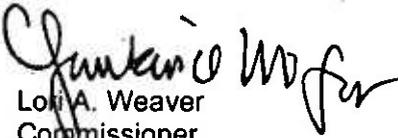
Should the Governor and Executive Council not approve this request the Department will not have sufficient clinical staff to administer the disability determinations within the ninety (90) day time frame established by federal and state regulations. In addition, the Department would not be eligible to receive the Federal match funds at a rate of fifty percent (50%) for contracted services with a non-public entity.

Area served: Statewide.

Source of Federal Funds: Assistance Listing Number Assistance Listing Number #93.778, FAIN #2405NHADM.

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

Respectfully submitted,


Lori A. Weaver
Commissioner

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

This Amendment to the Disability Determination contract is by and between the State of New Hampshire, Department of Health and Human Services ("State" or "Department") and TDB Communications, Inc., ("the Contractor").

WHEREAS, pursuant to an agreement (the "Contract") approved by the Governor and Executive Council on December 20, 2023 (Item #24), as amended on September 25, 2024 (Item #5E), the Contractor agreed to perform certain services based upon the terms and conditions specified in the Contract as amended and in consideration of certain sums specified; and

WHEREAS, pursuant to Form P-37, General Provisions, the Contract may be amended upon written agreement of the parties and approval from the Governor and Executive Council; and

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

1. Form P-37 General Provisions, Block 1.7., Completion Date, to read:
June 30, 2027
2. Form P-37, General Provisions, Block 1.8., Price Limitation, to read:
\$3,207,392.
3. Modify Exhibit C, Payment Terms, Section 1., to read:
 1. This Agreement is funded by:
 - 1.1. 50% Federal funds, Medical Assistance Program, as awarded on October 1, 2022, by the U.S. Department of Health and Human Services, ALN #93.778, FAIN #2305NH5ADM and #2405NHADM.
 - 1.2. 50% General funds.
4. Modify Exhibit C, Payment Terms, Section 2.3., to read:
 - 2.3. Payment shall be made for actual services provided in the fulfillment of this Agreement, as specified in Exhibit B Scope of Work, and in accordance with the Rate Table below:

RATE TABLE	
Type of Review	Rate Paid Per Case
APTD, MEAD, MOAD, and ANB cases requiring all Steps one (1) through five (5) of the evaluation process.	\$359.47
APTD, MEAD, MOAD and ANB cases requiring a CDR Steps one (1) through eight (8) of the evaluation process.	\$412.00
APTD, MEAD, MOAD and ANB cases requiring a CDR Steps three (3) through eight (8) (Steps one (1) and two (2) are completed by the Department).	\$359.47
HC-CSD cases requiring Steps one (1) through three (3) of the evaluation process and Level of Care.	\$359.47

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HC-CSD cases requiring CDR requiring Steps one (1) through three (3) of the evaluation process and Level of Care.	\$359.47
APTD, MEAD and MOAD cases requiring Residual Functional Capacity (RFC), Steps four (4) and five (5), and final sign-off by a Doctor (Steps one (1) through three (3) are completed by the Department).	\$300.76
APTD, MEAD and MOAD cases requiring Residual Functional Capacity (RFC) and sign-off by a Doctor (Steps one (1) through five (5) are completed by the Department).	\$259.56
HC-CSD, APTD, MEAD, MOAD, and ANB cases requiring only final sign-off by a Doctor including CDR. All other steps have been completed by the Department.	\$123.60
Vocational Expert (All Inclusive Per Case for Administrative Appeal).	\$180.25
Medical Witness (All Inclusive Per Case for Administrative Appeal).	\$202.91

All terms and conditions of the Contract and prior amendments not modified by this Amendment remain in full force and effect. This Amendment shall be effective upon Governor and Council approval.

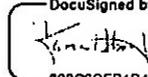
IN WITNESS WHEREOF, the parties have set their hands as of the date written below,

State of New Hampshire
Department of Health and Human Services

2/3/2025

Date

DocuSigned by:



Name: Karen Hebert

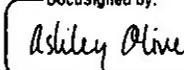
Title: Division Director

TDB Communications, Inc.

2/3/2025

Date

DocuSigned by:



Name: Ashley Olive

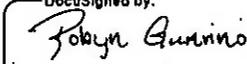
Title: SVP, Contracts & Finance

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

OFFICE OF THE ATTORNEY GENERAL

2/4/2025

Date

DocuSigned by:

7A87348A4941480
Name: Robyn Guarino
Title: Attorney

I hereby certify that the foregoing Amendment was approved by the Governor and Executive Council of the State of New Hampshire at the Meeting on: _____ (date of meeting)

OFFICE OF THE SECRETARY OF STATE

Date

Name:
Title:

State of New Hampshire

Department of State

CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that TDB COMMUNICATIONS INC. is a District Of Columbia Profit Corporation registered to transact business in New Hampshire on October 03, 2023. 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: 943709

Certificate Number: 0006735664



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 12th day of July A.D. 2024.

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

David M. Scanlan
Secretary of State

CERTIFICATE OF VOTE/AUTHORITY

I, Thomas A. Duckenfield III, of TDB Communications, Inc. do hereby certify that:

1. I am the CEO of TDB Communications, Inc.
2. That the CEO is hereby authorized on behalf of this company to enter into said contracts with the State, and to execute any and all documents, agreements, and other instruments, and any amendments, revisions, or modifications thereto, as he/she may deem necessary, desirable or appropriate, and Thomas A. Duckenfield III is the duly elected CEO of this company.
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.

TA Duckenfield III
Name: Thomas A. Duckenfield III
Title: CEO
Company Name: TDB Communications, Inc.

01/29/2025
Date

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STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF ECONOMIC STABILITY

Lori A. Weaver
Commissioner

Karen E. Hebert
Director

129 PLEASANT STREET, CONCORD, NH 03301
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Fax: 603-271-4230 TDD Access: 1-800-735-2964 www.dhhs.nh.gov

August 14, 2024

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

REQUESTED ACTION

Authorize the Department of Health and Human Services, Division of Economic Stability, to amend an existing contract with TDB Communications, Inc. (VC# 469507), Washington, DC, for the determination and review of individual eligibility for disability benefits, by decreasing the price limitation by \$282,765 from \$1,060,218 to \$777,453 with no change to the contract completion date of June 30, 2025, effective upon Governor and Council approval. 50% Federal Funds. 50% General Funds.

The original contract was approved by Governor and Council on December 20, 2023, Item #24.

Funds are available in the following accounts for State Fiscal Year 2025, with the authority to adjust budget line items within the price limitation and encumbrances between state fiscal years through the Budget Office, if needed and justified.

05-95-45-451010-7997 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SERVICES, HHS: HUMAN SERVICES-DEHS, BUREAU OF FAMILY ASSIST FIELD, DISABILITY DETERMINE UNIT

State Fiscal Year	Class / Account	Class Title	Job Number	Current Budget	Increased (Decreased) Amount	Revised Budget
2024	046-500462	Consultants	45142101	\$353,306	\$0	\$353,306
2025	046-500462	Consultants	45142101	\$706,912	(\$282,765)	\$424,147
			Total	\$1,060,218	(\$282,765)	\$777,453

EXPLANATION

The purpose of this request is to reduce the amount of funds allocated to the current Contractor, which will allow the Department to contract with an additional vendor to assist in the review of disability determinations due to the Contractor's workforce constraints. A contract for the additional vendor will be presented as a separate request at this Governor and Council meeting. The Contractor will continue to clinically assess, determine, and review individual eligibility for disability benefits through Aid to the Permanently and Totally Disabled; Aid to the

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

Needy Blind; Medicaid for Employed Adults with Disabilities, Medicaid for Employed Older Adults with Disabilities, and Home Care for Children with Severe Disabilities. Additionally, the Contractor will continue to provide expert vocational and medical witness testimony at Administrative Appeal Hearings on behalf of the Department.

The Contractor will provide services to clinically determine medical eligibility for individuals who apply for cash assistance and Medicaid through one of the Department's disability programs outlined above and to evaluate individual disability claims for cash and Medicaid eligibility purposes. The medical, psychological, and/or psychiatric assessment is required by the Federal Centers for Medicare and Medicaid Services to evaluate individuals' claims of disability for Medicaid eligibility purposes.

Approximately 2,227 individuals will be served in the duration of this contract.

The Department will monitor services by random case sampling to ensure timeliness and quality standards are met in accordance with the scope of work, program policy, state law, and federal regulations.

Should the Governor and Council not authorize this request, the Department will be unable to obtain an additional vendor to assist with the review of disability determinations. This may result in delays in medical assistance eligibility decisions causing a delay in access to benefits and subsequent services.

Area served: Statewide.

Source of Federal Funds: Assistance Listing Number #93.778, FAIN #2305NH5ADM

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

Respectfully submitted,


Lori A. Weaver
Commissioner

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

This Amendment to the Disability Determination contract is by and between the State of New Hampshire, Department of Health and Human Services ("State" or "Department") and TDB Communications, Inc., ("the Contractor").

WHEREAS, pursuant to an agreement (the "Contract") approved by the Governor and Executive Council on December 20, 2023 (Item #24), the Contractor agreed to perform certain services based upon the terms and conditions specified in the Contract and in consideration of certain sums specified; and

WHEREAS, pursuant to Form P-37, General Provisions, the Contract may be amended upon written agreement of the parties and approval from the Governor and Executive Council; and

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

1. Form P-37, General Provisions, Block 1.8., Price Limitation, to read:
\$777,453.00.
2. Modify Exhibit A, Revisions to Standard Agreement Provisions, by replacing it in its entirety with Exhibit A – Amendment #1, Revisions to Standard Agreement Provisions, which is attached hereto and incorporated by reference herein.
3. Modify Exhibit B, Section 1.24. Confidential Data, by adding 1.24.3., to read:
1.24.3. Personal Devices
 - 1.24.3.1. The Contractor must not permit its End Users to use personal devices to conduct work on behalf of the Department, including the storage or processing of Department Data or Confidential Data unless written exception is provided by the Department's Information Security Office.
 - 1.24.3.2. Administrative communication is permitted on personal cell phones as long as the communication does not include Confidential Data.

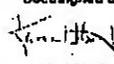
All terms and conditions of the Contract not modified by this Amendment remain in full force and effect. This Amendment shall be effective upon Governor and Council approval.

IN WITNESS WHEREOF, the parties have set their hands as of the date written below,

State of New Hampshire
Department of Health and Human Services

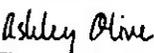
8/15/2024

Date

DocuSigned by:

Name: Karen Hebert
Title: Division Director

8/15/2024

Date

TDB Communications, Inc.
DocuSigned by:

Name: Ashley Olive
Title: SVP, Contracts & Finance

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

OFFICE OF THE ATTORNEY GENERAL

8/16/2024

Date

DocuSigned by:
Robyn Guarino
Name: Robyn Guarino
Title: Attorney

I hereby certify that the foregoing Amendment was approved by the Governor and Executive Council of the State of New Hampshire at the Meeting on: _____ (date of meeting)

OFFICE OF THE SECRETARY OF STATE

Date

Name:
Title:

New Hampshire Department of Health and Human Services
Disability Determination

EXHIBIT A

Amendment #1 - Revisions to Standard Agreement Provisions

1. Revisions to Form P-37, General Provisions

1.1. Paragraph 3, Effective Date/Completion of Services, is amended by deleting subparagraph 3.3., in its entirety and replacing it as follows:

3.3. Contractor must complete all Services by the original Completion Date specified in block 1.7. The parties may extend the Agreement for up to four (4) additional years from the Completion Date, contingent upon satisfactory delivery of services, available funding, agreement of the parties, and approval of the Governor and Executive Council.

1.2. Paragraph 10, Property Ownership/Disclosure, is updated with the following additions:

10.4. Disclosure of data, information and other records shall be governed by Exhibit E: DHHS Information Security Requirements and/or other applicable law. Disclosure requires prior written approval of the State. In performing its obligations under this Agreement, Contractor may gain access to Confidential Information of the State. Confidential Information is defined in Exhibit E.

10.5. Subject to applicable federal or State laws and regulations, Confidential Information shall not include information which:

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

10.5.2. Was disclosed to the receiving Party on a non-confidential basis from a source other than the disclosing Party, which the receiving Party believes is not prohibited from disclosing such information as a result of an obligation in favor of the disclosing Party;

10.5.3. Is disclosed with the written consent of the disclosing Party's Privacy Officer or designee.

10.5.4. Is disclosed with the written consent of the disclosing Party.

10.6. A receiving Party also may disclose the disclosing Party's Confidential Information to the extent required by law or an order of a court of competent jurisdiction. Any disclosure of the Confidential Information shall require the prior written approval of the State. Contractor shall immediately notify the State if any request, subpoena or other legal process is served upon Contractor regarding the Confidential Information, and Contractor shall cooperate with the State in any effort the State undertakes to contest the request, subpoena or other legal process, at no additional cost to the State.

**New Hampshire Department of Health and Human Services
Disability Determination**

EXHIBIT A

- 10.7. Contractor Confidential Information. Contractor shall clearly identify in writing all information it claims to be confidential or proprietary upon providing such information to the State. For the purposes of complying with its legal obligations, the State is under no obligation to accept the Contractor's designation of material as confidential. Contractor acknowledges that the State is subject to State and federal laws governing disclosure of information including, but not limited to, RSA Chapter 91-A. In the event the State receives a request for the information identified by Contractor as confidential, the State shall notify Contractor and specify the date the State will be releasing the requested information. At the request of the State, Contractor shall cooperate and assist the State with the collection and review of Contractor's information, at no additional expense to the State. Any effort to prohibit or enjoin the release of the information shall be Contractor's sole responsibility and at Contractor's sole expense. If Contractor fails to obtain a court order enjoining the disclosure, the State shall release the information on the date specified in the State's notice to Contractor, without any liability to the State.
- 10.8. This covenant in Paragraph 10, shall survive the termination of this Contract.
- 1.3. Paragraph 12, Assignment/Delegation/Subcontracts, is amended by adding subparagraph 12.5., as follows:
- 12.5. Subcontractors are subject to the same contractual conditions as the Contractor and the Contractor is responsible to ensure subcontractor compliance with those conditions. The Contractor shall have written agreements with all subcontractors, specifying the work to be performed, and if applicable, a Business Associate Agreement in accordance with the Health Insurance Portability and Accountability Act. Written agreements shall specify how corrective action shall be managed. The Contractor shall manage the subcontractor's performance on an ongoing basis and take corrective action as necessary. The Contractor shall annually provide the State with a list of all subcontractors provided for under this Agreement and notify the State of any inadequate subcontractor performance.

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STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF ECONOMIC STABILITY

Lori A. Weaver
Commissioner

Karen E. Hebert
Director

129 PLEASANT STREET, CONCORD, NH 03301
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November 29, 2023

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

REQUESTED ACTION

Authorize the Department of Health and Human Services, Division of Economic Stability, to enter into a contract with TDB Communications, Inc. (VC# 469507), Washington, DC, in the amount of \$1,060,218; to determine and review individual eligibility for disability benefits through Aid to the Permanently and Totally Disabled, Aid to the Needy Blind, Medicaid for Employed Adults with Disabilities, Medicaid for Employed Older Adults with Disabilities, and Home Care for Children with Severe Disabilities, with the option to renew for up to four (4) additional years, effective upon Governor and Council approval through June 30, 2025. 50% Federal Funds, 50% General Funds.

Funds are available in the following account for State Fiscal Years 2024 and 2025, with the authority to adjust budget line items within the price limitation and encumbrances between state fiscal years through the Budget Office, if needed and justified:

05-95-46-451010-7997 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SERVICES, HHS: HUMAN SERVICES-DEHS, BUREAU OF FAMILY ASSIST-FIELD, DISABILITY DETERMIN UNIT

State Fiscal Year	Class / Account	Class Title	Job Number	Total Amount
2024	046-500462	Consultants	TBD	\$353,306
2025	046-500462	Consultants	TBD	\$706,912
			Total	\$1,060,218

EXPLANATION

The purpose of this request is for the Contractor to clinically assess, determine and review individual eligibility for disability benefits through Aid to the Permanently and Totally Disabled, Aid to the Needy Blind, Medicaid for Employed Adults with Disabilities, Medicaid for Employed Older Adults with Disabilities, and Home Care for Children with Severe Disabilities. Additionally, the Contractor will provide expert vocational and medical witness testimony at Administrative Appeal Hearings on behalf of the Department.

The Contractor will provide services to clinically determine medical eligibility for individuals applying for cash assistance and Medicaid through one of the Department's disability programs outlined above. The medical, psychological, and/or psychiatric assessment is required by the

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

Federal Centers for Medicare and Medicaid Services in order to evaluate individual claims of disability for Medicaid eligibility purposes.

Approximately 4,500 individuals will be served during State Fiscal Years 2024 and 2025.

The Department will monitor services by random case sampling to ensure timeliness and quality standards are met in accordance with the scope of work, program policy, state law, and federal regulations.

Section 1903(a) (2) of the Social Security Act allows the Department, as the State Medicaid agency, to receive federal match funds at an enhanced rate of seventy-five percent (75%) for contracted services with a public entity for compensation of skilled professional medical personnel and the direct support staff. Services contracted with a non-public entity are subject to the standard fifty percent (50%) reimbursement.

The Department selected the Contractor through a competitive bid process using a Request for Applications (RFA) that was posted on the Department's website from September 1, 2023 through October 9, 2023. The Department received one (1) response that was reviewed and scored by a team of qualified individuals. The Scoring Sheet is attached.

As referenced in Exhibit A, Revisions to Standard Agreement Provisions, Subsection 1.1, of the attached agreement, the parties have the option to extend the agreement for up to four (4) additional years, contingent upon satisfactory delivery of services, available funding, agreement of the parties, and Governor and Council approval.

Should the Governor and Executive Council not approve this request the Department will not have sufficient clinical staff to administer the Disability Determinations within the ninety (90) day time frame established by federal and state regulations. In addition, the Department would not be eligible to receive the Federal match funds at a rate of fifty percent (50%) for contracted services with a non-public entity.

Area served: Statewide.

Source of Federal Funds: Assistance Listing Number #93.778, FAIN #2305NH5ADM.

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

Respectfully submitted,


Lon A. Weaver
Commissioner

**New Hampshire Department of Health and Human Services
Division of Finance and Procurement
Bureau of Contracts and Procurement
Scoring Sheet**

Project ID # RFA-2024-068-06-DHAP

Project Title Disability Determinations

	Maximum Points Available	Score
TECHNICAL		
Knowledge (K1)	200	175
Capacity (C2)	200	170
Ability (A3)	200	180
Experience (E4)	200	185
Subtotal - Technical	800	710
TOTAL POINTS	800	710
TOTAL PROPOSED VERBODD COST		
Not Applicable - No Cost Proposal for RFA		

Reviewer Name	Title
1. Scott Beckwith	Administrative Supervisor
2. Kenneth Schroeder	Bureau Chief - Bureau of Family Assistance
3. Alexandra King	Administrative Supervisor V for DTCU
4. Laura Ingram	Financial Manager - Bureau of Family Assistance

Subject: Disability Determinations - RFA-2024-DES-05-DISAB-01

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

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name New Hampshire Department of Health and Human Services		1.2 State Agency Address 129 Pleasant Street Concord, NH 03301-3857	
1.3 Contractor Name TDB Communications, Inc.		1.4 Contractor Address 4217 20th St. NE, Washington, DC 20018	
1.5 Contractor Phone Number (913) 327-7400	1.6 Account Unit and Class 05-95-45-451010-7997	1.7 Completion Date 6/30/2025.	1.8 Price Limitation \$1,060,218
1.9 Contracting Officer for State Agency Robert W. Moore, Director		1.10 State Agency Telephone Number (603) 271-9631	
1.11 Contractor Signature <i>Ashley Olive</i> Date: 11/28/2023		1.12 Name and Title of Contractor Signatory Ashley Olive, VP, Contracts	
1.13 State Agency Signature <i>Karen Hebert</i> Date: 11/29/2023		1.14 Name and Title of State Agency Signatory Karen Hebert, Division Director	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By: <i>Robyn Guarino</i> Attorney On: 12/4/2023			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: _____			

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

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

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

3.3 Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

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

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

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

5.2 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8. The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance

hereof, and shall be the only and the complete compensation to the Contractor for the Services.

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

5.4 The State's liability under this Agreement shall be limited to monetary damages not to exceed the total fees paid. The Contractor agrees that it has an adequate remedy at law for any breach of this Agreement by the State and hereby waives any right to specific performance or other equitable remedies against the State.

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

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws and the Governor's order on Respect and Civility in the Workplace, Executive order 2020-01. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of age, sex, sexual orientation, race, color, marital status, physical or mental disability, religious creed, national origin, gender identity, or gender expression, and will take affirmative action to prevent such discrimination, unless exempt by state or federal law. The Contractor shall ensure any subcontractors comply with these nondiscrimination requirements.

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

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

7. PERSONNEL.

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

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

8. EVENT OF DEFAULT/REMEDIES.

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

- 8.1.1 failure to perform the Services satisfactorily or on schedule;
- 8.1.2 failure to submit any report required hereunder; and/or
- 8.1.3 failure to perform any other covenant, term or condition of this Agreement.

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

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

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

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

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

9. TERMINATION.

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

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) calendar days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. In addition, at the State's discretion, the Contractor shall, within fifteen (15) calendar days of notice of early termination, develop and submit to the State a transition plan for Services under the Agreement.

10. PROPERTY OWNERSHIP/DISCLOSURE.

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

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

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

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

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

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

12.2 For purposes of paragraph 12, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

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

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

13. INDEMNIFICATION. The Contractor shall indemnify, defend, and hold harmless the State, its officers, and employees from and against all actions, claims, damages, demands, judgments, fines, liabilities, losses, and other expenses, including, without limitation, reasonable attorneys' fees, arising out of or relating to this Agreement directly or indirectly arising from death, personal injury, property damage, intellectual property infringement, or other claims asserted against the State, its officers, or employees caused by the acts or omissions of negligence, reckless or willful misconduct, or fraud by the Contractor, its employees, agents, or subcontractors. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the State's sovereign immunity, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

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

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

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

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

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or any successor, a certificate(s) of insurance for all insurance required under this Agreement. At the request of the Contracting Officer, or any successor, the Contractor shall provide certificate(s) of insurance for all renewal(s) of insurance required under this Agreement. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

15. WORKERS' COMPENSATION.

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

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

16. WAIVER OF BREACH. A State's failure to enforce its rights with respect to any single or continuing breach of this Agreement shall not act as a waiver of the right of the State to later enforce any such rights or to enforce any other or any subsequent breach.

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

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

19. CHOICE OF LAW AND FORUM.

19.1 This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire except where the Federal supremacy clause requires otherwise. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

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

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

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

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

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

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

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

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

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Disability Determinations**

EXHIBIT A

Revisions to Standard Agreement Provisions

1. Revisions to Form P-37, General Provisions
 - 1.1. Paragraph 3, Effective Date/Completion of Services, is amended by deleting subparagraph 3.3 in its entirety and replacing it as follows:
 - 3.3. Contractor must complete all Services by the Completion Date specified in block 1.7. The parties may extend the Agreement for up to four (4) additional years from the Completion Date, contingent upon satisfactory delivery of services, available funding, agreement of the parties, and approval of the Governor and Executive Council.
 - 1.2. Paragraph 12, Assignment/Delegation/Subcontracts, is amended by adding subparagraph 12.5 as follows:
 - 12.5. Subcontractors are subject to the same contractual conditions as the Contractor and the Contractor is responsible to ensure subcontractor compliance with those conditions. The Contractor shall have written agreements with all subcontractors, specifying the work to be performed, and if applicable, a Business Associate Agreement in accordance with the Health Insurance Portability and Accountability Act. Written agreements shall specify how corrective action shall be managed. The Contractor shall manage the subcontractor's performance on an ongoing basis and take corrective action as necessary. The Contractor shall annually provide the State with a list of all subcontractors provided for under this Agreement and notify the State of any inadequate subcontractor performance.

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EXHIBIT B

Scope of Services

1. Statement of Work

1.1. The Contractor must provide statewide services in this Agreement to include medical, psychological, and psychiatric consultation services to the Department in order to evaluate claims of disability and support eligibility determinations and Continuing Disability Review (CDR) for the following programs:

1.1.1. Aid to the Needy Blind (ANB) – a category of assistance for individuals who are blind at any age who meet the definition of blind and who are within income and resources guidelines.

1.1.2. Aid to the Permanently and Totally Disabled (APTD) – a category of assistance for individuals who are between the ages of eighteen (18) and sixty four (64) and who are permanently and totally disabled, as defined by state and federal regulations.

1.1.3. Home Care for Children with Severe Disabilities (HC-CSD) – a category of assistance for children from birth to age nineteen (19) who are disabled and require the same level of care as provided in a hospital, psychiatric hospital, nursing facility, or intermediate care facility for the intellectually disabled.

1.1.4. Medicaid for Employed Adults with Disabilities (MEAD) – a category of assistance for individuals who are employed and have earned income above the Substantial Gainful Employment threshold.

1.1.5. Medicaid for Employed Older Adults with Disabilities (MOAD) – a category of assistance for individuals age sixty five (65) and older who are employed and disabled.

1.2. The Contractor must provide Disability Determination Services to the Department for individuals who are residents of New Hampshire and meet one (1) or more of the following criteria:

1.2.1. Applying for APTD, MEAD, MOAD and ANB.

1.2.2. Applying for HC-CSD with the duration of impairment of a minimum of twelve (12) months.

1.2.3. Children with disabilities as described in New Hampshire Revised Statutes Annotated (RSA) 167, Public Assistance to Blind, Aged, or Disabled Persons and to Dependent Children and New Hampshire Administrative Rule He-W 508, Medical Assistance for Home Care of Certain Children with Severe Disabilities.

1.3. The Contractor must establish and maintain a cooperative working relationship with the Department. The Contractor must ensure disability determination reviews are completed within fifteen (15) business days after receiving the fully

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EXHIBIT B

developed file from the Department.

1.3.1. For the purpose of this Agreement, all references to "fully developed file" mean the Department has either received all the available records or has made at least two (2) attempts to obtain requested records. Once this has been done the Department shall refer the case to the Contractor.

1.3.2. If the Contractor determines that a Consultative Exam (CE) is needed, the Contractor shall refer the case back to the Department to obtain the CE. When the Contractor requests a CE, this request shall pause the fifteen (15) business day deadline. Once the Contractor receives the CE, the fifteen (15) business day deadline shall resume.

1.3.3. The Contractor may request additional time to complete disability determinations for extenuating circumstances only. If circumstances arise that prevent the Contractor from meeting the fifteen (15) business day deadline, the Contractor shall immediately notify the Department and submit a written request outlining the reasons for the request for additional time. The Department has sole discretion to approve or deny the Contractor's request to grant an extension to complete the disability determination.

1.4. For the purposes of this Agreement, all references to business days mean Monday through Friday; and all references to business hours mean from 8:00 AM to 5:00 PM, Eastern Standard Time.

1.5. The Contractor must have a thorough understanding of the disability determination process, legislation, and rules that are associated with the disability determination services being provided, which may include, but are not limited to:

1.5.1. NH RSA 167: Public Assistance to Blind, Aged, or Disabled Persons and to Dependent Children.

1.5.2. NH Administrative Rule He-W 508: Medical Assistance for Home Care of Certain Children with Severe Disabilities.

1.5.3. NH Administrative Rule He-W 504: Medicaid for Employed Adults with Disabilities.

1.5.4. Social Security Act Title II: Federal Old Age, Survivors, and Disability Insurance Benefits, 42 USC 401-433.

1.5.5. Social Security Act Title XVI: Supplemental Security Income for the Aged, Blind and Disabled, 42 USC 1381-1383f.

1.5.6. 20 CFR 416 subparts I and J.

1.5.7. NH RSA 541-A: 31-36: Administrative Procedure Act.

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- 1.5.8. NH Administrative Rule He-C 200.
- 1.5.9. CFR Appendix 2 to Subpart P of Part 404-Medical-Vocational Guidelines.
- 1.5.10. Up-to-date knowledge of, and experience with, industrial and occupational trends and local labor market conditions.
- 1.5.11. Involvement in or knowledge of vocational counseling and the job placement of adult workers with disabilities into jobs.
- 1.5.12. Knowledge of, and experience using, vocational reference sources of which the Department has taken administrative notice under 20 CFR 404.1566(d) and 416.966(d), including:
 - 1.5.12.1. The Dictionary of Occupational Titles and the Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles.
 - 1.5.12.2. County Business Patterns and Census reports published by the Bureau of Census.
 - 1.5.12.3. The Occupational Outlook Handbook published by the United States Bureau of Labor Statistics.
- 1.6. The Contractor must establish a Medical Review Team (MRT) to complete New Hampshire Medical Eligibility Review Summaries (MERS) and, as applicable, the Sequential Evaluation Process (see § 404.1520 Evaluation of disability in general). The Contractor must ensure the MRT includes, but is not limited to:
 - 1.6.1. For APTD, MEAD, MOAD and ANB eligibility determinations, a medical and psychological consultant and another individual who is qualified to interpret and evaluate medical reports and other evidence relating to the individual's physical or mental impairments and, as necessary, to determine the capacities of the individual to perform substantial gainful activity, as specified in 20 CFR Part 416, subparts I and J. ANB must be in accordance with RSA 167:6, IV.
 - 1.6.2. For HC-CSD eligibility determinations, physicians and registered nurses with expertise in the care of children with special health care needs; developmental disabilities; and behavioral issues responsible for determining whether home care services are medically appropriate in accordance with NH RSA 167:3-f, VI, and the most appropriate level of care under which to evaluate the child in accordance with RSA 167:3-g, III-VI.
- 1.7. The Contractor must ensure the medical consultant:
 - 1.7.1. Is a licensed physician, either medical or osteopathic doctor licensed by the state in which they practice;

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- 1.7.2. Completes the Residual Functional Capacity (RFC) (see 20.CFR § 220.120 The claimant's residual functional capacity) assessment for all APTD, MEAD and MOAD cases with physical impairments requiring steps 4. and 5 of the evaluation process (see 20 CFR § 404.1520 Evaluation of disability in general); and
- 1.7.3. Signs off on each case reviewed for confirmation of physical impairment.
- 1.8. The Contractor must ensure the psychological consultant:
 - 1.8.1. Is licensed or certified as a psychologist at the independent practice level of psychology by the state in which they practice; and
 - 1.8.1.1. Has a doctorate degree in psychology from a program in clinical psychology from an educational institution accredited by an organization recognized by the Council on Post-Secondary Accreditation; or
 - 1.8.1.2. Is listed in a national register of health service providers in psychology, which the Commissioner of the Social Security Administration deems appropriate; and
 - 1.8.1.3. Has two (2) years of supervised clinical experience as a psychologist in health service, of which one (1) year is post-master's degree.
 - 1.8.2. Signs off on each case reviewed for confirmation of psychological impairments.
 - 1.8.3. Completes the Residual Functional Capacity (RFC) assessment for all APTD, MEAD and MOAD cases with mental impairments requiring steps four (4) and five (5) of the evaluation process.
- 1.9. The Contractor's MRT must view cases made available to them through the Medicaid Management Information System (MMIS) and New HEIGHTS, the Department's computer system used to determine eligibility, for assistance programs in order to have the MRT complete the New Hampshire Medical Eligibility Review Summary (MERS)/Sequential Evaluation Process NH DDU Disability MERS, which complies with 20 CFR Part 416.
- 1.10. The Contractor must make disability determinations on the MERS forms provided by the Department for that purpose and shall be made at such times as are prescribed by the Department.
- 1.11. The Contractor must ensure:
 - 1.11.1. Documentation clearly and adequately supports the determination.
 - 1.11.2. All records and decisions include sign off by each member of the MRT.

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- 1.11.3. Approval or denial of the individual's application is completed and the appropriate approval or denial letter is submitted by the Contractor utilizing the MMIS and/or New HEIGHTS system.
 - 1.12. The Contractor must ensure all applicants declared ineligible are notified in writing of their right to a fair hearing regarding the determination in accordance with Department regulations.
 - 1.13. The Contractor shall participate in trainings, provided by the Department, on MMIS and New HEIGHTS functionality.
 - 1.14. The Contractor must ensure all MERS are signed off by:
 - 1.14.1. The Disability Reviewer;
 - 1.14.2. The Medical Consultant, for cases with physical impairments;
 - 1.14.3. The Psychological Consultant, for all cases with Psychological impairments; and
 - 1.14.4. A qualified individual who determines the capacities of the applicant to perform substantial gainful activity for all APTD, MEAD and MOAD cases requiring Steps IV and V of the Sequential Evaluation Process.
 - 1.15. Administrative Hearings
 - 1.15.1. The Contractor must ensure a vocational expert and/or a medical witness is available for cases that are denied eligibility and the claimant files for a timely appeal, ensuring availability as follows:
 - 1.15.1.1. Approximately two (2) hours for HC-CSD Administrative Appeals Hearings.
 - 1.15.1.2. Approximately one (1) hour for APTD, MEAD, MOAD and ANB Administrative Appeals Hearings.
 - 1.15.2. The Contractor must ensure the vocational expert:
 - 1.15.2.1. Is a certified rehabilitation counselor.
 - 1.15.2.2. Has the expertise and availability to provide testimony over the phone, via video conferencing or in person, as appropriate, at Administrative Appeals Hearings.
 - 1.15.2.3. Has the expertise and ability to provide both factual and expert opinion on:
 - 1.15.2.3.1. The skill level as well as the physical and mental demands of various occupations.
 - 1.15.2.3.2. The characteristics of work settings, including the ability to classify occupations as unskilled, semi-skilled and skilled through

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the use of materials published by the Department of Labor.

1.15.2.3.3. The ability to match skills used in the past to skills necessary for other jobs based on the similarity of occupationally significant work activities among different jobs.

1.15.2.3.4. The existence of jobs within various occupations in the national economy, which means is a significant number of jobs in a particular occupation exist in the region where the claimant lives or in several other regions of the country.

1.15.2.3.5. Transferable skills analysis and Social Security Administration (SSA) regulatory requirements for transferability of work skills.

1.15.2.4. Reviews medical records and collaborates with Department staff to resolve cases prior to hearing dates, as necessary.

1.15.2.5. Is available, as needed, for APTD, MEAD and MOAD cases where the denial was determined at Steps IV or V of the Sequential Evaluation Process.

1.15.3. The Contractor must ensure a medical witness:

1.15.3.1. Is an individual with the credentials of a Registered Nurse, or higher, who is available, as needed, to attend Administrative Appeals.

1.15.3.2. Is available, as needed, over the phone, via video conferencing, or in-person to attend Administrative Appeals Hearings with the Department's legal team.

1.15.3.3. Has the expertise and ability to attend pre-hearing conferences, compile evidence and interpret federal regulations and state policies to support eligibility decisions.

1.15.3.4. Reviews medical records and collaborates with Department staff to resolve cases prior to the hearing date.

1.16. The Contractor must conduct a "kick-off" meeting with the Department to discuss the expected work and deliverables of this agreement within five (5) calendar days from contract effective date.

1.17. The Contractor must provide a Department approved work plan  the

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Department within fifteen (15) calendar days from contract effective date.

- 1.18. The Contractor must participate in meetings with the Department on a monthly basis, or as otherwise requested by the Department.
- 1.19. The Contractor may be required to travel to meet with Department in-person.
- 1.20. The Contractor shall actively and regularly collaborate with the Department to enhance contract management, improve results, and adjust program delivery and policy based on successful outcomes.
- 1.21. The Department will monitor Contractor performance by random case sampling to ensure timeliness and quality standards are met in accordance with the scope of work, program policy, state law, and federal regulations.
- 1.22. Reporting
 - 1.22.1. The Contractor must submit weekly and/or monthly reports on a template provided by the Department, which include but are not limited to:
 - 1.22.1.1. The total number of disability determinations completed.
 - 1.22.1.2. Report of any overdue cases and an explanation of why the determination was not completed within fifteen (15) business days from receipt of referral of a fully developed file from the Department.
 - 1.22.1.3. Other reports as requested by the Department in a format specified by the Department.
 - 1.22.2. The Contractor may be required to provide other key data and metrics to the Department in a format specified by the Department.
- 1.23. Background Checks
 - 1.23.1. Prior to permitting any individual to provide services under this Agreement, the Contractor must ensure that said individual has undergone:
 - 1.23.1.1. A criminal background check, at the Contractor's expense, and has no convictions for crimes that represent evidence of behavior that could endanger individuals served under this Agreement;
 - 1.23.1.2. A name search of the Department's Bureau of Elderly and Adult Services (BEAS) State Registry, pursuant to RSA 161-F:49, with results indicating no evidence of behavior that could endanger individuals served under this Agreement; and

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1.23.1.3. A name search of the Department's Division for Children, Youth and Families (DCYF) Central Registry pursuant to RSA 169-C:35, with results indicating no evidence of behavior that could endanger individuals served under this Agreement.

1.24. Confidential Data

1.24.1. The Contractor must meet all information security and privacy requirements as set by the Department and in accordance with the Department's Information Security Requirements Exhibit as referenced below.

1.24.2. The Contractor must ensure any individuals involved in delivering services through this Agreement contract sign an attestation agreeing to access, view, store, and discuss Confidential Data in accordance with federal and state laws and regulations and the Department's Information Security Requirements Exhibit. The Contractor must ensure said individuals have a justifiable business need to access confidential data. The Contractor must provide attestations upon Department request.

1.25. Privacy Impact Assessment

1.25.1. Upon request, the Contractor must allow and assist the Department in conducting a Privacy Impact Assessment (PIA) of its system(s)/application(s)/web portal(s)/website(s) or Department system(s)/application(s)/web portal(s)/website(s) hosted by the Contractor, if Personally Identifiable Information (PII) is collected, used, accessed, shared, or stored. To conduct the PIA the Contractor must provide the Department access to applicable systems and documentation sufficient to allow the Department to assess, at minimum, the following:

- 1.25.1.1. How PII is gathered and stored;
- 1.25.1.2. Who will have access to PII;
- 1.25.1.3. How PII will be used in the system;
- 1.25.1.4. How individual consent will be achieved and revoked; and
- 1.25.1.5. Privacy practices.

1.25.2. The Department may conduct follow-up PIAs in the event there are either significant process changes or new technologies impacting the collection, processing or storage of PII.

1.26. Department Owned Devices, Systems and Network Usage

1.26.1. If Contractor End Users, defined in the Department's Information

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**New Hampshire Department of Health and Human Services
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Security Requirements Exhibit that is incorporated into this Agreement, are authorized by the Department's Information Security Office to use a Department issued device (e.g. computer, tablet, mobile telephone) or access the Department network in the fulfillment of this Agreement, each End User must:

- 1.26.1.1. Sign and abide by applicable Department and New Hampshire Department of Information Technology (NH DoIT) use agreements, policies, standards, procedures and guidelines, and complete applicable trainings as required;
- 1.26.1.2. Use the information that they have permission to access solely for conducting official Department business and agree that all other use or access is strictly forbidden including, but not limited, to personal or other private and non-Department use, and that at no time shall they access or attempt to access information without having the express authority of the Department to do so;
- 1.26.1.3. Not access or attempt to access information in a manner inconsistent with the approved policies, procedures; and/or agreement relating to system entry/access;
- 1.26.1.4. Not copy, share, distribute, sub-license, modify, reverse engineer, rent, or sell software licensed, developed, or being evaluated by the Department, and at all times must use utmost care to protect and keep such software strictly confidential in accordance with the license or any other agreement executed by the Department;
- 1.26.1.5. Only use equipment, software, or subscription(s) authorized by the Department's Information Security Office or designee;
- 1.26.1.6. Not install non-standard software on any Department equipment unless authorized by the Department's Information Security Office or designee;
- 1.26.1.7. Agree that email and other electronic communication messages created, sent, and received on a Department-issued email system are the property of the Department of New Hampshire and to be used for business purposes only. Email is defined as "internal email systems" or "Department-funded email systems."
- 1.26.1.8. Agree that use of email must follow Department and NH DoIT policies, standards, and/or guidelines; and

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**New Hampshire Department of Health and Human Services
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1.26.1.9. Agree when utilizing the Department's email system:

1.26.1.9.1. To only use a Department email address assigned to them with a "@affiliate.DHHS.NH.Gov."

1.26.1.9.2. Include in the signature lines information identifying the End User as a non-Department workforce member; and

1.26.1.9.3. Ensure the following confidentiality notice is embedded underneath the signature line:

CONFIDENTIALITY NOTICE: "This message may contain information that is privileged and confidential and is intended only for the use of the individual(s) to whom it is addressed. If you receive this message in error, please notify the sender immediately and delete this electronic message and any attachments from your system. Thank you for your cooperation."

1.26.1.10. Contractor End Users with a Department issued email, access or potential access to Confidential Data, and/or a workspace in a Department building/facility, must:

1.26.1.10.1. Complete the Department's Annual Information Security & Compliance Awareness Training prior to accessing, viewing, handling, hearing, or transmitting Department Data or Confidential Data.

1.26.1.10.2. Sign the Department's Business Use and Confidentiality Agreement and Asset Use Agreement, and the NH DoIT Department wide Computer Use Agreement upon execution of the Agreement and annually thereafter.

1.26.1.10.3. Only access the Department's intranet to view the Department's Policies and Procedures and Information Security webpages.

1.26.1.11. Contractor agrees, if any End User is found to be in violation of any of the above terms and conditions, said End User may face removal from the Agreement, and/or criminal and/or civil prosecution, if the act constitutes a violation of law.

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1.26.1.12. Contractor agrees to notify the Department a minimum of three business days prior to any upcoming transfers or terminations of End Users who possess Department credentials and/or badges or who have system privileges. If End Users who possess Department credentials and/or badges or who have system privileges resign or are dismissed without advance notice, the Contractor agrees to notify the Department's Information Security Office or designee immediately.

1.27. Contract End-of-Life Transition Services

1.27.1. General Requirements

1.27.1.1. If applicable, upon termination or expiration of the Agreement the parties agree to cooperate in good faith to effectuate a smooth secure transition of the Services from the Contractor to the Department and, if applicable, the Contractor engaged by the Department to assume the Services previously performed by the Contractor for this section the new Contractor shall be known as "Recipient"). Ninety (90) days prior to the end of the contract or unless otherwise specified by the Department, the Contractor must begin working with the Department and if applicable, the new Recipient to develop a Data Transition Plan (DTP). The Department shall provide the DTP template to the Contractor.

1.27.1.2. The Contractor must use reasonable efforts to assist the Recipient, in connection with the transition from the performance of Services by the Contractor and its End Users to the performance of such Services. This may include assistance with the secure transfer of records (electronic and hard copy), transition of historical data (electronic and hard copy), the transition of any such Service from the hardware, software, network and telecommunications equipment and internet-related information technology infrastructure ("Internal IT Systems") of Contractor to the Internal IT Systems of the Recipient and cooperation with and assistance to any third-party consultants engaged by Recipient in connection with the Transition Services.

1.27.1.3. If a system, database, hardware, software, and/or software licenses (Tools) was purchased or created to manage, track, and/or store Department Data in relationship to this contract said Tools will be inventoried

**New Hampshire Department of Health and Human Services
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and returned to the Department, along with the inventory document, once transition of Department Data is complete.

1.27.1.4. The internal planning of the Transition Services by the Contractor and its End Users shall be provided to the Department and if applicable the Recipient in a timely manner. Any such Transition Services shall be deemed to be Services for purposes of this Agreement.

1.27.1.5. Should the data Transition extend beyond the end of the Agreement, the Contractor agrees that the Information Security Requirements, and if applicable, the Department's Business Associate Agreement terms and conditions remain in effect until the Data Transition is accepted as complete by the Department.

1.27.1.6. In the event where the Contractor has comingled Department Data and the destruction or Transition of said data is not feasible, the Department and Contractor will jointly evaluate regulatory and professional standards for retention requirements prior to destruction, refer to the terms and conditions of the Department's DHHS Information Security Requirements Exhibit.

1.27.2. Completion of Transition Services

1.27.2.1. Each service or Transition phase shall be deemed completed (and the Transition process finalized) at the end of 15 business days after the product, resulting from the Service, is delivered to the Department and/or the Recipient in accordance with the mutually agreed upon Transition plan, unless within said 15 business day term the Contractor notifies the Department of an issue requiring additional time to complete said product.

1.27.2.2. Once all parties agree the data has been migrated the Contractor will have 30 days to destroy the data per the terms and conditions of the Department's Information Security Requirements Exhibit.

1.27.3. Disagreement over Transition Services Results

1.27.3.1. In the event the Department is not satisfied with the results of the Transition Service, the Department shall notify the Contractor, in writing, stating the reason for the lack of satisfaction within 15 business days of the final product or at any time during the data Transition process.

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**New Hampshire Department of Health and Human Services
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The Parties shall discuss the actions to be taken to resolve the disagreement or issue. If an agreement is not reached, at any time the Department shall be entitled to initiate actions in accordance with the Agreement.

2. Exhibits Incorporated

- 2.1. The Contractor must comply with all Exhibit D Federal Requirements, which are attached hereto and incorporated by reference herein.
- 2.2. The Contractor must manage all confidential data related to this Agreement in accordance with the terms of Exhibit E, DHHS Information Security Requirements.
- 2.3. The Contractor must use and disclose Protected Health Information in compliance with the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) (45 CFR Parts 160 and 164) under the Health Insurance Portability and Accountability Act (HIPAA) of 1996, and in accordance with the attached Exhibit F, Business Associate Agreement, which has been executed by the parties.

3. Additional Terms

3.1. Impacts Resulting from Court Orders or Legislative Changes

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

3.2. Federal Civil Rights Laws Compliance: Culturally and Linguistically Appropriate Programs and Services

- 3.2.1. The Contractor must submit, within ten (10) days of the Agreement Effective Date, a detailed description of the communication access and language assistance services to be provided to ensure meaningful access to programs and/or services to individuals with limited English proficiency; individuals who are deaf or have hearing loss; individuals who are blind or have low vision; and individuals who have speech challenges.

3.3. Credits and Copyright Ownership

- 3.3.1. All documents, notices, press releases, research reports and other materials prepared during or resulting from the performance of the services of the Agreement must include the following statement, "The preparation of this (report, document etc.) was financed under an Contract with the State of New Hampshire, Department of Health and Human Services, with funds provided in part by the State of New

**New Hampshire Department of Health and Human Services
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Hampshire and/or such other funding sources as were available or required, e.g., the United States Department of Health and Human Services.”

3.3.2. All materials produced or purchased under the Agreement must have prior approval from the Department before printing, production, distribution or use.

3.3.3. The Department must retain copyright ownership for any and all original materials produced, including, but not limited to:

3.3.3.1. Brochures.

3.3.3.2. Resource directories.

3.3.3.3. Protocols or guidelines.

3.3.3.4. Posters.

3.3.3.5. Reports.

3.3.4. The Contractor must not reproduce any materials produced under the Agreement without prior written approval from the Department.

3.4. Eligibility Determinations

3.4.1. The Contractor must make eligibility determinations in accordance with applicable federal and state laws, regulations, orders, guidelines, policies and procedures.

3.4.2. The Contractor must ensure all applicants are permitted to fill out an application form and must notify each applicant of their right to request a fair hearing in accordance with New Hampshire RSA 126-A:5 and Department regulations.

4. Records

4.1. The Contractor must keep records that include, but are not limited to:

4.1.1. Books, records, documents and other electronic or physical data evidencing and reflecting all costs and other expenses incurred by the Contractor in the performance of the Contract, and all income received or collected by the Contractor.

4.1.2. All records must be maintained in accordance with accounting procedures and practices, which sufficiently and properly reflect all such costs and expenses, and which are acceptable to the Department, and to include, without limitation, all ledgers, books, records, and original evidence of costs such as purchase requisitions and orders, vouchers, requisitions for materials, inventories, valuations of in-kind contributions, labor time cards, payrolls, and other records requested or required by the Department.

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**New Hampshire Department of Health and Human Services
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EXHIBIT B

- 4.1.3. Statistical, enrollment, attendance or visit records for each recipient of services, which records must include all records of application and eligibility (including all forms required to determine eligibility for each such recipient), records regarding the provision of services and all invoices submitted to the Department to obtain payment for such services.
- 4.1.4. Medical records on each patient/recipient of services.
- 4.2. During the term of this Agreement and the period for retention hereunder, the Department, the United States Department of Health and Human Services, and any of their designated representatives must have access to all reports and records maintained pursuant to the Agreement for purposes of audit, examination, excerpts and transcripts.
- 4.3. If, upon review of the Final Expenditure Report the Department must disallow any expenses claimed by the Contractor as costs hereunder, the Department retains the right, at its discretion, to deduct the amount of such expenses as are disallowed or to recover such sums from the Contractor.

New Hampshire Department of Health and Human Services
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EXHIBIT C

Payment Terms

1. This Agreement is funded by:
 - 1.1. 50% Federal funds, Medical Assistance Program, as awarded on October 1, 2022, by the U.S. Department of Health and Human Services, ALN #93.778, FAIN #2305NH5ADM.
 - 1.2. 50% General funds.
2. For the purposes of this Agreement the Department has identified:
 - 2.1. The Contractor as a Contractor, in accordance with 2 CFR §200.331.
 - 2.2. The Agreement as NON-R&D, in accordance with 2 CFR §200.332.
 - 2.3. Payment shall be made for actual services provided in the fulfillment of this Agreement, as specified in Exhibit B Scope of Work, and in accordance with the Rate Table below:

RATE TABLE	
Type of Review	Rate Paid Per Case
APTD, MEAD, MOAD, and ANB cases requiring all Steps one (1) through five (5) of the evaluation process.	\$349.00
APTD, MEAD, MOAD and ANB cases requiring a CDR Steps one (1) through eight (8) of the evaluation process.	\$400.00
APTD, MEAD, MOAD and ANB cases requiring a CDR Steps three (3) through eight (8) (Steps one (1) and two (2) are completed by the Department).	\$349.00
HC-CSD cases requiring Steps one (1) through three (3) of the evaluation process and Level of Care.	\$349.00
HC-CSD cases requiring CDR requiring Steps one (1) through three (3) of the evaluation process and Level of Care.	\$349.00
APTD, MEAD and MOAD cases requiring Residual Functional Capacity (RFC), Steps four (4) and five (5), and final sign-off by a Doctor (Steps one (1) through three (3) are completed by the Department).	\$292.00
APTD, MEAD and MOAD cases requiring Residual Functional Capacity (RFC) and sign off by a Doctor (Steps one (1) through five (5) are completed by the Department).	\$252.00

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New Hampshire Department of Health and Human Services
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EXHIBIT C

HC-CSD, APTD, MEAD, MOAD, and ANB cases requiring only final sign off by a Doctor including CDR. All other steps have been completed by the Department.	\$120.00
Vocational Expert (All Inclusive Per Case for Administrative Appeal)	\$175.00
Medical Witness (All Inclusive Per Case for Administrative Appeal)	\$197.00

3. Notwithstanding paragraph 8, Event of Default, and paragraph 9, Termination, of the General Provisions of this Agreement, Form P-37, payment to the Contractor may be reduced by fifteen (15%) for each disability determination that is not completed and submitted to the Department within the required fifteen (15) business days from receipt of referral, unless additional time has been requested by the Contractor and approved by the Department, as described in Exhibit B, Scope of Services, Statement of Work.
4. The Contractor shall submit an invoice with supporting documentation to the Department no later than the fifteenth (15th) working day of the month following the month in which the services were provided. The Contractor shall ensure each invoice:
 - 4.1. Includes the Contractor's Vendor Number issued upon registering with New Hampshire Department of Administrative Services.
 - 4.2. Is submitted in a form that is provided by or otherwise acceptable to the Department.
 - 4.3. Identifies and requests payment for allowable costs incurred in the previous month.
 - 4.4. Includes supporting documentation of allowable costs with each invoice that may include, but are not limited to, time sheets, payroll records, receipts for purchases, and proof of expenditures, as applicable.
 - 4.5. Is completed, dated and returned to the Department with the supporting documentation for allowable expenses to initiate payment.
 - 4.6. Is assigned an electronic signature, includes supporting documentation, and is emailed to scott.e.beckwith@dhhs.nh.gov or mailed to:

Scott Beckwith, Supervisor V
Department of Health and Human Services - DDU
129 Pleasant Street
Concord, NH 03301
5. The Department shall make payments to the Contractor within thirty (30) days of receipt of each invoice and supporting documentation for authorized expenses, subsequent to approval of the submitted invoice, which includes confirmation that all disability determinations and reports due in the prior month have been submitted to the Department.

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**New Hampshire Department of Health and Human Services
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EXHIBIT C

6. The final invoice and supporting documentation for authorized expenses shall be due to the Department no later than forty (40) days after the contract completion date specified in Form P-37, General Provisions Block 1.7 Completion Date.
7. Notwithstanding Paragraph 17 of the General Provisions Form P-37, changes limited to adjusting amounts within the price limitation and adjusting encumbrances between State Fiscal Years and budget class lines through the Budget Office may be made by written agreement of both parties, without obtaining approval of the Governor and Executive Council, if needed and justified.
8. Audits
 - 8.1. The Contractor must email an annual audit to dhhs.act@dhhs.nh.gov if any of the following conditions exist:
 - 8.1.1. Condition A - The Contractor expended \$750,000 or more in federal funds received as a subrecipient pursuant to 2 CFR Part 200, during the most recently completed fiscal year.
 - 8.1.2. Condition B - The Contractor is subject to audit pursuant to the requirements of NH RSA 7:28, III-b, pertaining to charitable organizations.
 - 8.1.3. Condition C - The Contractor is a public company and required by Security and Exchange Commission (SEC) regulations to submit an annual financial audit.
 - 8.2. If Condition A exists, the Contractor shall submit an annual Single Audit performed by an independent Certified Public Accountant (CPA) to dhhs.act@dhhs.nh.gov within 120 days after the close of the Contractor's fiscal year, conducted in accordance with the requirements of 2 CFR Part 200, Subpart F of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards.
 - 8.2.1. The Contractor shall submit a copy of any Single Audit findings and any associated corrective action plans. The Contractor shall submit quarterly progress reports on the status of implementation of the corrective action plan.
 - 8.3. If Condition B or Condition C exists, the Contractor shall submit an annual financial audit performed by an independent CPA within 120 days after the close of the Contractor's fiscal year.
 - 8.4. In addition to, and not in any way in limitation of obligations of the Agreement, it is understood and agreed by the Contractor that the Contractor shall be held liable for any state or federal audit exceptions and shall return to the Department all payments made under the

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**New Hampshire Department of Health and Human Services
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EXHIBIT C

Agreement to which exception has been taken, or which have been disallowed because of such an exception.

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New Hampshire Department of Health and Human Services Exhibit D – Federal Requirements

SECTION A: CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

ALTERNATIVE I - FOR CONTRACTORS OTHER THAN INDIVIDUALS

US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS
US DEPARTMENT OF EDUCATION - CONTRACTORS
US DEPARTMENT OF AGRICULTURE - CONTRACTORS

This certification is required by the regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.). The January 31, 1989 regulations were amended and published as Part II of the May 25, 1990 Federal Register (pages 21681-21691), and require certification by contractors (and by inference, sub-contractors), prior to award, that they will maintain a drug-free workplace. Section 3017.630(c) of the regulation provides that a contractor (and by inference, sub-contractors) that is a State may elect to make one certification to the Department in each federal fiscal year in lieu of certificates for each Agreement during the federal fiscal year covered by the certification. The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the Agreement. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of Agreements, or government wide suspension or debarment. Contractors using this form should send it to:

Commissioner
NH Department of Health and Human Services
129 Pleasant Street
Concord, NH 03301-6505

1. The Contractor certifies that it will or will continue to provide a drug-free workplace by:
 - 1.1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - 1.2. Establishing an ongoing drug-free awareness program to inform employees about
 - 1.2.1. The dangers of drug abuse in the workplace;
 - 1.2.2. The Contractor's policy of maintaining a drug-free workplace;
 - 1.2.3. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - 1.2.4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - 1.3. Making it a requirement that each employee to be engaged in the performance of the Agreement be given a copy of the statement required by paragraph (a);
 - 1.4. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the Agreement, the employee will
 - 1.4.1. Abide by the terms of the statement; and
 - 1.4.2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
 - 1.5. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph 1.4.2 from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every contract officer on whose contract activity the convicted employee was working, unless the Federal

New Hampshire Department of Health and Human Services Exhibit D – Federal Requirements

agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected Agreement;

- 1.6. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 1.4.2, with respect to any employee who is so convicted
 - 1.6.1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - 1.6.2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- 1.7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1.1, 1.2, 1.3, 1.4, 1.5, and 1.6.
2. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific Agreement.

Place of Performance (street address, city, county, state, zip code) (list each location)

Check if there are workplaces on file that are not identified here.

New Hampshire Department of Health and Human Services Exhibit D – Federal Requirements

SECTION B: CERTIFICATION REGARDING LOBBYING

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. 1352, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

US DEPARTMENT OF HEALTH AND HUMAN SERVICES – CONTRACTORS
US DEPARTMENT OF EDUCATION - CONTRACTORS
US DEPARTMENT OF AGRICULTURE - CONTRACTORS

Programs (indicate applicable program covered):

- *Temporary Assistance to Needy Families under Title IV-A
- *Child Support Enforcement Program under Title IV-D
- *Social Services Block Grant Program under Title XX
- *Medicaid Program under Title XIX
- *Community Services Block Grant under Title VI
- *Child Care Development Block Grant under Title IV

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, continuation, renewal, amendment, or modification of any Federal contract, loan, or cooperative agreement (and by specific mention sub-contractor).
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, loan, or cooperative agreement (and by specific mention sub-contractor), the undersigned shall complete and submit Standard Form LLL, (Disclosure Form to Report Lobbying, in accordance with its instructions, see <https://omb.report/ocr/201009-0348-022/doc/20388401>
3. The undersigned shall require that the language of this certification be included in the award document for sub-awards at all tiers (including subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

New Hampshire Department of Health and Human Services Exhibit D – Federal Requirements

SECTION C: CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Executive Office of the President, Executive Order 12549 and 45 CFR Part 76 regarding Debarment, Suspension, and Other Responsibility Matters, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this Agreement, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the NH Department of Health and Human Services' (DHHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when DHHS determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, DHHS may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the DHHS agency to whom this Agreement is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549: 45 CFR Part 76. See <https://www.govinfo.gov/app/details/CFR-2004-title45-vol1/CFR-2004-title45-vol1-part76/context>.
6. The prospective primary participant agrees by submitting this Agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by DHHS.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," provided by DHHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or involuntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (of excluded parties) at <https://www.ecfr.gov/current/title-22/chapter-V/part-513>.

New Hampshire Department of Health and Human Services Exhibit D – Federal Requirements

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, DHHS may terminate this transaction for cause or default.

PRIMARY COVERED TRANSACTIONS

11. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
- 11.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - 11.2. Have not within a three-year period preceding this proposal (Agreement) been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or a contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - 11.3. Are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (I)(b) of this certification; and
 - 11.4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
12. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal (contract).

LOWER TIER COVERED TRANSACTIONS

13. By signing and submitting this lower tier proposal (Agreement), the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:
- 13.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
 - 13.2. Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal (Agreement).
14. The prospective lower tier participant further agrees by submitting this proposal (Agreement) that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

New Hampshire Department of Health and Human Services Exhibit D – Federal Requirements

SECTION D: CERTIFICATION OF COMPLIANCE WITH REQUIREMENTS PERTAINING TO FEDERAL NONDISCRIMINATION, EQUAL TREATMENT OF FAITH-BASED ORGANIZATIONS, WHISTLEBLOWER PROTECTIONS, CLEAN AIR AND CLEAN WATER ACT

The Contractor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

Contractor will comply, and will require any subcontractors to comply, with any applicable federal nondiscrimination requirements, which may include:

1. The Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. Section 3789d) which prohibits recipients of federal funding under this statute from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex. The Act requires certain recipients to produce an Equal Employment Opportunity Plan;
2. The Juvenile Justice Delinquency Prevention Act of 2002 (42 U.S.C. Section 5672(b)) which adopts by reference, the civil rights obligations of the Safe Streets Act. Recipients of federal funding under this statute are prohibited from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex. The Act includes Equal Employment Opportunity Plan requirements;
3. The Civil Rights Act of 1964 (42 U.S.C. Section 2000d, which prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in any program or activity);
4. The Rehabilitation Act of 1973 (29 U.S.C. Section 794), which prohibits recipients of Federal financial assistance from discriminating on the basis of disability, in regard to employment and the delivery of services or benefits, in any program or activity;
5. The Americans with Disabilities Act of 1990 (42 U.S.C. Sections 12131-34), which prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation;
6. The Education Amendments of 1972 (20 U.S.C. Sections 1681, 1683, 1685-86), which prohibits discrimination on the basis of sex in federally assisted education programs;
7. The Age Discrimination Act of 1975 (42 U.S.C. Sections 6106-07), which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. It does not include employment discrimination;
8. 28 C.F.R. pt. 31 (U.S. Department of Justice Regulations – OJJDP Grant Programs); 28 C.F.R. pt. 42 (U.S. Department of Justice Regulations – Nondiscrimination; Equal Employment Opportunity; Policies and Procedures); Executive Order No. 13279 (equal protection of the laws for faith-based and community organizations); Executive Order No. 13559, which provide fundamental principles and policy-making criteria for partnerships with faith-based and neighborhood organizations;
9. 28 C.F.R. pt. 38 (U.S. Department of Justice Regulations – Equal Treatment for Faith-Based Organizations); and Whistleblower protections 41 U.S.C. §4712 and The National Defense Authorization Act (NDAA) for Fiscal Year 2013 (Pub. L. 112-239, enacted January 2, 2013) The Pilot

New Hampshire Department of Health and Human Services Exhibit D – Federal Requirements

Program for Enhancement of Contract Employee Whistleblower Protections, which protects employees against reprisal for certain whistle blowing activities in connection with federal grants and contracts.

10. The Clean Air Act (42 U.S.C. 7401-7671q.) which seeks to protect human health and the environment from emissions that pollute ambient, or outdoor, air.

11. The Clean Water Act (33 U.S.C. 1251-1387) which establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters.

The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the Agreement. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of Agreements, or government wide suspension or debarment.

In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, to the applicable contracting agency or division within the Department of Health and Human Services, and to the Department of Health and Human Services Office of the Ombudsman.

The Contractor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this Agreement, the Contractor agrees to comply with the provisions indicated above.

New Hampshire Department of Health and Human Services Exhibit D – Federal Requirements.

SECTION E: CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, Part C, Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

The Contractor identified in Section 1.3 of the General Provisions agrees, by signature of the Contractor's representative as identified in Section 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this Agreement, the Contractor agrees to make reasonable efforts to comply with all applicable provisions of Public Law 103-227, Part C, known as the Pro-Children Act of 1994.

New Hampshire Department of Health and Human Services Exhibit D – Federal Requirements

SECTION F: CERTIFICATION REGARDING THE FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) COMPLIANCE

The Federal Funding Accountability and Transparency Act (FFATA) requires prime awardees of individual Federal grants equal to or greater than \$30,000 and awarded on or after October 1, 2010, to report on data related to executive compensation and associated first-tier sub-grants of \$30,000 or more. If the initial award is below \$30,000 but subsequent grant modifications result in a total award equal to or over \$30,000, the award is subject to the FFATA reporting requirements, as of the date of the award.

In accordance with 2 CFR Part 170 (Reporting Subaward and Executive Compensation Information), the Department of Health and Human Services (DHHS) must report the following information for any sub award or contract award subject to the FFATA reporting requirements:

1. Name of entity
2. Amount of award
3. Funding agency
4. NAICS code for contracts / CFDA program number for grants
5. Program source
6. Award title descriptive of the purpose of the funding action
7. Location of the entity
8. Principle place of performance
9. Unique Entity Identifier (SAM UEI; DUNS#)
10. Total compensation and names of the top five executives if:
 - 10.1. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25M annually and
 - 10.2. Compensation information is not already available through reporting to the SEC. Prime grant recipients must submit FFATA required data by the end of the month, plus 30 days, in which the award or award amendment is made.

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of The Federal Funding Accountability and Transparency Act, Public Law 109-282 and Public Law 110-252, and 2 CFR Part 170 (Reporting Subaward and Executive Compensation Information), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

The below named Contractor agrees to provide needed information as outlined above to the NH Department of Health and Human Services and to comply with all applicable provisions of the Federal Financial Accountability and Transparency Act.

New Hampshire Department of Health and Human Services Exhibit D – Federal Requirements

FORM A

As the Grantee identified in Section 1.3 of the General Provisions, I certify that the responses to the below listed questions are true and accurate:

1. The UEI (SAM.gov) number for your entity is: SNA4S19RNL45
2. In your business or organization's preceding completed fiscal year, did your business or organization receive (1) 80 percent or more of your annual gross revenue in U.S. federal contracts, subcontracts, loans, grants, sub-grants, and/or cooperative agreements; and (2) \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements?

NO YES

If the answer to #2 above is NO, stop here.
If the answer to #2 above is YES, please answer the following:

3. Does the public have access to information about the compensation of the executives in your business or organization through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?

NO YES

If the answer to #3 above is YES, stop here.
If the answer to #3 above is NO, please answer the following:

4. The names and compensation of the five most highly compensated officers in your business or organization are as follows:

Name: _____	Amount: _____

Contractor Name:

11/28/2023

Date:

DocuSigned by:

Ashley Olive
108D9C4E7D534C7

Name: Ashley Olive

Title: VP, Contracts

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Exhibit D
Federal Requirements

Contractor's Initials

Date 11/28/2023

New Hampshire Department of Health and Human Services

Exhibit E

DHHS Information Security Requirements

A. Definitions.

The following terms may be reflected and have the described meaning in this document:

1. "Breach" means the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic. With regard to Protected Health Information, "Breach" shall have the same meaning as the term "Breach" in section 164.402 of Title 45, Code of Federal Regulations.
2. "Computer Security Incident" shall have the same meaning "Computer Security Incident" in section two (2) of NIST Publication 800-61, Computer Security Incident Handling Guide, National Institute of Standards and Technology, U.S. Department of Commerce.
3. "Confidential Information" or "Confidential Data" means all confidential information disclosed by one party to the other such as all medical, health, financial, public assistance benefits and personal information including without limitation, Substance Abuse Treatment Records, Case Records, Protected Health Information and Personally Identifiable Information.

Confidential Information also includes any and all information owned or managed by the State of NH - created, received from or on behalf of the Department of Health and Human Services (DHHS) or accessed in the course of performing contracted services - of which collection, disclosure, protection, and disposition is governed by state or federal law or regulation. This information includes, but is not limited to Protected Health Information (PHI), Personal Information (PI), Personal Financial Information (PFI), Federal Tax Information (FTI), Social Security Numbers (SSN), Payment Card Industry (PCI), and or other sensitive and confidential information.

4. "End User" means any person or entity (e.g., contractor, contractor's employee, business associate, subcontractor, other downstream user, etc.) that receives DHHS data or derivative data in accordance with the terms of this Contract.
5. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder.
6. "Incident" means an act that potentially violates an explicit or implied security policy, which includes attempts (either failed or successful) to gain unauthorized access to a system or its data, unwanted disruption or denial of service, the unauthorized use of a system for the processing or storage of data; and changes to system hardware, firmware, or software characteristics without the owner's knowledge, instruction, or consent. Incidents include the loss of data through theft or device misplacement, loss

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New Hampshire Department of Health and Human Services

Exhibit E

DHHS Information Security Requirements

or misplacement of hardcopy documents, and misrouting of physical or electronic mail, all of which may have the potential to put the data at risk of unauthorized access, use, disclosure, modification or destruction.

7. "Open Wireless Network" means any network or segment of a network that is not designated by the State of New Hampshire's Department of Information Technology or delegate as a protected network (designed, tested, and approved, by means of the State, to transmit) will be considered an open network and not adequately secure for the transmission of unencrypted PI, PFI, PHI or confidential DHHS data.
8. "Personal Information" (or "PI") means information which can be used to distinguish or trace an individual's identity, such as their name, social security number, personal information as defined in New Hampshire RSA 359-C:19, biometric records, etc., alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc.
9. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.
10. "Protected Health Information" (or "PHI") has the same meaning as provided in the definition of "Protected Health Information" in the HIPAA Privacy Rule at 45 C.F.R. § 160.103.
11. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 164, Subpart C, and amendments thereto.
12. "Unsecured Protected Health Information" means Protected Health Information that is not secured by a technology standard that renders Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals and is developed, or endorsed by a standards developing organization that is accredited by the American National Standards Institute.

I. RESPONSIBILITIES OF DHHS AND THE CONTRACTOR

A. Business Use and Disclosure of Confidential Information.

1. The Contractor must not use, disclose, maintain or transmit Confidential Information except as reasonably necessary as outlined under this Contract. Further, Contractor, including but not limited to all its directors, officers, employees and agents, must not use, disclose, maintain or transmit PHI in any manner that would constitute a violation of the Privacy and Security Rule.

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DHHS Information Security Requirements

2. The Contractor must not disclose any Confidential Information in response to a request for disclosure on the basis that it is required by law, in response to a subpoena, etc., without first notifying DHHS so that DHHS has an opportunity to consent or object to the disclosure.
3. If DHHS notifies the Contractor that DHHS has agreed to be bound by additional restrictions over and above those uses or disclosures or security safeguards of PHI pursuant to the Privacy and Security Rule, the Contractor must be bound by such additional restrictions and must not disclose PHI in violation of such additional restrictions and must abide by any additional security safeguards.
4. The Contractor agrees that DHHS Data or derivative there from disclosed to an End User must only be used pursuant to the terms of this Contract.
5. The Contractor agrees DHHS Data obtained under this Contract may not be used for any other purposes that are not indicated in this Contract.
6. The Contractor agrees to grant access to the data to the authorized representatives of DHHS for the purpose of inspecting to confirm compliance with the terms of this Contract.

II. METHODS OF SECURE TRANSMISSION OF DATA

1. Application Encryption. If End User is transmitting DHHS data containing Confidential Data between applications, the Contractor attests the applications have been evaluated by an expert knowledgeable in cyber security and that said application's encryption capabilities ensure secure transmission via the internet.
2. Computer Disks and Portable Storage Devices. End User may not use computer disks or portable storage devices, such as a thumb drive, as a method of transmitting DHHS data.
3. Encrypted Email. End User may only employ email to transmit Confidential Data if email is encrypted and being sent to and being received by email addresses of persons authorized to receive such information.
4. Encrypted Web Site. If End User is employing the Web to transmit Confidential Data, the secure socket layers (SSL) must be used and the web site must be secure. SSL encrypts data transmitted via a Web site.
5. File Hosting Services, also known as File Sharing Sites. End User may not use file hosting services, such as Dropbox or Google Cloud Storage, to transmit Confidential Data.
6. Ground Mail Service. End User may only transmit Confidential Data via *certified* ground mail within the continental U.S. and when sent to a named individual.
7. Laptops and PDA. If End User is employing portable devices to transmit Confidential Data said devices must be encrypted and password-protected.

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New Hampshire Department of Health and Human Services

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DHHS Information Security Requirements

8. **Open Wireless Networks.** End User may not transmit Confidential Data via an open wireless network. End User must employ a virtual private network (VPN) when remotely transmitting via an open wireless network.
9. **Remote User Communication.** If End-User is employing remote communication to access or transmit Confidential Data, a virtual private network (VPN) must be installed on the End User's mobile device(s) or laptop from which information will be transmitted or accessed.
10. **SSH File Transfer Protocol (SFTP),** also known as Secure File Transfer Protocol. If End User is employing an SFTP to transmit Confidential Data, End User will structure the Folder and access privileges to prevent inappropriate disclosure of information. SFTP folders and sub-folders used for transmitting Confidential Data will be coded for 24-hour auto-deletion cycle (i.e. Confidential Data will be deleted every 24 hours).
11. **Wireless Devices.** If End User is transmitting Confidential Data via wireless devices, all data must be encrypted to prevent inappropriate disclosure of information.

III. RETENTION AND DISPOSITION OF IDENTIFIABLE RECORDS

The Contractor will only retain the data and any derivative of the data for the duration of this Contract. After such time, the Contractor will have 30 days to destroy the data and any derivative in whatever form it may exist, unless, otherwise required by law or permitted under this Contract. To this end, the parties must:

A. Retention

1. The Contractor agrees it will not store, transfer or process data collected in connection with the services rendered under this Contract outside of the United States. This physical location requirement shall also apply in the implementation of cloud computing, cloud service or cloud storage capabilities, and includes backup data and Disaster Recovery locations.
2. The Contractor agrees to ensure proper security monitoring capabilities are in place to detect potential security events that can impact State of NH systems and/or Department confidential information for contractor provided systems.
3. The Contractor agrees to provide security awareness and education for its End Users in support of protecting Department confidential information.
4. The Contractor agrees to retain all electronic and hard copies of Confidential Data in a secure location and identified in section IV. A.2
5. The Contractor agrees Confidential Data stored in a Cloud must be in a FedRAMP/HITECH compliant solution and comply with all applicable statutes and regulations regarding the privacy and security. All servers and devices must have currently-supported and hardened operating systems, the latest anti-viral, antihacker, anti-spam, anti-spyware, and anti-malware utilities. The environment, as a whole, must have aggressive intrusion-detection and firewall protection.

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Exhibit E

DHHS Information Security Requirements

6. The Contractor agrees to and ensures its complete cooperation with the State's Chief Information Officer in the detection of any security vulnerability of the hosting infrastructure.

B. Disposition

1. If the Contractor will maintain any Confidential Information on its systems (or its sub-contractor systems), the Contractor will maintain a documented process for securely disposing of such data upon request or contract termination; and will obtain written certification for any State of New Hampshire data destroyed by the Contractor or any subcontractors as a part of ongoing, emergency, and or disaster recovery operations. When no longer in use, electronic media containing State of New Hampshire data shall be rendered unrecoverable via a secure wipe program in accordance with industry-accepted standards for secure deletion and media sanitization, or otherwise physically destroying the media (for example, degaussing) as described in NIST Special Publication 800-88, Rev 1, Guidelines for Media Sanitization, National Institute of Standards and Technology, U. S. Department of Commerce. The Contractor will document and certify in writing at time of the data destruction, and will provide written certification to the Department upon request. The written certification will include all details necessary to demonstrate data has been properly destroyed and validated. Where applicable, regulatory and professional standards for retention requirements will be jointly evaluated by the State and Contractor prior to destruction.
2. Unless otherwise specified, within thirty (30) days of the termination of this Contract, Contractor agrees to destroy all hard copies of Confidential Data using a secure method such as shredding.
3. Unless otherwise specified, within thirty (30) days of the termination of this Contract, Contractor agrees to completely destroy all electronic Confidential Data by means of data erasure, also known as secure data wiping.

IV. PROCEDURES FOR SECURITY

- A. Contractor agrees to safeguard the DHHS Data received under this Contract, and any derivative data or files, as follows:
 1. The Contractor will maintain proper security controls to protect Department confidential information collected, processed, managed, and/or stored in the delivery of contracted services.
 2. The Contractor will maintain policies and procedures to protect Department confidential information throughout the information lifecycle, where applicable, (from creation, transformation, use, storage and secure destruction) regardless of the media used to store the data (i.e., tape, disk, paper, etc.).

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New Hampshire Department of Health and Human Services

Exhibit E

DHHS Information Security Requirements

3. The Contractor will maintain appropriate authentication and access controls to contractor systems that collect, transmit, or store Department confidential information where applicable.
4. The Contractor will ensure proper security monitoring capabilities are in place to detect potential security events that can impact State of NH systems and/or Department confidential information for contractor provided systems.
5. The Contractor will provide regular security awareness and education for its End Users in support of protecting Department confidential information.
6. If the Contractor will be sub-contracting any core functions of the engagement supporting the services for State of New Hampshire, the Contractor will maintain a program of an internal process or processes that defines specific security expectations, and monitoring compliance to security requirements that at a minimum match those for the Contractor, including breach notification requirements.
7. The Contractor will work with the Department to sign and comply with all applicable State of New Hampshire and Department system access and authorization policies and procedures, systems access forms, and computer use agreements as part of obtaining and maintaining access to any Department system(s). Agreements will be completed and signed by the Contractor and any applicable sub-contractors prior to system access being authorized.
8. If the Department determines the Contractor is a Business Associate pursuant to 45 CFR 160.103, the Contractor will execute a HIPAA Business Associate Agreement (BAA) with the Department and is responsible for maintaining compliance with the agreement.
9. The Contractor will work with the Department at its request to complete a System Management Survey. The purpose of the survey is to enable the Department and Contractor to monitor for any changes in risks, threats, and vulnerabilities that may occur over the life of the Contractor engagement. The survey will be completed annually, or an alternate time frame at the Departments discretion with agreement by the Contractor, or the Department may request the survey be completed when the scope of the engagement between the Department and the Contractor changes.
10. The Contractor will not store, knowingly or unknowingly, any State of New Hampshire or Department data offshore or outside the boundaries of the United States unless prior express written consent is obtained from the Information Security Office leadership member within the Department.
11. Data Security Breach Liability. In the event of any security breach Contractor shall make efforts to investigate the causes of the breach, promptly take measures to prevent

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- future breach and minimize any damage or loss resulting from the breach. The State shall recover from the Contractor all costs of response and recovery from the breach, including but not limited to: credit monitoring services, mailing costs and costs associated with website and telephone call center services necessary due to the breach.
12. Contractor must, comply with all applicable statutes and regulations regarding the privacy and security of Confidential Information, and must in all other respects maintain the privacy and security of PI and PHI at a level and scope that is not less than the level and scope of requirements applicable to federal agencies, including, but not limited to, provisions of the Privacy Act of 1974 (5 U.S.C. § 552a), DHHS Privacy Act Regulations (45 C.F.R. §5b), HIPAA Privacy and Security Rules (45 C.F.R. Parts 160 and 164) that govern protections for individually identifiable health information and as applicable under State law.
 13. Contractor agrees to establish and maintain appropriate administrative, technical, and physical safeguards to protect the confidentiality of the Confidential Data and to prevent unauthorized use or access to it. The safeguards must provide a level and scope of security that is not less than the level and scope of security requirements established by the State of New Hampshire, Department of Information Technology. Refer to Vendor Resources/Procurement at <https://www.nh.gov/doi/vendor/index.htm> for the Department of Information Technology policies, guidelines, standards, and procurement information relating to vendors.
 14. Contractor agrees to maintain a documented breach notification and incident response process. The Contractor will notify the State's Privacy Officer and the State's Security Officer of any security breach immediately, at the email addresses provided in Section VI. This includes a confidential information breach, computer security incident, or suspected breach which affects or includes any State of New Hampshire systems that connect to the State of New Hampshire network.
 15. Contractor must restrict access to the Confidential Data obtained under this Contract to only those authorized End Users who need such DHHS Data to perform their official duties in connection with purposes identified in this Contract.
 16. The Contractor must ensure that all End Users:
 - a. comply with such safeguards as referenced in Section IV A. above, implemented to protect Confidential Information that is furnished by DHHS under this Contract from loss, theft or inadvertent disclosure.
 - b. safeguard this information at all times.
 - c. ensure that laptops and other electronic devices/media containing PHI, PI, or PFI are encrypted and password-protected.

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Exhibit E
DHHS Information Security Requirements

- d. send emails containing Confidential Information only if encrypted and being sent to and being received by email addresses of persons authorized to receive such information.
- e. limit disclosure of the Confidential Information to the extent permitted by law.
- f. Confidential Information received under this Contract and individually identifiable data derived from DHHS Data, must be stored in an area that is physically and technologically secure from access by unauthorized persons during duty hours as well as non-duty hours (e.g., door locks, card keys, biometric identifiers, etc.).
- g. only authorized End Users may transmit the Confidential Data, including any derivative files containing personally identifiable information, and in all cases, such data must be encrypted at all times when in transit, at rest, or when stored on portable media as required in section IV above.
- h. in all other instances Confidential Data must be maintained, used and disclosed using appropriate safeguards, as determined by a risk-based assessment of the circumstances involved.
- i. understand that their user credentials (user name and password) must not be shared with anyone. End Users will keep their credential information secure. This applies to credentials used to access the site directly or indirectly through a third party application.

Contractor is responsible for oversight and compliance of their End Users. DHHS reserves the right to conduct onsite inspections to monitor compliance with this Contract, including the privacy and security requirements provided in herein, HIPAA, and other applicable laws and Federal regulations until such time the Confidential Data is disposed of in accordance with this Contract.

V. LOSS REPORTING

The Contractor must notify the State's Privacy Officer and Security Officer of any Security Incidents and Breaches immediately, at the email addresses provided in Section VI.

The Contractor must further handle and report Incidents and Breaches involving PHI in accordance with the agency's documented Incident Handling and Breach Notification procedures and in accordance with 42 C.F.R. §§ 431.300 - 306. In addition to, and notwithstanding, Contractor's compliance with all applicable obligations and procedures, Contractor's procedures must also address how the Contractor will:

1. Identify Incidents;
2. Determine if personally identifiable information is involved in Incidents;
3. Report suspected or confirmed Incidents as required in this Exhibit or P-37;

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4. Identify and convene a core response group to determine the risk level of Incidents and determine risk-based responses to Incidents; and.
5. Determine whether Breach notification is required, and, if so, identify appropriate Breach notification methods, timing, source, and contents from among different options, and bear costs associated with the Breach notice as well as any mitigation measures.

Incidents and/or Breaches that implicate PI must be addressed and reported, as applicable, in accordance with NH RSA 359-C:20.

VI. PERSONS TO CONTACT

A. DHHS Privacy Officer:

DHHSPrivacyOfficer@dhhs.nh.gov B.

DHHS Security Officer:

DHHSInformationSecurityOffice@dhhs.nh.gov

New Hampshire Department of Health and Human Services

Exhibit F



BUSINESS ASSOCIATE AGREEMENT

The Contractor identified in Section 1.3 of the General Provisions of the Agreement (Form P-37) ("Agreement"), and any of its agents who receive use or have access to protected health information (PHI), as defined herein, shall be referred to as the "Business Associate." The State of New Hampshire, Department of Health and Human Services, "Department" shall be referred to as the "Covered Entity." The Contractor and the Department are collectively referred to as "the parties."

The parties agree, to comply with the Health Insurance Portability and Accountability Act, Public Law 104-191, the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160, 162, and 164 (HIPAA), provisions of the HITECH Act, Title XIII, Subtitle D, Parts 1&2 of the American Recovery and Reinvestment Act of 2009, 42 USC 17934, et sec., applicable to business associates, and as applicable, to be bound by the provisions of the Confidentiality of Substance Use Disorder Patient Records, 42 USC s. 290 dd-2, 42 CFR Part 2, (Part 2), as any of these laws and regulations may be amended from time to time.

(1) Definitions

- a. The following terms shall have the same meaning as defined in HIPAA, the HITECH Act, and Part 2, as they may be amended from time to time:
 - "Breach," "Designated Record Set," "Data Aggregation," "Designated Record Set," "Health Care Operations," "HITECH Act," "Individual," "Privacy Rule," "Required by law," "Security Rule," and "Secretary."
- b. Business Associate Agreement, (BAA) means the Business Associate Agreement that includes privacy and confidentiality requirements of the Business Associate working with PHI and as applicable, Part 2 record(s) on behalf of the Covered Entity under the Agreement.
- c. "Constructively Identifiable," means there is a reasonable basis to believe that the information could be used, alone or in combination with other reasonably available information, by an anticipated recipient to identify an individual who is a subject of the information.
- d. "Protected Health Information" ("PHI") as used in the Agreement and the BAA, means protected health information defined in HIPAA 45 CFR 160.103, limited to the information created, received, or used by Business Associate from or on behalf of Covered Entity, and includes any Part 2 records, if applicable, as defined below.
- e. "Part 2 record" means any patient "Record," relating to a "Patient," and "Patient Identifying Information," as defined in 42 CFR Part 2.11.
- f. "Unsecured Protected Health Information" means protected health information that is not secured by a technology standard that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.

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

- a. Business Associate shall not use, disclose, maintain, store, or transmit Protected Health Information (PHI) except as reasonably necessary to provide the services outlined under the Agreement. Further, Business Associate, including but not

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Business Associate Agreement
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Date 11/28/2023



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limited to all its directors, officers, employees, and agents, shall protect any PHI as required by HIPAA and 42 CFR Part 2, and not use, disclose, maintain, store, or transmit PHI in any manner that would constitute a violation of HIPAA or 42 CFR Part 2.

- b. Business Associate may use or disclose PHI, as applicable:
 - I. For the proper management and administration of the Business Associate;
 - II. As required by law, according to the terms set forth in paragraph c. and d. below;
 - III. According to the HIPAA minimum necessary standard;
 - IV. For data aggregation purposes for the health care operations of the Covered Entity; and
 - V. Data that is de-identified or aggregated and remains constructively identifiable may not be used for any purpose outside the performance of the Agreement.
- c. To the extent Business Associate is permitted under the BAA or the Agreement to disclose PHI to any third party or subcontractor prior to making any disclosure, the Business Associate must obtain a business associate agreement or other agreement with the third party or subcontractor, that complies with HIPAA and ensures that all requirements and restrictions placed on the Business Associate as part of this BAA with the Covered Entity, are included in those business associate agreements with the third party or subcontractor.
- d. The Business Associate shall not, disclose any PHI in response to a request or demand for disclosure, such as by a subpoena or court order, on the basis that it is required by law, without first notifying Covered Entity so that Covered Entity can determine how to best protect the PHI. If Covered Entity objects to the disclosure, the Business Associate agrees to refrain from disclosing the PHI and shall cooperate with the Covered Entity in any effort the Covered Entity undertakes to contest the request for disclosure, subpoena, or other legal process. If applicable relating to Part 2 records, the Business Associate shall resist any efforts to access part 2 records in any judicial proceeding.

(3) Obligations and Activities of Business Associate

- a. Business Associate shall implement appropriate safeguards to prevent unauthorized use or disclosure of all PHI in accordance with HIPAA Privacy Rule and Security Rule with regard to electronic PHI, and Part 2, as applicable.
- b. The Business Associate shall immediately notify the Covered Entity's Privacy Officer at the following email address, DHSPrivacyOfficer@dhhs.nh.gov after the Business Associate has determined that any use or disclosure not provided for by its contract, including any known or suspected privacy or security incident or breach has occurred potentially exposing or compromising the PHI. This includes inadvertent or accidental uses or disclosures or breaches of unsecured protected health information.
- c. In the event of a breach, the Business Associate shall comply with the terms of this Business Associate Agreement, all applicable state and federal laws and regulations and any additional requirements of the Agreement.
- d. The Business Associate shall perform a risk assessment, based on the information available at the time it becomes aware of any known or suspected privacy or

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security breach as described above and communicate the risk assessment to the Covered Entity. The risk assessment shall include, but not be limited to:

- I. The nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
 - II. The unauthorized person who accessed, used, disclosed, or received the protected health information;
 - III. Whether the protected health information was actually acquired or viewed; and
 - IV. How the risk of loss of confidentiality to the protected health information has been mitigated.
- e. The Business Associate shall complete a risk assessment report at the conclusion of its incident or breach investigation and provide the findings in a written report to the Covered Entity as soon as practicable after the conclusion of the Business Associate's investigation.
- f. Business Associate shall make available all of its internal policies and procedures, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of Covered Entity to the US Secretary of Health and Human Services for purposes of determining the Business Associate's and the Covered Entity's compliance with HIPAA and the Privacy and Security Rule, and Part 2, if applicable.
- g. Business Associate shall require all of its business associates that receive, use or have access to PHI under the BAA to agree in writing to adhere to the same restrictions and conditions on the use and disclosure of PHI contained herein.
- h. Within ten (10) business days of receipt of a written request from Covered Entity, Business Associate shall make available during normal business hours at its offices all records, books, agreements, policies and procedures relating to the use and disclosure of PHI to the Covered Entity, for purposes of enabling Covered Entity to determine Business Associate's compliance with the terms of the BAA and the Agreement.
- i. Within ten (10) business days of receiving a written request from Covered Entity, Business Associate shall provide access to PHI in a Designated Record Set to the Covered Entity, or as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR Section 164.524.
- j. Within ten (10) business days of receiving a written request from Covered Entity for an amendment of PHI or a record about an individual contained in a Designated Record Set, the Business Associate shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under 45 CFR Section 164.526.
- k. Business Associate shall document any disclosures of PHI and information related to any disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.
- l. Within ten (10) business days of receiving a written request from Covered Entity for a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill its obligations to provide an accounting of disclosures with respect to PHI in

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accordance with 45 CFR Section 164.528.

- m. In the event any individual requests access to, amendment of, or accounting of PHI directly from the Business Associate, the Business Associate shall within five (5) business days forward such request to Covered Entity. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or the Business Associate to violate HIPAA and the Privacy and Security Rule, the Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable.
- n. Within thirty (30) business days of termination of the Agreement, for any reason, the Business Associate shall return or destroy, as specified by Covered Entity, all PHI received from or created or received by the Business Associate in connection with the Agreement, and shall not retain any copies or back-ups of such PHI in any form or platform.
 - VI. If return or destruction is not feasible, or the disposition of the PHI has been otherwise agreed to in the Agreement, or if retention is governed by state or federal law, Business Associate shall continue to extend the protections of the Agreement, to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible for as long as the Business Associate maintains such PHI. If Covered Entity, in its sole discretion, requires that the Business Associate destroy any or all PHI, the Business Associate shall certify to Covered Entity that the PHI has been destroyed.

(4) Obligations of Covered Entity

- a. Covered Entity shall post a current version of the Notice of the Privacy Practices on the Covered Entity's website:
<https://www.dhhs.nh.gov/oos/hipaa/publications.htm> in accordance with 45 CFR Section 164.520.
- b. Covered Entity shall promptly notify Business Associate of any changes in, or revocation of permission provided to Covered Entity by individuals whose PHI may be used or disclosed by Business Associate under this BAA, pursuant to 45 CFR Section 164.506 or 45 CFR Section 164.508.
- c. Covered entity shall promptly notify Business Associate of any restrictions on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(5) Termination of Agreement for Cause

- a. In addition to the General Provisions (P-37) of the Agreement, the Covered Entity may immediately terminate the Agreement upon Covered Entity's knowledge of a material breach by Business Associate of the Business Associate Agreement. The Covered Entity may either immediately terminate the Agreement or provide an opportunity for Business Associate to cure the alleged breach within a timeframe specified by Covered Entity.

(6) Miscellaneous

- a. Definitions, Laws, and Regulatory References. All laws and regulations

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- herein, shall refer to those laws and regulations as amended from time to time. A reference in the Agreement, as amended to include this Business Associate Agreement, to a Section in HIPAA or 42 Part 2, means the Section as in effect or as amended.
- b. **Change In law** - Covered Entity and Business Associate agree to take such action as is necessary from time to time for the Covered Entity and/or Business Associate to comply with the changes in the requirements of HIPAA, 42 CFR Part 2 other applicable federal and state law.
- c. **Data Ownership** - The Business Associate acknowledges that it has no ownership rights with respect to the PHI provided by or created on behalf of Covered Entity.
- d. **Interpretation** - The parties agree that any ambiguity in the BAA and the Agreement shall be resolved to permit Covered Entity and the Business Associate to comply with HIPAA and 42 CFR Part 2.
- e. **Segregation** - If any term or condition of this BAA or the application thereof to any person(s) or circumstance is held invalid, such invalidity shall not affect other terms or conditions which can be given effect without the invalid term or condition; to this end the terms and conditions of this BAA are declared severable.
- f. **Survival** - Provisions in this BAA regarding the use and disclosure of PHI, return or destruction of PHI, extensions of the protections of the BAA in section (3) g. and (3) n.l., and the defense and indemnification provisions of the General Provisions (P-37) of the Agreement, shall survive the termination of the BAA.

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

Department of Health and Human Services

The State

DocuSigned by:
Karen Hebert
078CACEB15M18

Signature of Authorized Representative

Karen Hebert

Name of Authorized Representative

Division Director

Title of Authorized Representative

11/29/2023

Date

TDB Communications, Inc.

Name of the Contractor

DocuSigned by:
Ashley Olive
108C9C4E3DE31CT

Signature of Authorized Representative

Ashley Olive

Name of Authorized Representative

VP, Contracts

Title of Authorized Representative

11/28/2023

Date

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