

A  
MAN



Lori A. Sbibiaette  
Commissioner

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

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

September 11, 2020

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

**INFORMATIONAL ITEM**

Pursuant to RSA 4:45, RSA 21-P:43, and Section 4 of Executive Order 2020-04, as extended by Executive Orders 2020-05, 2020-08, 2020-09, 2020-10, 2020-14, 2020-15, 2020-16, and 2020-17, Governor Sununu has authorized the Department of Health and Human Services, Office of the Commissioner, to enter into a **Retroactive Sole Source** amendment to an existing contract with SAFEPASSAGES GROUP INCORPORATED, Manchester, NH, (VC# TBD) to continue providing transportation services for individuals experiencing homelessness to either a Quarantine Facility or a Community of Origin, by exercising a renewal option by increasing the price limitation by \$10,000 from \$30,000 to \$40,000 and by extending the contract completion date from August 27, 2020, to December 31, 2020. 100% General Funds.

The original contract was approved by the Governor on June 15, 2020, and presented to the Executive Council on July 15, 2020 (Informational Item #G).

Funds are available in the following account for State Fiscal Years 2021, 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.

**05-95-95-950010-56760000 Health and Social Services, Department of Health and Human Services, HHS: Office of the Commissioner, Office of Business Operations.**

State Fiscal Year	Class / Account	Class Title	Job Number	Current Budget	Increase / (Decrease) Amount	Revised Budget
2020	103-502664	Contracts for Oper Svc	95010998	\$30,000	\$0	\$30,000
2021	103-502664	Contracts for Oper Svc	95010998	\$0	\$10,000	\$10,000
			<b>Total</b>			<b>\$40,000</b>

**EXPLANATION**

This item is **Sole Source** because the contract was originally approved as sole source and MOP 150 requires any subsequent amendments to be labeled as sole source. This item is **Retroactive** because the Department needed to ensure that these critical services continue to be provided to individuals experiencing homelessness.

The purpose of this amendment is to continue transporting individuals to the Isolation and Quarantine Facility to align with Centers for Disease Control recommendations relative to quarantine and isolation. The Contractor will also transport individuals back to their Communities of Origin once individuals are cleared to return.

The population served are individuals who are experiencing homelessness and may have suspected or confirmed diagnoses of COVID-19 or are awaiting COVID-19 test results; and

- Are in need of isolation in accordance with the Centers for Disease Control recommendations.
- Are asymptomatic but have had close contact with an individual who has tested positive for COVID-19.
- Are referred to services by the Department, the Manchester Health Department, or the Nashua Health Department.

The Department cannot determine the number of individuals who will be served from May 26, 2020, to December 31, 2020.

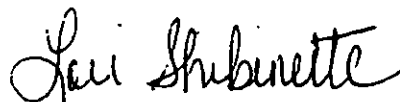
The Contractor will provide transportation within one (1) hour of receiving the request for transportation from the Department. Individuals will not be comingled with individuals from other shelters during transport. The Contractor will ensure all drivers receive and complete training on the use of personal protective equipment and follow the Centers for Disease Control Guidelines relative to transportation services for individuals with suspected or positive COVID-19 diagnoses, as appropriate.

As referenced in Exhibit A, Revisions to Standard Contract Provisions, Section 1. Revisions to Form P-37, General Provisions, Sub-section 1.2, Paragraph 3, Effective Date/Completion of Services, Subparagraph 3.3 of the attached contracts, the parties have the option to extend the agreements for up to one (1) additional year, contingent upon satisfactory delivery of services, available funding, agreement of the parties, and appropriate State approval. The Department is exercising six (6) months of the one (1) year available for renewal.

Areas served: Statewide

Source of Funds: 100% General

Respectfully submitted,



Lori A. Shibinette  
Commissioner

**New Hampshire Department of Health and Human Services  
Transportation for Homeless Individuals**



**State of New Hampshire  
Department of Health and Human Services  
Amendment #1 to the Transportation for Homeless Individuals Contract**

This 1st Amendment to the Transportation for Homeless Individuals contract (hereinafter referred to as "Amendment #1") is by and between the State of New Hampshire, Department of Health and Human Services (hereinafter referred to as the "State" or "Department") and SAFEPASSAGE Group INCORPORATED, (hereinafter referred to as "the Contractor"), a profit corporation with a place of business at 1 Harvey Road, Manchester, NH 03103.

WHEREAS, pursuant to an agreement (the "Contract") approved by the Governor on June 15, 2020, and presented to the Executive Council on July 15, 2020 (Informational Item #G), 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, Paragraph 17 and Exhibit A, Section 1, Subsection 1.2, the Contract may be amended and extended upon written agreement of the parties and appropriate State approval; and

WHEREAS, the parties agree to extend the term of the agreement, increase the price limitation, or modify the scope of services to support continued delivery of these services; 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 1.4, Contractor Address, to read:  
1 Harvey Road  
Manchester, NH 03103
2. Form P-37 General Provisions, Block 1.7, Completion Date, to read:  
December 31, 2020.
3. Form P-37, General Provisions, Block 1.8, Price Limitation, to read:  
\$40,000.
4. Exhibit B, Scope of Services Section 1, Statement of Work, Subsection 1.1, Paragraph 1.1.1., to read:  
1.1.1. Department of Health and Human Services or the Isolation and Quarantine Team; or.

*CJ*

*8/17/2020*

New Hampshire Department of Health and Human Services  
Transportation for Homeless Individuals



All terms and conditions of the Contract not inconsistent with this Amendment #1 remain in full force and effect. This amendment shall be effective August 27, 2020, upon the Governor's approval issued under the Executive Order 2020-04 as extended by Executive Orders 2020-05, 2020-08, 2020-09, 2020-10, 2020-14, and 2020-15.

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

8/10/20  
Date

Christine Santaniello  
Name: Christine Santaniello  
Title: Director DEITS

SAFEPASSAGE GROUP INCORPORATED

8/7/2020  
Date

Christopher LaBerge  
Name: Christopher LaBerge  
Title: President

**New Hampshire Department of Health and Human Services  
Transportation for Homeless Individuals**



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

OFFICE OF THE ATTORNEY GENERAL

08/24/20  
Date

Catherine Pinos  
Name:  
Title: Catherine Pinos, Attorney

I hereby certify that the foregoing Amendment was approved by the Governor approval issued under the Executive Order 2020-04 as extended by Executive Orders 2020-05, 2020-08, 2020-09, 2020-10, 2020-14, and 2020-15.

OFFICE OF THE SECRETARY OF STATE

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name:  
Title:

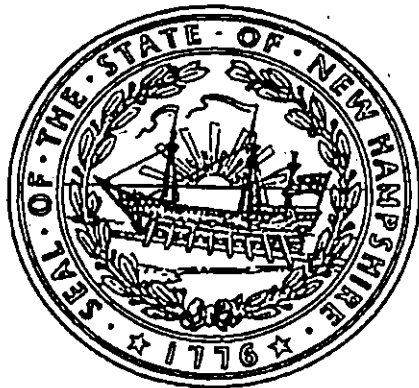
**State of New Hampshire**  
**Department of State**

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that SAFEPASSAGE GROUP INCORPORATED is a New Hampshire Profit Corporation registered to transact business in New Hampshire on April 20, 2006. 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: 556180

Certificate Number: 0004892916



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed

the Seal of the State of New Hampshire,

this 15th day of April A.D. 2020.

A handwritten signature in cursive script, appearing to read "Wm Gardner".

William M. Gardner

Secretary of State

## CERTIFICATE OF AUTHORITY

I, Jarod Conlin – Chief Financial Officer, hereby certify that:

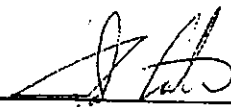
1. I am a duly elected Clerk/Secretary/Officer of SafePassage Group Incorporated.

2. The following is a true copy of a vote taken at a meeting of the Board of Directors/shareholders, duly called and held on August 8, 2020, at which a quorum of the Directors/shareholders were present and voting.

**VOTED:** That Christopher LaBerge – President / SafePassage Group Inc. is duly authorized on behalf of SafePassage Group Inc. to enter into contracts or agreements with the State of New Hampshire and any of its agencies or departments and further is authorized to execute any and all documents, agreements and other instruments, and any amendments, revisions, or modifications thereto, which may in his/her judgment be desirable or necessary to effect the purpose of this vote.

3. I hereby certify that said vote has not been amended or repealed and remains in full force and effect as of the date of the contract/contract amendment to which this certificate is attached. This authority **remains valid for thirty (30) days** from the date of this Certificate of Authority. I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that the person(s) listed above currently occupy the position(s) indicated and that they have full authority to bind the corporation. To the extent that there are any limits on the authority of any listed individual to bind the corporation in contracts with the State of New Hampshire, all such limitations are expressly stated herein.

Dated: 8-7-2020



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Signature of Elected Officer  
Name: Jarod Conlin  
Title: CFO







Lori A. Shibnette  
Commissioner

JUN 30 '20 AND 0:00 LRS

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

129 PLEASANT STREET, CONCORD, NH 03301-3857  
603-271-9200 1-800-852-3345 Ext. 9200  
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June 18, 2020

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

**INFORMATIONAL ITEM**

Pursuant to RSA 4:45, RSA 21-P:43, and Section 4 of Executive Order 2020-04 as extended by Executive Orders 2020-05, 2020-08, and 2020-09, Governor Sununu has authorized the Department of Health and Human Services, Office of the Commissioner, to enter into a **Retroactive, Sole Source** contract with SAFEPASSAGES GROUP INCORPORATED (VC# TBD) in the amount of \$30,000 to provide transportation services for individuals experiencing homelessness to either a Quarantine Facility; a Decompression site; or Community of Origin, with the option to renew for up to one (1) additional year, effective retroactive to May 26, 2020, through August 27, 2020. 100% General Funds.

Funds are available in the following account for State Fiscal Years 2020 and 2021, 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.

**05-95-95-950010-56760000 Health and Social Services, Department of Health and Human Services, HHS: Office of the Commissioner, Office of Business Operations**

State Fiscal Year	Class / Account	Class Title	Job Number	Total Amount
2020	103-502664	Contracts for Oper Svc	95010998	\$30,000
2021	103-502664	Contracts for Oper Svc	95010998	\$0
			<b>Total</b>	<b>\$30,000</b>

**EXPLANATION**

The Department requested that the Governor retroactively approve this item because the Department identified an immediate need for the transportation of individuals experiencing homelessness to either the Quarantine Facility, a Decompression Site, or their Communities of Origin, as a result of the COVID-19 pandemic. This contract was developed concurrently with the Quarantine Facility contract for the Laconia site, operated by Lakes Region Mental Health Center Inc., which the Governor approved retroactive to April 17, 2020, on May 11, 2020. Transportation requests began immediately after the Quarantine Facility began operations. This item is **Sole Source** because the Department, in the interest of the public's health and safety, identified this vendor as having the capacity to quickly respond to the transportation need caused by the COVID-19 pandemic.

The purpose of this item is to transport individuals to either the Quarantine Facility or a Decompression Site, in order to align with Centers for Disease Control recommendations relative to social distancing and isolation. The Contractor also transports individuals back to their Communities of Origin once they are cleared to return.

The population served are individuals who may be residing in a shelter and individuals who are experiencing homelessness and not residing in a shelter. The population includes individuals who:

- May have a suspected or confirmed diagnosis of COVID-19 or are waiting for COVID-19 test results; and
- Are in need of social distancing in accordance with the Centers for Disease Control recommendations.

The Department cannot determine the number of individuals who will be served from May 26, 2020, to August 27, 2020.

The Contractor provides transportation within 24 hours of receiving the request for transportation, from the Department, the Adjutant General, or the Department of Safety. Individuals from one shelter are not to be comingled with individuals from other shelters during transport. The Contractor ensures all drivers receive and complete training on the use of personal protective equipment and follow Centers for Disease Control guidelines relative to transportation services for individuals with a suspected or positive COVID-19 diagnosis, as appropriate.

As referenced in Exhibit A, Revisions to Standard Contract Provisions, Section 1. Revisions to Form P-37, General Provisions, Sub-section 1.2, Paragraph 3, Effective Date/Completion of Services; Subparagraph 3.3 of the attached contracts, the parties have the option to extend the agreements for up to one (1) additional year, contingent upon satisfactory delivery of services, available funding, agreement of the parties, and appropriate State approval.

Areas served: Statewide

Respectfully submitted,

  
for Lori A. Shabinette  
Commissioner

Subject: Transportation for Homeless Individuals (SS-2020-OCOM-09-TRANS-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**

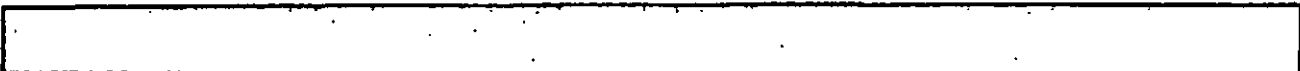
The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name New Hampshire Department of Health & Human Services		1.2 State Agency Address 129 Pleasant Street Concord, NH 03301-3857	
1.3 Contractor Name SAFEPASSAGE GROUP INCORPORATED		1.4 Contractor Address 651 Elm Street Manchester, NH 03101	
1.5 Contractor Phone Number (603) 647-0066	1.6 Account Number 05-95-95-950010- 56760000-103-502664- 95010998	1.7 Completion Date August 27, 2020	1.8 Price Limitation \$30,000
1.9 Contracting Officer for State Agency Nathan D. White, Director		1.10 State Agency Telephone Number (603) 271-9631	
1.11 Contractor Signature <i>Christopher LaBerge</i> Date: 5/28/2020		1.12 Name and Title of Contractor Signatory President - Christopher LaBerge	
1.13 State Agency Signature <i>Christina Santanello</i> Date: 5/28/2020		1.14 Name and Title of State Agency Signatory Christina Santanello, DHS, DEHS Dir. Tech.	
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>J Christopher Marshall</i> On: June 2, 2020			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: _____			

Contractor Initials *CL*  
 Date *5/28/2020*



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

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**

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

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

**4. CONDITIONAL NATURE OF AGREEMENT.**

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

**5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.**

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

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

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

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

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

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

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

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

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

**7. PERSONNEL.**

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

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

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

## 8. EVENT OF DEFAULT/REMEDIES.

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

8.1.1 failure to perform the Services satisfactorily or on schedule;

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

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

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

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

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

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

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

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

## 9. TERMINATION.

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

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

submit to the State a Transition Plan for services under the Agreement.

## 10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

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

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

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

## 12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

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

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

13. **INDEMNIFICATION.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the

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

#### 14. INSURANCE.

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

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

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

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

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

#### 15. WORKERS' COMPENSATION.

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

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

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

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

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

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

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

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

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

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

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



**EXHIBIT A**

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**REVISIONS TO STANDARD CONTRACT PROVISIONS**

**1. Revisions to Form P-37, General Provisions**

- 1.1. Paragraph 3, Subparagraph 3.1, Effective Date/Completion of Services, is amended as follows:
  - 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 as indicated in block 1.17, this Agreement, and all obligations of the parties hereunder, shall become effective on May 26, 2020 ("Effective Date").
- 1.2. Paragraph 3, Effective Date/Completion of Services, is amended by adding subparagraph 3.3 as follows:
  - 3.3. The parties may extend the Agreement for up to one (1) additional year from the Completion Date, contingent upon satisfactory delivery of services, available funding, agreement of the parties, and approval of the Governor and Executive Council.
- 1.3. Paragraph 9, Termination, is amended by adding Subparagraph 9.3, as follows:
  - 9.3 In the event that services in the contract are no longer needed, due to the resolution of the COVID 19 Pandemic, the contract shall be terminated immediately upon written notification of the State to the Contractor.
- 1.4. Paragraph 12, Assignment/Delegation/Subcontracts, is amended by adding subparagraph 12.3 as follows:
  - 12.3. 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 how corrective action shall be managed if the subcontractor's performance is inadequate. 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.

*CJ*  
*5/28/2020*



**EXHIBIT B**

**Scope of Services**

**1. Statement of Work**

- 1.1. For the purposes of this agreement, the State of New Hampshire shall mean the:
  - 1.1.1. Department of Health and Human Services; or
  - 1.1.2. Department of Safety; or
  - 1.1.3. Adjutant General.
- 1.2. The Contractor shall provide services in this agreement to individuals who:
  - 1.2.1. May have vulnerable medical, behavioral, and/or psychological conditions; and
  - 1.2.2. Are currently residing in a shelter that provides services to individuals experiencing homelessness; or
  - 1.2.3. Are experiencing homeless and not residing in a shelter that provides services to individuals experiencing homelessness.
- 1.3. The Contractor shall ensure services are available statewide, as needed.
- 1.4. The Contractor shall provide a telephone number to the State of New Hampshire for receiving requests for transportation of individuals experiencing homeless who require relocation to an alternative site.
- 1.5. The Contractor shall transport individuals from a point of pick up, as specified by the State of New Hampshire, to either:
  - 1.5.1. The Quarantine Facility, ensuring the driver leaves for transport within one (1) hour of receiving a request for transportation.
  - 1.5.2. The Decompression Facility, ensuring the driver leaves for transport within 24 hours of receiving the request for transportation.
  - 1.5.3. Communities of origin, ensuring drivers leave for transports within 24 hours of receiving the request for transportation.
- 1.6. The Contractor shall provide transportation services in a manner that ensures:
  - 1.6.1. Individuals destined for the Quarantine Facility are not comingled with individuals destined for the Decompression Facility.
  - 1.6.2. Individuals from one shelter are not comingled with individuals from other shelters.
- 1.7. The Contractor shall work with the State of New Hampshire to coordinate transportation of individuals to their communities of origin, as appropriate, within 24 hours of receiving the request.
- 1.8. The Contractor shall ensure safe travel of passengers to and from points of



New Hampshire Department of Health and Human Services  
Transportation for Homeless Individuals  
**EXHIBIT B**



destination identified by the State of New Hampshire through various modes of transportation, which may include, but are not limited to:

- 1.8.1. Multi-passenger van.
- 1.8.2. Wheelchair van.
- 1.8.3. Taxi.
- 1.9. The Contractor shall ensure transporters operate vehicles that:
  - 1.9.1. Meet state inspection standards.
  - 1.9.2. Have a current state inspection sticker.
  - 1.9.3. Are registered for operation in the State of New Hampshire.
- 1.10. The Contractor shall ensure all drivers:
  - 1.10.1. Have appropriate and valid driver's licenses and insurance for vehicles used in transports.
  - 1.10.2. Have not had more than two (2) accidents within the last 12 months.
  - 1.10.3. Have not been convicted of any felony or misdemeanor crimes related to:
    - 1.10.3.1. Drugs.
    - 1.10.3.2. Alcohol.
    - 1.10.3.3. Abuse of any individual.
    - 1.10.3.4. Sexual misconduct.
  - 1.10.4. Are briefed on the specific population served and safety precautions that must be in place due to the COVID-19 Pandemic.
- 1.11. The Contractor shall ensure all transporters receive and complete training on the proper donning and doffing of personal protective equipment for COVID-19. The Contractor shall:
  - 1.11.1. Document the name of the transporter and date training is completed.
  - 1.11.2. Ensure documentation of completed trainings is available to the State of New Hampshire upon request.
- 1.12. The Contractor shall follow CDC Interim Guidelines relative to transportation to the Quarantine Facility, which include, but are not limited to:
  - 1.12.1. Ensuring transporters wear personal protective equipment (PPE), provided by the State of New Hampshire, during the course of each ride provided.
  - 1.12.2. Ensuring interactions by transporter with individuals are at a distance of at least six (6) feet, if possible.

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- 1.12.3. Ensuring family members and other contacts of individuals with possible COVID-19 are not transported together in the same vehicle, whenever possible.
- 1.12.4. Ensuring individuals are placed in the vehicle at least six (6) feet from the driver.
- 1.12.5. Ensuring individuals are placed at least six (6) feet apart from other passengers when multiple individuals are transported in a single vehicle.
- 1.12.6. Ensuring a facemask is worn by the individual being transported, whenever possible.
- 1.12.7. Ensuring contact with unmasked individuals is minimized.
- 1.12.8. Ensuring individuals with a nasal cannula in place is donning a facemask over the nasal cannula, or is utilizing an oxygen mask if no facemask is available.
- 1.12.9. Ensuring every effort is made to have a driver's compartment separated from the passenger compartment, which may include an air-tight vapor barrier that is installed and ensures both compartments have separate ventilation.
- 1.12.10. Isolating the driver from the patient compartment and keeping pass-through doors and windows tightly shut.
- 1.12.11. Closing the door and/or window between the driver and passenger compartments prior to allowing an individual to board the vehicle.
- 1.12.12. Making every effort to ensure vehicle ventilation in both compartments is on a non-recirculated of interior ventilation setting to maximize the ability to bring exterior air into the interior compartments to ensure reduction in potentially infectious particles in the vehicle.
- 1.12.13. Ensuring transport vehicles can be effectively disinfected by ensuring seats within the vehicle either:
  - 1.12.13.1. Do not have cloth seats; or
  - 1.12.13.2. Have plastic covering over the seats.
- 1.13. The Contractor shall document and provide initial notification of adverse events or incidents, and any follow-up action taken. The Contractor shall notify the State of New Hampshire of any accidents, injuries and incidents within:
  - 1.13.1. Twelve (12) hours of any event that results in injury.
  - 1.13.2. Twenty-four (24) hours of any event that does not result in injury.
- 1.14. The Contractor shall ensure transport vehicles are cleaned after every transport

New Hampshire Department of Health and Human Services  
Transportation for Homeless Individuals  
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completed, in accordance with CDC Interim Guidelines relative to transportation services provided during the COVID-19 Pandemic. The Contractor shall:

- 1.14.1. Leave the doors of the transport vehicle open while the individual is escorted by staff into the facility.
- 1.14.2. Ensure transporters wear disposable gowns, gloves, facemasks or face shields, and goggles during cleaning.
- 1.14.3. Ensure that environmental cleaning and disinfection procedures are followed consistently and correctly, which includes ensuring doors remain open to provide adequate ventilation when chemicals are in use.
- 1.14.4. Follow routine cleaning and disinfection procedures, which may include, but is not limited to, using cleaners and water to pre-clean surfaces prior to applying an EPA-registered, hospital-grade disinfectant to frequently touched surfaces or objects for appropriate contact times as indicated on the product's label.
- 1.14.5. Clean and disinfect each vehicle in accordance with standard operating procedures, ensuring all surfaces that may have come in contact with the patient or materials contaminated during patient care are thoroughly cleaned and disinfected using an EPA-registered hospital grade disinfectant in accordance with the product label.
- 1.14.6. Follow standard operating procedures for the containment and disposal of used PPE.
- 1.14.7. Follow standard operating procedures for containing and laundering used linen.

**2. Exhibits Incorporated**

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

**3. Confidentiality**

- 3.1. Any and all confidential information obtained or received by the Contractor shall be kept confidential and shall not be disclosed to anyone for any reason outside the scope of services of this Agreement.
- 3.2. "Confidential Information" means all information owned, managed, created, or received from the Individuals, the Department, any other agency of the State, or any medical provider, that is protected by Federal or State information

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Transportation for Homeless Individuals  
**EXHIBIT B**



security, privacy or confidentiality laws or rules. Confidential Information includes, but is not limited to:

- 3.2.1. Derivative Data.
- 3.2.2. Protected health information (PHI).
- 3.2.3. Personally identifiable information (PII).
- 3.2.4. Federal tax information (FTI).
- 3.2.5. Social Security Administration information (SSA).
- 3.2.6. Criminal justice information services (CJIS).
- 3.2.7. Any other sensitive confidential information provided under the Agreement.

3.3. This covenant shall survive the termination of the Agreement.

**4. Methods of Secure Transmission of Data**

- 4.1. The Contractor shall maintain the confidentiality and security of any identifiable information relating to individuals transported to and from the Quarantine Facility or the Decompression Facility.
- 4.2. The Contractor shall submit invoices for services in a security manner via encrypted email or other electronically secure means listed below.
  - 4.2.1. Encrypted Email. Contractor may employ email to transmit Confidential Data only if email is encrypted and being sent to and being received by email addresses of persons authorized to receive such information.
  - 4.2.2. Encrypted Web Site. If Contractor employs the Web to transmit Confidential Data, the secure socket layers (SSL) must be used and the web site must be secure.
  - 4.2.3. Laptops and PDA. If End User is employing portable devices to transmit Confidential Information said devices must be encrypted and password-protected. If Contractor employs a remote communication to access or transmit Confidential Information, a virtual private network (VPN) must be installed on the Contractor's mobile device(s) or laptop from which information will be transmitted or accessed.
  - 4.2.4. SSH File Transfer Protocol (SFTP), also known as Secure File Transfer Protocol. If Contractor is employing an SFTP to transmit Confidential Data, Contractor will structure the Folder and access privileges to prevent inappropriate disclosure of information. SFTP folders and sub-folders used for transmitting Confidential Data must be coded for 24-hour auto-deletion cycle (i.e. Confidential Data will be deleted every 24 hours).

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**EXHIBIT B**



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4.2.5. Wireless Devices. If Contractor is transmitting Confidential Data via wireless devices, all data must be encrypted to prevent inappropriate disclosure of information.



**EXHIBIT C**

Payment Terms

1. The State shall pay the Contractor an amount not to exceed Form P-37, Block 1.8 Price Limitation for the services provided by the Contractor pursuant to Exhibit B, Scope of Services
2. The Contractor shall submit invoices on a weekly basis that indicate the total number of rides provided per day, specifying:
  - 2.1. Source of transport initiation.
  - 2.2. Name of individual transported.
  - 2.3. Pick up location.
  - 2.4. Drop off location.
  - 2.5. Number of loaded miles traveled.
  - 2.6. Amount of time in transit.
3. The rate of reimbursement for transportation services shall be:
  - 3.1. An hourly rate of \$100.00 per hour, billable in 15 minute increments with a two (2) hour minimum charge per trip.
  - 3.2. Mileage billable at \$0.575 per mile from pick up to drop off points.
  - 3.3. A flat rate of \$20.00 per additional person sharing the transport.
4. No minimum amounts of transports are guaranteed and payments will be only for actual transports completed as specified in Exhibit B, Scope of Services.
5. In lieu of hard copies, all Department-provided invoices may be assigned an electronic signature and emailed to [Beth.Kelly@dhhs.nh.gov](mailto:Beth.Kelly@dhhs.nh.gov).
6. The State shall make payment to the Contractor within thirty (30) days of receipt of each invoice, subsequent to approval of the submitted invoice and if sufficient funds are available, subject to Paragraph 4 of the General Provisions Form Number P-37 of this Agreement.
7. The final invoice shall be due to the State no later than forty (40) days after the contract completion date specified in Form P-37, General Provisions Block 1.7 Completion Date.
8. The Contractor must provide the services in Exhibit B, Scope of Services, in compliance with funding requirements.
9. The Contractor agrees that funding under this Agreement may be withheld, in whole or in part in the event of non-compliance with the terms and conditions of Exhibit B, Scope of Services.

*CJ*  
Date 5/28/2020

New Hampshire Department of Health and Human Services  
Transportation for Homeless Individuals



EXHIBIT C

- 
10. Notwithstanding anything to the contrary herein, the Contractor agrees that funding under this agreement may be withheld, in whole or in part, in the event of non-compliance with any Federal or State law, rule or regulation applicable to the services provided, or if the said services or products have not been satisfactorily completed in accordance with the terms and conditions of this agreement.

SAFEPASSAGE GROUP INCORPORATED

Exhibit C

Contractor Initials

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5/28/2020

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Date

Rev. 01/08/19



Exhibit D

**HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**  
**BUSINESS ASSOCIATE AGREEMENT**

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

(1) **Definitions.**

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

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5/28/2020





Exhibit D

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

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

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



Exhibit D

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

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

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

- a. The Business Associate shall notify the Covered Entity's Privacy Officer immediately after the Business Associate becomes aware of any use or disclosure of protected health information not provided for by the Agreement including breaches of unsecured protected health information and/or any security incident that may have an impact on the protected health information of the Covered Entity.
- b. The Business Associate shall immediately perform a risk assessment when it becomes aware of any of the above situations. The risk assessment shall include, but not be limited to:

- o The nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
- o The unauthorized person used the protected health information or to whom the disclosure was made;
- o Whether the protected health information was actually acquired or viewed
- o The extent to which the risk to the protected health information has been mitigated.

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

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



Exhibit D

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

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

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5/28/2020



Exhibit D

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

**(4) Obligations of Covered Entity**

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

**(5) Termination for Cause**

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

**(6) Miscellaneous**

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



Exhibit D

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

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

Department of Health and Human Services  
The State

Christine Santamelli  
Signature of Authorized Representative

Christine Santamelli  
Name of Authorized Representative

Director, DEHS  
Title of Authorized Representative

5/29/20  
Date

Safeway Group Inc.  
Name of the Contractor

Christopher LaBerge  
Signature of Authorized Representative

Christopher LaBerge  
Name of Authorized Representative

President / CEO  
Title of Authorized Representative

5/28/2020  
Date

CJ  
5/28/2020

