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STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH SERVICES

Lori A. Shabinette
Commissioner

Patricia M. Tilley
Director

29 HAZEN DRIVE, CONCORD, NH 03301
603-271-4501 1-800-852-3345 Ext. 4501
Fax: 603-271-4827 TDD Access: 1-800-735-2964
www.dhhs.nh.gov

July 6, 2022

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 Public Health Services, to amend an existing memorandum of agreement with the National Foundation for the Centers for Disease Control and Prevention, Inc., Atlanta, for temporary employees to support the COVID-19 response in New Hampshire, by exercising a renewal option by extending the completion date from July 31, 2022 to October 31, 2022, effective August 1, 2022 upon Governor and Council approval.

The original memorandum of agreement was approved by Governor and Council on December 8, 2021, item #9. Funding information is not provided because this agreement is at no cost to the Department.

EXPLANATION

The purpose of this request is for the Department to continue to allow for CDC Foundation employees to assist the State with the COVID-19 response. The employees will provide support for public health investigation and monitoring activities, execution of community and school based support programs, and implementation of information technology projects and associated tasks.

The Department will monitor services by ensuring the employees are performing work assigned within their allowable job descriptions.

As referenced in Section 3 Terms and Conditions of the memorandum of agreement, the parties have the option to extend the agreement for up to three (3) 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 three (3) months of the three (3) years available.

Should the Governor and Council not authorize this request, the Department will not have access to these critical employees to assist the State in the COVID-19 response at no cost to the Department.

Area served: Statewide

Respectfully submitted,

DocuSigned by:
Lori A. Shabinette
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Lori A. Shabinette
Commissioner



MEMORANDUM OF AGREEMENT
First Amendment

AMENDMENT TO THE MEMORANDUM OF AGREEMENT

This First Amendment to the Memorandum of Agreement (the "First Amendment") is entered into on July 31, 2022 ("Effective Date") by and between the New Hampshire Department of Health and Human Services ("Department") and the National Foundation for the Centers for Disease Control and Prevention, Inc. ("CDC Foundation").

RECITALS

WHEREAS, Department and the CDC Foundation entered into that certain Memorandum of Agreement effective December 18, 2021 ("Agreement").

WHEREAS, Department and the CDC Foundation now desire to amend the terms of the Agreement as set forth below.

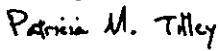
NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CDC Foundation and Department hereby agree to the following terms, conditions, standards, and provisions of the contract as follows:

AGREEMENT

1. The **Term** is hereby amended by deleting **July 31, 2022** and inserting the following in lieu thereof: **October 31, 2022 ("TERMINATION DATE")**.
2. Except as provided in the Amendment, all terms used in this Amendment that are not otherwise defined shall have the respective meaning ascribed to such terms in the Agreement.
3. All other terms and conditions that are not hereby amended remain in full force and effect. In the event of any conflict or inconsistency between the provision of the Agreement and this Amendment, the provisions of this Amendment shall control and govern.

In Witness Whereof, the Parties' duly authorized representatives have hereunto signed this Amendment on the dates indicated.

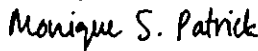
Department

DocuSigned by:

848E838E5F Patricia M. Tilley
 Name: _____
 Title: Director

7/11/2022

Date

CDC Foundation

DocuSigned by:

C2EAB2D9B7ACAE1
 Monique S. Patrick
 COO

7/5/2022 | 4:16:21 PM EDT

Date

MEMORANDUM OF AGREEMENT

First Amendment to Attachment A:

Department of Health:	New Hampshire Department of Health and Human Services
Project Number:	41120
Project Name:	Strengthening Capacity of Community Based Organizations to Address COVID-19 Response Needs Part II
Project Description:	The CDC Foundation proposes to build the capacity of the public health workforce through managing a large-scale, public health workforce program to provide critical staffing support to states, territories, large cities, and tribal communities.

This First Amendment to Attachment A: 41120 is incorporated into, governed by and made part of the Attachment A: 41120, and the Agreement by and between the CDC Foundation and the Department, that was approved by Governor and Executive Council approval on December 08, 2021 item #9 (Master MOA).

The Department and the CDC Foundation further agree as follows:

Section 1.1 Effective Dates is hereby removed in its entirety and replaced with:

1.1. Effective dates. This Attachment A: 41120 shall be effective on December 08, 2021, and will terminate on October 31, 2022.

Except as set forth in this Amendment, Attachment A: 41120, and the Master MOA are unaffected and shall continue in full force and effect in accordance with their terms.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Department

CDC Foundation

DocuSigned by:
Patricia M. Tilley
846FB90F5BFB408...

DocuSigned by:
Monique S. Patrick
C3FAB2D007AC4E1

Name: Patricia M. Tilley

Monique S. Patrick

Title: Director

COO

7/11/2022

7/5/2022 | 4:17:46 PM EDT

Date

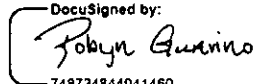
Date

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

OFFICE OF THE ATTORNEY GENERAL

7/11/2022

Date

DocuSigned by:

748734844941460

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:

CERTIFICATE OF AUTHORITY

I, Judy Monroe, hereby certify that:

1. I am a duly elected Clerk/Secretary/Officer of National Foundation for the Centers for Disease Control and Prevention, Inc. (dba "CDC Foundation")
2. That Monique S. Patrick is duly authorized on behalf of the CDC Foundation to enter into contracts, MOA, 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 authority has not been amended or repealed and remains in full force and effect as of the date of the contract/contract amendment/MOA to which this certificate is attached. This authority was effective on October 25, 2021 and 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: 7/5/2022 | 3:56:58 PM EDT

DocuSigned by:

Judith d. Monroe, MD

006847536371414

Name: Judy Monroe

Title: President and CEO

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STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH SERVICES

Lori A. Shibanette
Commissioner

Patricia M. Tilley
Director

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603-271-4501 1-800-852-3345 Ext. 4501
Fax: 603-271-4827 TDD Access: 1-800-735-2964
www.dhhs.nh.gov

October 5, 2021

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 Public Health Services, to enter into a Memorandum of Agreement with National Foundation for the Centers for Disease Control and Prevention, Inc., Atlanta, for temporary employees to support the COVID-19 response in New Hampshire, with the option to renew for up to three (3) additional years, effective upon Governor and Council approval through July 31, 2022.

Funding information is not provided because this Memorandum of Agreement is at no cost to the Department.

EXPLANATION

The purpose of this request is to allow for six (6) CDC Foundation employees to assist the State with the COVID-19 response. The employees will provide public health investigation and monitoring activities and be involved in the collection, analysis, interpretation, dissemination of COVID-19 related health data. Further, the employees will be involved with implementing and maintaining informational technology projects and associated tasks to support the COVID-19 response.

The exact number of residents of the State of New Hampshire who will be served will depend on the trajectory of COVID-19.

The Department will monitor services by ensuring the employees are performing work assigned within their allowable job descriptions.

As referenced in Section 3 Terms and Conditions of the memorandum of agreement, the parties have the option to extend the agreement for up three (3) additional years, contingent upon satisfactory delivery of services, available funding, agreement of the parties and Governor and Council approval.

Should the Governor and Council not authorize this request the Department will not have access to these critical employees to assist the State in the COVID-19 response at no cost to the Department.

Area served: Statewide

Respectfully submitted,

DocuSigned by:
Ann H. N. Landry
24B4B37ED8E6488
Lori A. Shibanette
Commissioner

MEMORANDUM OF AGREEMENT

1. **PURPOSE.** The National Foundation for the Centers for Disease Control and Prevention, Inc. ("CDC Foundation") and the New Hampshire Department of Health and Human Services ("Department") hereby enter into this Memorandum of Agreement ("MOA") for the purpose of supporting public health workforce staffing initiatives.

2. **SCOPE OF SERVICES.** The Parties are responsible for the obligations and services set forth in Attachment A: 41116 and Attachment A: 41120 (the "Services").

3. **TERM AND TERMINATION**

3.1. **Effective dates.** This MOA shall be effective upon approval of the Governor and Executive Council of New Hampshire and will terminate on July 31, 2022. The term of the MOA may be extended for up to three (3) years by an amendment agreed to and executed by both CDC Foundation and the Department, upon Governor and Executive Council approval.

3.2. **Termination.**

- a. Either party may terminate this MOA by providing thirty (30) days written notice of termination to the other party.
- b. The Department may terminate this MOA for cause, default, or negligence on the CDC Foundation part at any time without thirty days advance written notice. The Department may, at its option, allow the CDC Foundation a reasonable time to cure the default before termination.
- c. Either party may terminate this MOA for cause, default, or negligence at any time, without thirty days advance written notice. The Party initiating the termination may, at its option, allow the other party a reasonable time to cure the default before termination.
- d. The CDC Foundation may immediately terminate this MOA in the event payment from the CDC Foundation's funding source ceases. In the event there is a delay in payment from the CDC Foundation's funding source, the CDC Foundation may, in its sole discretion, temporarily cease services or immediately terminate this MOA.

4. **AMENDMENTS.** The MOA may only be amended by written agreement of all parties, and subject to required State/Governor and Council approval.

5. **CONFIDENTIALITY.**

5.1. The CDC Foundation will comply with all confidentiality obligations under federal and state laws and Department policies and requirements including but not limited to the Federal Educational Rights and Privacy Act, 20 U.S.C. §1232g, and the Health Insurance Portability and Accountability Act (HIPAA), Public Law 104-92, as amended, and regulations (45 CFR Parts 160 and 164), as applicable. Confidential information means information known or maintained in any form, whether recorded or not, consisting of protected health information, other health information, personal information, personal identifying information, confidential business information, and any other information required by law to be treated as confidential, designated as confidential by Department; or known or believed by the CDC Foundation or the CDC Foundation's employee or agent to be claimed as confidential or entitled to confidential treatment.

5.2. The CDC Foundation will not: 1) access, view, use, or disclose confidential information without written authorization from Department; 2) discuss confidential information obtained in the course of its relationship with Department with any other person, or in any location outside of its area of responsibility in Department; or 3) make any unauthorized copy of confidential information, or remove or transfer this information to any unauthorized location or media.

5.3. The CDC Foundation will direct any request it receives for confidential information obtained through performance of services under this MOA, including a subpoena, litigation discovery request, court order, or Freedom of Information Act request, to the Department Contracts Manager and Department Office of General Counsel as soon as possible, and in every case within one business day of receipt. If the CDC Foundation discloses confidential information pursuant to a properly completed authorization or legal process, order or requirement, the CDC Foundation must document the disclosure and make the documentation and authorization available for Department inspection and audit.

5.4. The CDC Foundation must immediately notify the Department Compliance Officer at DHHSPrivacyOfficer@dhhs.nh.gov and the Department's Security Officer at DHHSInformationSecurityOffice@dhhs.nh.org of any unauthorized use or disclosure of confidential information received under this MOA. The CDC Foundation will promptly notify Department of any suspected or actual breach of security of an individual's personal identifying information under applicable law.

5.5. The CDC Foundation's obligations under this provision and any other agreements concerning confidentiality shall survive termination, cancellation, or expiration of the MOA.

6. RECORDKEEPING, AUDITS, & INSPECTIONS. Each Party shall create and maintain adequate records to document all matters covered by this MOA. All such records shall be maintained for seven (7) years or other longer period as may be required by law after termination, cancellation, or expiration of the MOA. Each Party must make records available for inspection and audit at any time, with reasonable notice. If any litigation, claim or audit has begun but is not completed at the end of the seven-year period, or if audit findings have not been resolved at the end of the seven-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. The parties shall allow for inspection of the facilities and locations where activities under this MOA are to be performed on reasonable notice. Unjustified failure to produce any records required under this paragraph may result in immediate termination of this MOA.

The parties must dispose of records containing each other's Confidential information in a secure manner such as shredding or incineration once the required retention period has ended. Confidential information means information known or maintained in any form, whether recorded or not, consisting of protected health information, other health information, personal information, personal identifying information, confidential business information, or any other information required by law to be treated as confidential, designated as confidential by the other party.

7. LIABILITY, NO AGENCY RELATIONSHIP. Neither party shall be liable for any claims, demands, expenses, liabilities and losses (including reasonable attorney's fees) which may arise out of any acts or failures to act by the other party, its employees or agents, in connection with the performance of services pursuant to this MOA. Neither party is an employee, agent, partner, or joint venturer of the other. Neither party has the right or authority to control or direct the activities of the other or the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party, unless expressly authorized in this MOA.

8. NON-DISCRIMINATION. No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in relation to activities carried out under this MOA on the grounds of race, religion, color, sex, age, national origin, disability, or any other basis prohibited by law. This includes the provision of language assistance services to individuals of limited English proficiency eligible for services provided by Department.

9. DRUG FREE WORKPLACE. By signing this MOA, the Department certifies that it will comply with all applicable provisions of The Drug-free Workplace Act of 1988, 48 CFR § 52.223-6 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701-707).

10. **CHOICE OF LAW.** The MOA, any dispute, claim, or controversy relating to the MOA and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of New Hampshire.

11. **DISPUTES.** This MOA will be interpreted, applied and enforced pursuant to the laws of the State of New Hampshire, including New Hampshire's statutes of limitation and without regard to its conflict of law principles. Any action to enforce or interpret this Agreement, or arising therefrom, must be brought exclusively in the courts located in New Hampshire and the parties hereby consent to the exclusive jurisdiction of these courts in any such litigation and waive any claim of forum non conveniens with respect thereto.

12. **INSURANCE.** Each party will maintain general liability insurance and workers compensation insurance, and may be required to provide the other party with satisfactory evidence of such coverage. Neither party will provide individual coverage for the other party's employees, with each party being responsible for coverage of its employees.

13. **LICENSES.** During the term of this MOA, each party shall maintain its respective federal and state licenses, certifications, and accreditations required for the provision of services herein. The CDC Foundation will immediately notify Department if a board, association, or other licensing authority takes any action to revoke or suspend the license, certification, or accreditation of CDC Foundation or CDC Foundation's employees or agents providing or performing services under this MOA.

14. **FINANCIAL RESPONSIBILITY.** Each party shall bear and be responsible solely for its own costs and expenses necessary to comply with this MOA.

15. **COMPLIANCE WITH LAWS.** CDC Foundation shall comply with all applicable laws and regulations in the performance of this MOA.

16. **SEVERABILITY.** The invalidity or unenforceability of any provision of this MOA shall not affect the validity or enforceability of any other provision, which shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Department

CDC Foundation

DocuSigned by:
Patricia M. Tilley
Name: Patricia Tilley
Title: Director, Division of Public Health Services

DocuSigned by:
Monique S. Patrick
Name: Monique S. Patrick
Title: COO

10/12/2021

10/26/2021 | 1:08:49 PM EDT

Date

Date

MEMORANDUM OF AGREEMENT

Attachment A: 41116

- h. Comply with existing and/or future directives and guidance from the Department of Health and Human Services (HHS) Secretary regarding control of the spread of COVID-19; In consultation and coordination with HHS, provide, commensurate with the condition of the individual, COVID-19 patient care regardless of the individual's home jurisdiction and/or appropriate public health measures (e.g. social distancing, home isolations); and assist the United States Government in the implementation and enforcement of federal orders related to quarantine and isolation.
- i. Notifying the CDC Foundation if concerns arise regarding the CDC Foundation employees' ability to complete designated Project assignments.
- j. Working collaboratively with CDC Foundation staff to create and foster a professional, respectful, and productive work environment.
- k. Certifying that federal funds will not be used to supplant State, local, or other non-federal funds that would, in the absence of such federal aid, be made available for any such staffing and COVID-19 response related activities within your state, localities, and/or territories.
- l. The State will provide laptops with Microsoft Office software, as needed based on functions of their position as outlined in their job descriptions. Where CDC Foundation staff is onsite at the Department's office, the Department will assist with the returning of these laptops, in good working order, back to the Department at the termination of this Agreement.

1.2. The CDC Foundation shall be responsible for the following:

- a. Temporarily assigning employee(s) to work from the Department office or other appropriate location, or remotely. The CDC Foundation employees will comply with the policies and procedures of the CDC Foundation. These positions may include, but are not limited to:
 - i. COVID-19 Vaccination Personnel
 - a.) Communication Specialists
 - b.) Data Analysts
 - c.) Senior Epidemiologists
 - d.) Vaccine Managers/Program Coordinators
 - e.) Fiscal/Budget Analysts
 - f.) Informaticians
 - g.) Public Health Nurses
 - h.) Vaccine Demand Strategists
 - ii. COVID-19 Infectious Disease Personnel
 - iii. Laboratory Personnel
- b. Providing employees human resources support and training materials for successful onboarding including but not limited to information regarding benefits, instructions for the completion of timesheets and requests for leave.
- c. Providing administrative and managerial oversight of CDC Foundation staff, as well as overseeing related administrative documents. Department will cover all costs associated with information technology, infrastructure, training, and equipment related to this Project.
- d. Ensuring that CDC Foundation staff will attend and complete Department's trainings necessary to carry out their duties contained within this Agreement.

MEMORANDUM OF AGREEMENT

Attachment A: 41116

Department of Health:	New Hampshire Department of Health and Human Services
Project Number:	41116
Project Name:	Strengthening Public Health Systems and Services through National Partnerships to Improve and Protect the Nation's Health
Project Description:	The CDC Foundation proposes to build the capacity of the public health workforce through managing a large-scale, public health workforce program to provide critical staffing support to states, territories, large cities, and tribal communities.

This Attachment A: 41116 is incorporated into, governed by and made part of the MOA by and between the CDC Foundation and the Department. The Department and the CDC Foundation further agree as follows:

1. SCOPE OF SERVICES.

1.1. Department shall be responsible for the following:

- a. Providing access to Department facilities and resources to support the Project; and as may be required or necessary, provide CDC Foundation employees who may be required to report to Department's worksite with the following access to facilities: on-site workspace, printer access, copy machine access, meeting room access, kitchen/breakroom access, clearance to enter the Central Office, and parking.
- b. Where the CDC Foundation staff is receiving a Department issued laptop, the Department will ensure access to computer applications and/or databases to accomplish their duties consistent with this Project.
- c. Communicating immediately to CDC Foundation staff's supervisor regarding any all issues with performance and/or conduct requiring managerial oversight or intervention. CDC Foundation supervisor will address all reported issues, in order to improve/rectify the issues.
- d. Providing regular and ongoing technical guidance and training necessary to carry out their duties related to the support of Department operations; training must also include safety training regarding use of Department's office.
- e. Neither requesting, nor allowing CDC Foundation staff to perform work not otherwise incorporated within their respective job descriptions or outside the COVID-19 response without prior approval from the CDC Foundation. CDC Foundation staff should only work within the scope of their job descriptions. Any modifications to CDC Foundation staff duties or job descriptions require written approval by the CDC Foundation.
- f. Neither requesting, nor allowing CDC Foundation staff to perform unallowable duties as outlined in the Notice of Award, Uniform Guidance, and all governing federal rules and regulations, including performing duties related to fundraising, lobbying, research, and clinical work.
- g. Ensuring the safety of CDC Foundation employees, including requiring and utilizing safe infection prevention control practices, such as proper personal protective equipment, as set forth by the CDC; and inform the CDC Foundation of CDC Foundation employees that fall ill.

MEMORANDUM OF AGREEMENT

Attachment A: 41116

- e. Working collaboratively with colleagues in the Department office to create and foster a professional, respectful, and productive work environment.
- f. The CDC Foundation staff assigned to the Department is at all times considered an employee of the CDC Foundation with all the legal rights, responsibilities and obligations that apply.
- g. The CDC Foundation staff adhere to the Business Use and Confidentiality Agreement and the Business Associate Agreement.

1.3. Positions/Staff. CDC Foundation shall provide to Department one or more CDC Foundation employees, as requested by Department from time to time, and as may be agreed to in writing by CDC Foundation, in its sole discretion.

1.4. Backfilled Positions. In the event that a CDC Foundation employee ceases to be employed by CDC Foundation or is no longer available for assignment to the Department, the CDC Foundation, may in its sole discretion, agree to backfill the respective position.

1.5. Approvals. The CDC Foundation's approval for the items set forth in Section 2.3 and 2.4 must be obtained in writing; however, a formal amendment is not required to increase, decrease, or backfill the CDC Foundation staff or positions assigned to the Department. Such agreed upon written terms shall become a part of this Agreement, as amended.

1.6. Reporting. Department will provide the CDC Foundation with periodic progress reports and a final narrative report detailing the impact of having CDC Foundation employees on staff and how the CDC Foundation employees supported the COVID-19 response and bolstered the public health workforce in the Department. The final report will be due upon the completion of the project.

MEMORANDUM OF AGREEMENT

Attachment A: 41120

<u>Department of Health:</u>	New Hampshire Department of Health and Human Services
<u>Project Number:</u>	41120
<u>Project Name:</u>	Strengthening Capacity of Community Based Organizations to Address COVID-19 Response Needs Part II
<u>Project Description:</u>	The CDC Foundation proposes to build the capacity of the public health workforce through managing a large-scale, public health workforce program to provide critical staffing support to states, territories, large cities, and tribal communities.

This Attachment A: 41120 is incorporated into, governed by and made part of the Agreement by and between the CDC Foundation and the Department, that was effective upon approval of the Governor and Executive Council of New Hampshire (MOA). The Department and the CDC Foundation further agree as follows:

1. TERM AND TERMINATION

1.1. Effective dates. This Attachment A: 41120 shall be effective upon approval of the Governor and Executive Council of New Hampshire, and will terminate on July 31, 2022.

1.2. Termination.

- a. Either party may terminate this Attachment A: 41120 by providing thirty (30) days written notice of termination to the other party.
- b. Either party may terminate this Attachment A: 41120 for cause, default, or negligence at any time, without thirty days advance written notice. The Party initiating the termination may, at its option, allow the other party a reasonable time to cure the default before termination.
- c. The CDC Foundation may immediately terminate this Attachment A: 41120 in the event payment from the CDC Foundation's funding source ceases.

2. SCOPE OF SERVICES.

2.1. Department shall be responsible for the following:

- a. Providing access to Department facilities and resources to support the Project; and as may be required or necessary, provide CDC Foundation employees who may be required to report to Department's worksite with the following access to facilities: on-site workspace, printer access, copy machine access, meeting room access, kitchen/breakroom access, clearance to enter the Central Office, and parking.
- b. Where the CDC Foundation staff is receiving a Department issued laptop, the Department will ensure access to computer applications and/or databases to accomplish their duties consistent with this Project.
- c. Communicating immediately to CDC Foundation staff's supervisor regarding any all issues with performance and/or conduct requiring managerial oversight or intervention. CDC Foundation supervisor will address all reported issues, in order to improve/rectify the issues.
- d. Providing regular and ongoing technical guidance and training necessary to carry out their duties related to the support of Department operations; training must also include safety training regarding use of Department's office.

MEMORANDUM OF AGREEMENT

Attachment A: 41120

- e. Neither requesting, nor allowing CDC Foundation staff to perform work not otherwise incorporated within their respective job descriptions. CDC Foundation staff should only work within the scope of their job descriptions. Any modifications to CDC Foundation staff duties or job descriptions require written approval by the CDC Foundation.
- f. Neither requesting, nor allowing CDC Foundation staff to perform unallowable duties as outlined in the Notice of Award, Uniform Guidance, and all governing federal rules and regulations, including performing duties related to fundraising, lobbying, research, and clinical work.
- g. Ensuring the safety of CDC Foundation employees, including requiring and utilizing safe infection prevention control practices, such as proper personal protective equipment, as set forth by the CDC; and inform the CDC Foundation of CDC Foundation employees that fall ill.
- h. Comply with existing and/or future directives and guidance from the Department of Health and Human Services (HHS) Secretary regarding control of the spread of COVID-19; in consultation and coordination with HHS, provide, commensurate with the condition of the individual, COVID-19 patient care regardless of the individual's home jurisdiction and/or appropriate public health measures (e.g. social distancing, home isolations); and assist the United States Government in the implementation and enforcement of federal orders related to quarantine and isolation.
- i. Notifying the CDC Foundation if concerns arise regarding the CDC Foundation employees' ability to complete designated Project assignments.
- j. Working collaboratively with CDC Foundation staff to create and foster a professional, respectful, and productive work environment.
- k. Certifying that federal funds will not be used to supplant State, local, or other non-federal funds that would, in the absence of such federal aid, be made available for any such staffing and COVID-19 response related activities within your state, localities, and/or territories.

2.2. The CDC Foundation shall be responsible for the following:

- a. Temporarily assigning employee(s) to the work: from the Department office or other appropriate location, or remotely. The CDC Foundation employees will comply with the policies and procedures of the CDC Foundation.
- b. Providing CDC Foundation staff assigned to this Project with laptops with Microsoft Office software, as needed based on functions of their position as outlined in their job descriptions. Where CDC Foundation staff is onsite at the Department's office, the Department will assist with the returning of these laptops, in good working order, back to the CDC Foundation at the Termination of this Agreement.
- c. Providing employees human resources support and training materials for successful onboarding including but not limited to information regarding benefits, instructions for the completion of timesheets and requests for leave.
- d. Providing administrative and managerial oversight of CDC Foundation staff, as well as overseeing related administrative documents. Department will cover all costs associated with information technology, infrastructure, training, and equipment related to this Project.

MEMORANDUM OF AGREEMENT

Attachment A: 41120

- e. Ensuring that CDC Foundation staff will attend and complete Department's trainings necessary to carry out their duties contained within this Agreement.
- f. Working collaboratively with colleagues in the Department office to create and foster a professional, respectful, and productive work environment.
- g. The CDC Foundation staff assigned to the Department is at all times considered an employee of the CDC Foundation with all the legal rights, responsibilities and obligations that apply.

2.3. Positions/Staff. CDC Foundation shall provide to Department one or more CDC Foundation employees, as requested by Department from time to time, and as may be agreed to in writing by CDC Foundation, in its sole discretion.

2.4. Backfilled Positions. In the event that a CDC Foundation employee ceases to be employed by CDC Foundation or is no longer available for assignment to the Department, the CDC Foundation, may in its sole discretion, agree to backfill the respective position.

2.5. Approvals. The CDC Foundation's approval for the items set forth in Section 2.3 and 2.4 must be obtained in writing; however, a formal amendment is not required to increase, decrease, or backfill the CDC Foundation staff or positions assigned to the Department. Such agreed upon written terms shall become a part of this Agreement, as amended.

2.6. Reporting. Department will provide the CDC Foundation with periodic progress reports and a final narrative report detailing the impact of having CDC Foundation employees on staff and how the CDC Foundation employees supported the COVID-19 response and bolstered the public health workforce in the Department. The final report will be due upon the completion of the project.

Except as set forth in this Attachment, the MOA is unaffected and shall continue in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Department

CDC Foundation

DocuSigned by:
Patricia M. Tilley
849FB38F5BFD4C8...

DocuSigned by:
Monique S. Patrick
C2EAB2007AC1E3

Name: Patricia Tilley

Monique S. Patrick

Title: Director, Division of Public Health Services
10/12/2021

COO
10/26/2021 | 12:52:05 PM EDT

Date

Date

BUSINESS ASSOCIATE AGREEMENT

BETWEEN

New Hampshire Department of Health and Human Services

AND

THE CDC FOUNDATION

I. PURPOSE

The New Hampshire Department of Health and Human Services (hereafter referred to as "Covered Entity") and the CDC Foundation (hereafter referred to as "Business Associate") desire to enter into this Business Associate Agreement (hereafter, "BA Agreement" or "the Agreement") for the purpose of protecting the privacy and security of clients' health information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including all pertinent regulations (45 CFR Part 160 and Part 164), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), Title XIII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

II. DEFINITIONS Terms used, but not otherwise defined, in this Agreement shall have the same meanings as set forth in HIPAA and HITECH. A change to HIPAA or HITECH which modifies any defined term, or which alters the regulatory citation for the definition, shall be deemed incorporated into this Agreement.

- a. Breach. "Breach" shall have the meaning given under HITECH Section 13400, 42 U.S.C § 17921, and 45 CFR §164.402.
- b. Data Aggregation. "Data Aggregation" shall have the meaning given under the Privacy Rule, including, but not limited to, 45 CFR §164.501.
- c. Designated Record Set. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR §164.501.
- d. Disclose and Disclosure. "Disclose" and "Disclosure" shall have the meaning given in 45 CFR §160.103.
- e. Electronic Protected Health Information. "Electronic Protected Health Information" (referred to below as EPHI) shall have the same meaning as the term "electronic protected health information" in 45 CFR § 160.103.
- f. HIPAA. "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-91, as amended, and related HIPAA regulations (45 CFR Parts 160-164.)
- g. HITECH. "HITECH" shall mean the Health Information Technology for Economic and Clinical Health Act, found in Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005.
- h. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- i. "Part 2 data" means any record of information identifying a patient relating to his or her substance use disorder treatment, evaluation or referral, as protected by 42 CFR Part 2.
- j. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information codified at 45 CFR Part 160 and Part 164, Subparts A and E and any other applicable provisions of HIPAA, or amendments thereto, including HITECH.
- k. Protected Health Information. "Protected Health Information" (referred to below as PHI) shall have the same definition contained in 45 CFR §160.103, and may include substance use disorder treatment information (SUD) as defined in 42 CFR Part 2. For purposes of this Agreement, PHI is limited to the information created or received by Business Associate from or on behalf of Covered Entity. "Protected Health Information" includes, without limitation, "Electronic Protected Health Information," as defined below.
- l. Required By Law. "Required By Law" shall have the meaning given to the term under the Privacy Rule, including but not limited to, 45 CFR §164.103, and any additional requirements created under HITECH.
- m. Secretary. "Secretary" shall mean the Secretary of the U. S. Department of Health and Human Services or his/her designee.
- n. Security Incident. "Security Incident" shall have the meaning given in 45 CFR §164.304.

- o. Security Standards. "Security Standards" shall mean the Standards for the Protection of Electronic Protected Health Information that are codified at 45 CFR Part 160 and Part 164, Subparts A and C, and any other applicable provision of HIPAA, or amendments thereto, including HITECH.
- p. Unsecured PHI. "Unsecured PHI" shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in Section 13402 of HITECH.
- q. "Use" or "Uses" shall have the meaning given in 45 CFR §160.103.

III. USE OR DISCLOSURE OF PHI BY BUSINESS ASSOCIATE

- a. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the MOA, or as otherwise provided by law, if such use or disclosure would not violate the Privacy Rule or the Security Standards if done by Covered Entity.
- b. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, and may disclose PHI for those purposes provided that as to any such disclosure: 1) the disclosure is required by law except as limited below; 2) with prior approval of the Covered Entity, 3) according to the HIPAA Minimum Necessary Standard, 4) upon Business Associate first obtaining reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed, and the person notifies the Business Associate of any instances of which the person is aware in which the confidentiality of the information has been breached 5) subject to the requirements relating to disclosure, notices prohibiting re-disclosure as required by 42 CFR Part 2.32; and 6) Business Associate must resist any effort to obtain any SUD information as required by 42 CFR Part 2, and notify Covered Entity of any such effort to obtain the PHI.
- c. Business Associate will notify the Covered Entity of any breach of confidentiality or security by a person to whom the Business Associate has disclosed PHI pursuant to this Section, and will mitigate and/or assist the person and the Covered Entity in mitigating any harmful effects resulting from the breach of information.
- d. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).
- e. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).
- f. Business Associate may disclose PHI to any of its subcontractors for use in fulfilling the obligations of this Agreement as long as the subcontractor agrees in writing to the restrictions and conditions in this Agreement with respect to PHI.
- g. Business Associate may disclose PHI to another entity as authorized by the Covered Entity in a separate written agreement or amendment to this agreement, if such disclosure of PHI would not violate the Privacy Rule, or HITECH, if done by Covered Entity itself and agrees to be bound by 42 CFR Part 2, as applicable.
- h. Business Associate, upon entering into an agreement using PHI for any of its functions and activities on behalf of the Covered Entity or in its general operations, will make available that agreement to the Covered Entity upon request.

IV. DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI

- a. Business Associate shall comply with the Confidentiality provision contained in the MOA and any Confidentiality Agreement signed by the Business Associate pursuant to that Contract for so long as this BA Agreement remains in effect.
- b. Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement or as required by law. Business Associate will not use PHI in any manner that would constitute a violation of the Privacy Rule, Security Standards, HIPAA, HITECH, or 42 CFR Part 2 if so used by Covered Entity.
- c. Business Associate shall develop, implement, maintain, and use appropriate safeguards to prevent any use or disclosure of PHI or EPHI other than as provided by this Agreement, and shall implement administrative, physical, and technical safeguards to comply with the Security Standards as required by 45 CFR Sections 164.308, 164.310, 164.312 and 164.316 in order to protect the confidentiality, integrity, and availability of EPHI or PHI that Business Associate creates, receives, maintains, or transmits, to the same extent as if Business Associate were a Covered Entity, pursuant to HITECH Section 13401, 42 U.S.C. § 17931. These safeguards are required regardless of the mechanism used to transmit the information.

- d. Business Associate shall adopt the effective and appropriate technical safeguards and technology and methodology standards provided in any guidance issued by the Secretary pursuant to HITECH Sections 13401-13402, 42 U.S.C. §§ 17931-17932.
- e. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement or of a Breach of Unsecured PHI, pursuant to 45 CFR § 164.530(f) and HITECH § 13402.
- f. Business Associate shall notify Covered Entity by the most expedient manner within one business day of any use or disclosure of PHI or EPHI not authorized by this Agreement or in violation of any applicable federal or state laws or regulations of which Business Associate becomes aware, or of any suspected or actual Security Incident or Breach, unless delayed in accordance with 45 CFR § 164.412. Business Associate shall notify Covered Entity immediately upon the law enforcement delay being lifted.
- g. In addition to the notification required by IV(f), Business Associate will provide written notification of a Breach of Unsecured PHI to Covered Entity without unreasonable delay and in no event later than 5 calendar days after discovery of the Breach. A Breach of Unsecured PHI shall be treated as discovered by the Business Associate as of the first day on which such breach is known to Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate. Notification of a Breach of Unsecured PHI required by this paragraph shall comply with HITECH Section 13402, 42 U.S.C. § 17932, and 45 CFR § 164.410. The Breach notice shall include, to the extent possible, the identification of each individual whose Unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during the Breach. Business Associate shall provide Covered Entity with the following information at the time of the Breach notification or promptly thereafter as soon as information becomes available:
 - 1. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known, and the nature of the non-permitted use or disclosure;
 - 2. A description of the unsecured PHI that was involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - 3. Who made the non-permitted use or disclosure;
 - 4. Who received the non-permitted use or disclosure;
 - 5. Any steps individuals should take to protect themselves from potential harm resulting from the Breach; and
 - 6. What Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further breaches.
- h. Business Associate shall ensure that any agent or subcontractor to whom it provides PHI received from Covered Entity, or that creates, receives, maintains, or transmits PHI on behalf of Business Associate, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information, including this paragraph, and agrees to implement reasonable and appropriate safeguards to protect such PHI, including the safeguards required by paragraph IV(c) and IV(d) above with respect to PHI. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of such violation.
- i. Business Associate shall provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to fulfill the requirements of 45 CFR § 164.524 if the Business Associate has PHI in a designated record set. If Business Associate receives a request directly from an Individual, Business Associate will direct the Individual to the Covered Entity.
- j. Business Associate shall make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity, if Business Associate has PHI in a Designated Record Set. Business Associate shall not amend PHI received from the Covered Entity or created and/or provided to the Business Associate on behalf of the Covered Entity unless the amendment is directed by or consented to by the Covered Entity. If an Individual requests an amendment of PHI directly from Business Associate or any of its agents or subcontractors, Business Associate will direct Individual to Covered Entity. The Business Associate shall provide a copy of the amended PHI to the Covered Entity.

- k. Business Associate agrees to 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 § 164.528. Business Associate agrees to collect and maintain disclosure information as it relates to PHI including: (i) the date of disclosure; (ii) the name of the entity or person who received the PHI and, if known, the address of the entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the Individual of the basis for the disclosure, or a copy of the written request for disclosure under 45 CFR § 164.502(a)(2)(ii) or 164.512, if any. Business Associate will maintain records related to disclosures of PHI for at least six (6) years after the date of the disclosure. The provisions of this subparagraph shall survive termination of this Agreement.
- l. Business Associate will provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, information collected in accordance with Section IV(k) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. In addition, Business Associate agrees to make PHI available for purposes of accounting of disclosures as required by Section 164.528 of the Privacy Rule and Section 13405(c)(3) of HITECH, 42 U.S.C. § 17935(c)(3). If the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall within five (5) days of a request forward it to Covered Entity in writing.
- m. Business Associate shall comply with any requests for restrictions on certain disclosures of PHI pursuant to Section 164.522 of the Privacy Rule to which Covered Entity has agreed and of which Business Associate is notified by Covered Entity
- n. Business Associate shall comply, pursuant to HITECH and its implementing regulations, with all additional requirements of the Privacy Rule, including those contained in 45 CFR 164.502(e) and 164.504(e)(1)(ii) at such time as the requirements are applicable to Business Associate, pursuant to HITECH Section 13404, 42 U.S.C. § 17934.
- o. If applicable, and if requested by Covered Entity, Business Associate will provide a copy of Covered Entity's Notice of Privacy Practices to the client at the time of first contact, and maintain documentation of the client's receipt of the Notice.
- p. Business Associate shall make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of the Secretary determining compliance with the Privacy Rule. Business Associate shall comply and cooperate with any request for documents or other information from the Secretary directed to Covered Entity that seeks documents or other information held by Business Associate. Business Associate shall provide to Covered Entity a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.
- q. Business Associate and its agents and subcontractors may only request, use, or disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use, or disclosure pursuant to this agreement and consistent with Covered Entity's minimum necessary policies and procedures. Except as otherwise permitted by HIPAA standards, until the effective date on which the Secretary issues guidance on what constitutes "minimum necessary," when using or disclosing PHI or responding to a request for PHI, Business Associate and its agents or subcontractors must limit such PHI, to the extent practicable, to a Limited Data Set, or if more information than a Limited Data Set is required, to the minimum necessary to accomplish the intended purpose of such use, disclosure or request. After the effective date on which the Secretary issues guidance on what constitutes "minimum necessary," Business Associate and its agents or subcontractors shall only request, use, and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure, and shall comply with the Secretary's guidance on what constitutes "minimum necessary." See HITECH Section 13405, 42 U.S.C. § 17935.
- r. Business Associate shall provide Covered Entity reasonable access to its premises for review and demonstration of its internal practices and procedures for safeguarding PHI of Covered Entity for purposes of determining that Business Associate has complied with this Agreement and HITECH; provided that 1) the Parties mutually agree in advance upon the scope, location and timing of such access, and 2) Covered Entity shall protect confidential and proprietary information of Business Associate to which Covered Entity has access.
- s. Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.
- t. If Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of Covered Entity's obligations under the Agreement or other arrangement, Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, Business Associate must terminate the Agreement or other arrangement if feasible, or, if termination is not feasible, report the problem to the Secretary. Business Associate shall provide written notice to Covered Entity of any pattern of activity or practice of the Covered

Entity that Business Associate believes constitutes a material breach or violation of the Covered Entity's obligations under the Agreement within five (5) days of discovery and shall meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

- u. Business Associate acknowledges that if it violates any of the requirements provided under this Business Associate Agreement, Business Associate will be subject to the same civil and criminal penalties that a Covered Entity would be subject to if such Covered Entity violated the same requirement.
- v. The additional requirements of HITECH that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate and shall be and by this reference are incorporated into this Agreement.
- w. Business Associate will contact the Covered Entity's Privacy Officer at DHHSPrivacyOfficer@dhhs.nh.gov, at any time clarification or guidance is needed regarding compliance with the terms of this Agreement.
- x. Business Associate shall not use or disclose PHI for fundraising or marketing purposes.
- y. Business Associate may not enter into any agreements with its agents or subcontractors pertaining to its obligations under this Agreement without the express written consent of Covered Entity.

V. **DUTIES OF COVERED ENTITY**

- a. If applicable, Covered Entity shall provide the Business Associate with a copy of its policies and procedures implementing the Privacy Rule, including the Notice of Privacy Practices.
- b. Covered Entity shall notify Business Associate of any limitation(s) in Covered Entity's Notice of Privacy Practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- c. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI, within a reasonable period of time after Covered Entity becomes aware of such changes to or revocation of permission.
- d. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to or must comply with in accordance with 45 CFR § 164.522 and HITECH § 13405(a), 42 USC § 17935(a), to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- e. Covered Entity will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

VI. **TERM AND TERMINATION**

- a. **Term.** The Term of this Agreement shall be effective as of April 1, 2021 and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- b. **Termination for Cause.** Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall do any of the following:
 - 1. Provide an opportunity for Business Associate to cure the breach or end the violation, and terminate this Agreement and MOA if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - 2. Immediately terminate this Agreement and MOA if Business Associate has breached a material term of this Agreement and cure is not feasible;
 - 3. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary;
 - 4. Immediately stop all further disclosures of PHI to Business Associate pursuant to each agreement between Covered Entity and Business Associate that is the subject of such breach, until the breach is cured.

c. Effect of Termination.

1. Except as provided in paragraph (2) of this section, upon termination of this Agreement for any reason or upon written demand from Covered Entity, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies, including backups, of the PHI. If the return or destruction of PHI held by the Business Associate is not permissible pursuant to applicable law, the Business Associate will extend the protections of this Agreement to the PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible.
2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this 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 Associate maintains such PHI.

- d. Continuing Privacy Obligation. Business Associate's obligation to protect the privacy of PHI is continuous and survives any termination, cancellation, expiration, or other conclusion of this Agreement or any other agreement between Business Associate and Covered Entity.

VII. INDEMNIFICATION (the following does not apply to other government agencies or political subdivisions)

Business Associate agrees to liability for its own and its employees, acts and omissions as described in section 7 of the Memorandum of Agreement.

VIII. MISCELLANEOUS

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule or the Security Standards means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement to comply with the requirements of the Privacy Rule, the Security Standards, HIPAA, HITECH, or any other state or federal law affecting this Agreement. If a Party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of HITECH or its regulations, such Party shall notify the other Party in writing. For a period of thirty days, the Parties shall address such concern in good faith and amend the terms of the Agreement if necessary to bring it into compliance. If, after such thirty day period, the Agreement fails to comply with HIPAA, the Privacy Rule, the Security Standards or HITECH, then either Party has the right to terminate upon written notice to the other Party.
- c. Survival. The respective rights and obligations of Business Associate under Section VI(c) and VI(d) of this Agreement shall survive termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule and the Security Standards, and the safeguards in 42 CFR Part 2.
- e. All notices pursuant to this Agreement must be given in writing and shall be effective when received if hand-delivered or upon dispatch if sent by reputable overnight delivery service, facsimile, or U.S. Mail to the appropriate address or facsimile number. Notification of any unauthorized use or disclosure of PHI or of a Breach of Unsecured PHI under paragraphs IV(f) and IV(g) shall be made to the DHHSInfoSecurityOffice@dhhs.nh.gov.
- f. Business Associate and Covered Entity agree that Individuals who are the subject of PHI are not third-party beneficiaries of this Agreement.
- g. The parties acknowledge that state and federal laws relating to electronic data security and privacy are evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA and HITECH and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all PHI that it receives or creates pursuant to this Agreement. Upon Covered Entity's request, Business Associate agrees to promptly enter into negotiations with Covered Entity concerning the terms of any amendment to the Agreement embodying written assurances consistent with the standards and requirements of HIPAA and HITECH or other applicable laws. Covered Entity may terminate this Agreement and MOA upon thirty (30) days written notice if (i) Business Associate does not promptly enter into negotiations to amend this Agreement when requested by Covered Entity pursuant to this Section, or (ii) Business Associate does not enter into an amendment to this Agreement providing

assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and HITECH.

- h. If any provision of this Agreement violates any applicable statute, ordinance, or rule of law in any jurisdiction that governs this Agreement, such provision shall be ineffective to the extent of such violation without invalidating any other provision of this Agreement.
- i. This Agreement may not be amended, altered, or modified except by written agreement signed by Business Associate and Covered Entity.
- j. No provision of this Agreement may be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision.
- k. The persons signing below have the right and authority to execute this Agreement for their respective entities and no further approvals are necessary to create a binding Agreement.
- l. Neither Covered Entity nor Business Associate shall use the names or trademarks of the other party or of any of the respective party's affiliated entities in any advertising, publicity, endorsement, or promotion unless prior written consent has been obtained for the particular use contemplated.
- m. All references to specific statutes, codes, or regulations shall be deemed to be references to those statutes, codes or regulations as they may be amended from time to time.
- n. Neither party is an employee, agent, partner, or joint venturer of the other. Neither party has the right or authority to control or direct the activities of the other or the right or authority to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party, unless expressly authorized in this or another agreement between the parties.

AS TO New Hampshire Department of Health and Human Services

BY: ^{DocuSigned by:} Patricia Riley, Director of Public Health Services
 Its: Patricia M. Riley
 04F50CC1F-E150-463F-B868-DBFFF0DC68E5

DATE: 10/12/2021

MAILING ADDRESS:

29 Hazen Drive
 Concord, NH 03301

AS TO THE CDC Foundation

BY: Monique S. Patrick
 Its: COO
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