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Lori A. Shibley  
Commissioner

Katja S. Fox  
Director

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION FOR BEHAVIORAL HEALTH

129 PLEASANT STREET, CONCORD, NH 03301  
603-271-9544 1-800-852-3345 Ext. 9544  
Fax: 603-271-4332 TDD Access: 1-800-735-2964 www.dhhs.nh.gov

November 19, 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, 2020-17, 2020-18, 2020-20, and 2020-21, Governor Sununu has authorized the Department of Health and Human Services, Division for Behavioral Health, to enter into a **Retroactive Sole Source** cooperative project agreement with the University of New Hampshire, Institute for Health Policy and Practice, (VC#92050), Durham, NH, in the amount of \$60,995 for data collection and performance management services for the New Hampshire Rapid Response to Behavioral Health Needs During COVID-19 grant, with the option to renew for up to two (2) additional years, effective retroactive to July 1, 2020, through September 29, 2021. 100% Federal Funds.

Funds are available in the following account for State Fiscal Year 2021 and are anticipated to be available in State Fiscal Year 2022, 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.

**05-095-092-922010-19090000 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS DEPT OF, HHS: BEHAVIORAL HEALTH DIV, BUREAU OF MENTAL HEALTH SERVICES, SAMHSA GRANT**

State Fiscal Year	Class / Account	Class Title	Job Number	Total Amount
2021	102-500731	Contracts for Prog Svc	92201909	\$36,597.00
2022	102-500731	Contracts for Prog Svc	92201909	\$24,398.00
			<b>Total</b>	<b>\$60,995.00</b>

**EXPLANATION**

This item is **Retroactive** because more time was needed to negotiate and finalize the scope of work prior to the Contractor accepting the terms of the agreement. It was necessary to have the University of New Hampshire Institute for Health Policy and Practice provide these services beginning in July 2020 to support the Department's compliance with the collaborative grant application the Department submitted to the federal Substance Abuse and Mental Health Services Administration for the New Hampshire Rapid Response Program to address behavioral health needs during the COVID-19 pandemic.

This item is **Sole Source** because the Department was required to identify an entity during the application process that would be utilized to complete the activities described in the Department's application for funding. The University of New Hampshire Institute for Health Policy and Practice is well positioned to conduct and complete the evaluation components of the program that will assist the Department with meeting the Substance Abuse and Mental Health Services Administration requirements for grant funding.

The Contractor will provide technical assistance to individuals and service providers to promote quality improvement activities in programs that address behavioral health needs of individuals during the COVID-19 pandemic. The Contractor will also provide training on principles and practices for the Government Performance and Results Modernization Act of 2010 to programs that provide behavioral health services.

The Contractor will collect and analyze administrative data identified by the Department and prepare quarterly reports, as required by the grant funding, to be reviewed by the Department.

As referenced in Exhibit A, Section B of the attached cooperative project agreement, the parties have the option to extend the agreement for up two (2) additional years, contingent upon satisfactory delivery of services, available funding, agreement of the parties, and appropriate State approval.

Area served: Statewide

Source of Funds: CFDA #93.665, FAIN # H79FG000210

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

Respectfully submitted,



Lori A. Shibinette  
Commissioner

**COOPERATIVE PROJECT AGREEMENT**

between the

STATE OF NEW HAMPSHIRE, **Department of Health and Human Services**

and the

**University of New Hampshire** of the UNIVERSITY SYSTEM OF NEW HAMPSHIRE

- A. This Cooperative Project Agreement (hereinafter "Project Agreement") is entered into by the State of New Hampshire, **Department of Health and Human Services**, (hereinafter "State"), and the University System of New Hampshire, acting through **University of New Hampshire**, (hereinafter "Campus"), for the purpose of undertaking a project of mutual interest. This Cooperative Project shall be carried out under the terms and conditions of the Master Agreement for Cooperative Projects between the State of New Hampshire and the University System of New Hampshire dated November 13, 2002, except as may be modified herein.
- B. This Project Agreement and all obligations of the parties hereunder shall become effective on the date the Governor and Executive Council of the State of New Hampshire approve this Project Agreement ("Effective date") and shall end on **9/29/21**. If the provision of services by Campus precedes the Effective date, all services performed by Campus shall be performed at the sole risk of Campus and in the event that this Project Agreement does not become effective, State shall be under no obligation to pay Campus for costs incurred or services performed; however, if this Project Agreement becomes effective, all costs incurred prior to the Effective date that would otherwise be allowable shall be paid under the terms of this Project Agreement.
- C. The work to be performed under the terms of this Project Agreement is described in the proposal identified below and attached to this document as Exhibit A, the content of which is incorporated herein as a part of this Project Agreement.

Project Title: **Rapid Response Data Collection and Performance Management**

- D. The Following Individuals are designated as Project Administrators. These Project Administrators shall be responsible for the business aspects of this Project Agreement and all invoices, payments, project amendments and related correspondence shall be directed to the individuals so designated.

**State Project Administrator**

Name: Kerri Swenson  
 Address:  
 Department of Health and Human Services  
 Bureau of Mental Health Services  
 105 Pleasant Street  
 Concord, NH 03301

Phone: (603) 271-5007

**Campus Project Administrator**

Name: Susan Sosa  
 Address: University of New Hampshire  
 Sponsored Programs Administration  
 51 College Rd. Rm 116  
 Durham, NH 03824

Phone: (603)-862-4848


- E. The Following Individuals are designated as Project Directors. These Project Directors shall be responsible for the technical leadership and conduct of the project. All progress reports, completion reports and related correspondence shall be directed to the individuals so designated.

**State Project Director**

Name: Audrey Orphanos

**Campus Project Director**

Name: Josephine Porter

Campus Authorized Official   
 Date 10/13/2020

Address:  
Department of Health and Human Services  
Bureau of Mental Health Services  
105 Pleasant Street  
Concord, NH 03301

Address: University of New Hampshire  
NH IHPP  
4 Liberty Way, Hewitt Hall Rm 202  
Durham, NH 03824

Phone: (603) 271-5000

Phone: (603)-862-2964

F. Total State funds in the amount of \$60,995 have been allotted and are available for payment of allowable costs incurred under this Project Agreement. State will not reimburse Campus for costs exceeding the amount specified in this paragraph.

Check if applicable

Campus will cost-share % of total costs during the term of this Project Agreement.

Federal funds paid to Campus under this Project Agreement are from Grant/Contract/Cooperative Agreement No. **SS-2021-DBH-06-EVALU-01** from **SAMHSA Grant** under CFDA# **93.665**. Federal regulations required to be passed through to Campus as part of this Project Agreement, and in accordance with the Master Agreement for Cooperative Projects between the State of New Hampshire and the University System of New Hampshire dated November 13, 2002, are attached to this document as Exhibit B, the content of which is incorporated herein as a part of this Project Agreement.

G. Check if applicable

Article(s) of the Master Agreement for Cooperative Projects between the State of New Hampshire and the University System of New Hampshire dated November 13, 2002 is/are hereby amended to read:


H.  State has chosen **not to take** possession of equipment purchased under this Project Agreement.  
 State has chosen **to take** possession of equipment purchased under this Project Agreement and will issue instructions for the disposition of such equipment within 90 days of the Project Agreement's end-date. Any expenses incurred by Campus in carrying out State's requested disposition will be fully reimbursed by State.

This Project Agreement and the Master Agreement constitute the entire agreement between State and Campus regarding this Cooperative Project, and supersede and replace any previously existing arrangements, oral or written; all changes herein must be made by written amendment and executed for the parties by their authorized officials.

IN WITNESS WHEREOF, the University System of New Hampshire, acting through the **University of New Hampshire** and the State of New Hampshire, **Department of Health and Human Services** have executed this Project Agreement.

**By An Authorized Official of:**  
**University of New Hampshire**  
Name: Karen M. Jensen  
Title: Director, Research Administration

**By An Authorized Official of:**  
**State of New Hampshire**  
Name: Katja S. Fox  
Title: Director, Division for Behavioral Health

Campus Authorized Official   
Date 10/13/2020

DocuSigned by:  
Signature and Date: *Karen Jensen* 10/13/2020  
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By An Authorized Official of: the New Hampshire Office of the Attorney General  
Name: Catherine Pinos

Title: Attorney

Signature and Date: *Catherine Pinos* 10/27/2020  
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DocuSigned by:  
Signature and Date: *Katya Fox* 10/20/2020  
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By An Authorized Official of: the New Hampshire Governor & Executive Council  
Name:

Title:

Signature and Date:

**EXHIBIT A**

- A. **Project Title:** Rapid Response Program Data Collection and Performance Management
- B. **Project Period:** This Agreement is retroactively effective to July 1, 2020 upon Governor approval, through September 29, 2021.

The parties may extend the Agreement for up to two (2) additional years from the Completion Date, contingent upon satisfactory delivery of services, available funding, agreement of the parties, and approval of the Governor and Executive Council.

- C. **Objectives:** To provide evaluation services to the Bureau of Mental Health Services for the New Hampshire Rapid Response to Behavioral Health Needs During COVID-19 grant.
- D. **Scope of Work:** See Exhibit A-1, Scope of Work; Exhibit A-2, Business Associate Agreement; and Exhibit A-3, DHHS Informaiton Security Requirements.
- E. **Deliverables Schedule:** See Exhibit A-1, Scope of Work.
- F. **Budget and Invoicing Instructions:**

Payment shall be on a cost reimbursement basis for time and material incurred in the fulfillment of this Agreement, as indicated in Exhibit A, Item F-1.

The Department shall pay the campus an amount not to exceed the amount listed in Item F of this Cooperative Project Agreement for the services provided by the Campus pursuant to Exhibit A-1, Scope of Service.

The Campus agrees to provide the servicees in Exhibit A-1, Scope of Service, in compliance with funding requirements. Failure to meet the scope of service may jeopardize the Campus's current and future funding.

The Campus shall submit an invoice in a form satisfactory to the Department by the fifteenth (15th) working day of the following month, which identifies and requests reimbursement for the time and material expenses incurred in the prior month. The Campus shall ensure the invoice is complete,

DocuSigned by:  
Campus Authorized Official *KJ*  
Date: 10/13/2020

dated and returned to the Department in order to initiate payment. The Campus shall retain documentation to support evidence of actual expenditures incurred in fulfillment of this Agreement.

In lieu of hard copies, all invoices may be assigned an electronic signature and emailed to [dhhs.dbhinvoicesmhs@dhhs.nh.gov](mailto:dhhs.dbhinvoicesmhs@dhhs.nh.gov), or invoices may be mailed to:

Financial Manager  
Bureau of Mental Health Services  
Department of Health and Human Services  
105 Pleasant Street, Main Building  
Concord, NH 03301

The Department shall make payment to the Campus within thirty (30) days of receipt of each invoice, subsequent to approval of the submitted invoice and if sufficient funds are available. The final invoice shall be due to the Department no later than forty (40) days after the Cooperative Project Agreement completion date.

The Campus agrees that payment under this Cooperative Project Agreement may be withheld, in whole or in part in the event of non-compliance with the terms and conditions of Exhibit A-1, Scope of Services.

Notwithstanding anything to the contrary herein, the Campus agrees that funding under this Cooperative Project 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 Cooperative Project Agreement.

Changes limited to adjusting amounts within the price limitation and adjusting encumbrances between State Fiscal Years and budget class lines through the Budget Office may be made by written agreement of both parties, without obtaining approval of the Governor and Executive Council, if needed and justified.

**EXHIBIT B**

This Project Agreement is funded under a Grant/Contract/Cooperative Agreement to State from the Federal sponsor specified in Project Agreement article F. All applicable requirements, regulations, provisions, terms and conditions of this Federal Grant/Contract/Cooperative Agreement are hereby adopted in full force and effect to the relationship between State and Campus, except that wherever such requirements, regulations, provisions and terms and conditions differ for INSTITUTIONS OF HIGHER EDUCATION, the appropriate requirements should be substituted (e.g., OMB Circulars A-21 and A-110, rather than OMB Circulars A-87 and A-102). References to Contractor or Recipient in the Federal language will be taken to mean Campus; references to the Government or Federal Awarding Agency will be taken to mean Government/Federal Awarding Agency or State or both, as appropriate.

Special Federal provisions are listed here:  None or

New Hampshire Department of Health and Human Services  
Rapid Response Data Collection and  
Performance Management



**EXHIBIT A-1 SCOPE OF WORK**

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**Scope of Services**

**1. Statement of work**

- 1.1. The Contractor shall provide technical assistance and consultant services to individuals and service providers, as identified by the Department, in response to the COVID-19 pandemic in accordance with:
  - 1.1.1. Applicable federal and state regulations, laws, and administrative rules.
  - 1.1.2. The terms and conditions of the New Hampshire Rapid Response to Behavioral Health Needs during COVID-19 grant (herein referred to as the "Grant") as identified in Exhibit A, Section F of the Cooperative Project Agreement (CPA).
- 1.2. The Contractor shall provide technical assistance and consultant services by:
  - 1.2.1. Collaborating with individuals and service providers, as identified by the Department, to promote Grant quality improvement activities and provide technical assistance in support of the Grant.
  - 1.2.2. Providing training on principles and practices for the Government Performance and Results Modernization Act of 2010 (GPRA) and administrative data collection processes.
  - 1.2.3. Downloading GPRA data from the SAMHSA Performance Accountability and Reporting System (SPARS) for quantitative and qualitative analysis to report to the Department.
  - 1.2.4. Collecting and analyzing administrative data identified by the Department.
  - 1.2.5. Preparing four quarterly reports, subject to the Department's guidance, review and approval.
  - 1.2.6. Preparing a final report, subject to the Department's guidance, review and approval by month 16 of the Grant.

**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 A-2, Business Associate Agreement, which has been executed by the parties.

SS-2021-DBH-06-RAPID-01

University of New Hampshire

Page 1 of 3

Contractor Initials

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Date 10/13/2020



**New Hampshire Department of Health and Human Services  
Rapid Response Data Collection and  
Performance Management**



**EXHIBIT A-1 SCOPE OF WORK**

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- 2.2. The Contractor shall manage all confidential data related to this Agreement in accordance with the terms of Exhibit A-3, DHHS Information Security Requirements.
- 2.3. The Contractor shall comply with all Exhibits A-1 through A-3, which are attached hereto and incorporated by reference herein.

**3. Additional Terms**

**3.1. Impacts Resulting from Court Orders or Legislative Changes**

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

**3.2. Gratuities or Kickbacks**

- 3.2.1. The Contractor agrees that it is a breach of this Agreement to accept or make a payment, gratuity or offer of employment on behalf of the Contractor, any Sub-Contractor or the Department in order to influence the performance of the Scope of Work detailed in Exhibit A-1 of this Agreement. The Department may terminate this Agreement and any sub-contract or sub-agreement if it is determined that payments, gratuities or offers of employment of any kind were offered or received by any officials, officers, employees or agents of the Contractor or Sub-Contractor.

**4. Records**

- 4.1. The Contractor shall keep records that include, but are not limited to:
  - 4.1.1. Books, records, documents and other electronic or physical data evidencing and reflecting all costs and other expenses incurred by the Contractor in the performance of this Agreement, and all income received or collected by the Contractor.
  - 4.1.2. All records must be maintained in accordance with accounting procedures and practices, which sufficiently and properly reflect all such costs and expenses, and which are acceptable to the Department, and to include, without limitation, all ledgers, books, records, and original evidence of costs such as purchase requisitions and orders, vouchers, requisitions for materials, inventories, valuations of in-kind contributions, labor time cards, payrolls, and other records requested or required by the Department.
- 4.2. During the term of this Agreement and the period for retention hereunder, the Department, the United States Department of Health and Human Services, and

                      
[Handwritten initials]

**New Hampshire Department of Health and Human Services  
Rapid Response Data Collection and  
Performance Management**



**EXHIBIT A-1 SCOPE OF WORK**

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any of their designated representatives shall have access to all reports and records maintained pursuant to the Agreement for purposes of audit, examination, excerpts and transcripts. Upon the Department's payment of the price limitation hereunder, the Agreement and all the obligations of the parties hereunder (except such obligations as, by the terms of the Agreement are to be performed after the end of the term of this Agreement and/or survive the termination of the Agreement) shall terminate, provided however that if, upon review of the Final Expenditure Report, the Department shall disallow any expenses claimed by the Contractor as costs hereunder, the Department shall retain the right, at its discretion, to deduct the amount of such expenses as are disallowed or to recover such sums from the Contractor.

**New Hampshire Department of Health and Human  
Services Exhibit A-2**



**STANDARD EXHIBIT I**

The Contractor identified as "University of New Hampshire" in Section A of the General Provisions of the Agreement agrees to comply with the Health Insurance Portability and Accountability Act, Public Law 104-191 and with the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160 and 164 and those parts of the HITECH Act applicable to business associates. As defined herein, "Business Associate" shall 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 Department of Health and Human Services.

**Project Title: Rapid Response Data Collection and Performance Management**  
**Project Period: July 1, 2020-September 29, 2021**

**BUSINESS ASSOCIATE AGREEMENT**

**(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. "Breach Notification Rule" shall mean the provisions of the Notification in the Case of Breach of Unsecured Protected Health Information at 45 CFR Part 164, Subpart D, and amendments thereto.
- c. "Business Associate" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- d. "Covered Entity" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- e. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR Section 164.501.
- f. "Data Aggregation" shall have the same meaning as the term "data aggregation" in 45 CFR Section 164.501.
- g. "Health Care Operations" shall have the same meaning as the term "health care operations" in 45 CFR Section 164.501.
- h. "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.
- i. "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.
- j. "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 164.502(g).

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New Hampshire Department of Health and Human  
Services Exhibit A-2



- k. "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.
- l. "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.
- m. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR Section 164.103.
- n. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- o. "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.
- p. "Unsecured Protected Health Information" shall have the same meaning given such term in section 164.402 of Title 45, Code of Federal Regulations.
- q. 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) 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, the Business Associate, and 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 (including this Exhibit) 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 45 CFR 164.410, 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 Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all remedies. If Covered Entity does not object to

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New Hampshire Department of Health and Human  
Services Exhibit A-2



such disclosure within five (5) business days of Business Associate's notification, then Business Associate may choose to disclose this information or object as Business Associate deems appropriate.

- 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 reasonable security safeguards.

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

- a. The Business Associate shall notify the NH DHHS Information Security via the email address provided in Exhibit K- Information Security Requirements of this Contract, of any Incidents or Breaches immediately after the Business Associate has determined that the aforementioned has occurred and that Confidential Data may have been exposed or compromised.
- b. The Business Associate shall promptly perform a risk assessment when it becomes aware of any of the above situations. The risk assessment shall include, but not be limited to, the following information, to the extent it is known by the Business Associate:
  - The nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
  - The unauthorized person who used the protected health information or to whom the disclosure was made;
  - Whether the protected health information was actually acquired or viewed
  - The extent to which the risk to the protected health information has been mitigated.

The Business Associate shall complete the risk assessment without unreasonable delay and in no case later than two (2) business days of discovery of the breach and after completion, immediately report the findings of the risk assessment in writing to the Covered Entity.

- c. The Business Associate shall comply with all applicable 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(l) herein. 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 pursuant to this Agreement, with rights of enforcement and indemnification from such business associates who shall be governed by the Agreement for the purpose of use and disclosure of protected health information.

New Hampshire Department of Health and Human  
Services Exhibit A-2



- 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 this Exhibit.
- 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 this Exhibit, 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. 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**

New Hampshire Department of Health and Human  
Services Exhibit A-2



- 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 #14 of the 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 I. 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, and the HITECH Act, as codified at 45 CFR Parts 160 and 164 and as amended from time to time. A reference in the Agreement, as amended to include this Exhibit I, 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, including this Exhibit, 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 under the Agreement.
- d. **Interpretation.** The parties agree that any ambiguity in the Agreement or this Exhibit shall be resolved to permit Covered Entity to comply with HIPAA, the Privacy and Security Rule and the HITECH Act.
- e. **Segregation.** If any term or condition of this Exhibit I 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 I are declared severable.
- f. **Survival.** Provisions in this Exhibit I regarding the use and disclosure of PHI, return or destruction of PHI, extensions of the protections of this Exhibit in section (3)(I), and the defense

New Hampshire Department of Health and Human Services Exhibit A-2



and indemnification provisions of section (3) and Paragraph #14 of the Agreement shall survive the termination of the Agreement.

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

Department of Health and Human Services

The State by:

*Katja Fox*

ED9D05B04C63442

Signature of Authorized Representative

Katja Fox

Authorized Representative

Director

Title of Authorized Representative

10/20/2020

Date

Sponsored Programs Administration

University of New Hampshire

DocuSigned by:

*Karen Jensen*

Signature of Authorized Representative

Karen Jensen

Authorized Representative

Director, Pre-Award

Title of Authorized Representative

10/13/2020

Date

*KJ*



**New Hampshire Department of Health and Human  
Services Exhibit A-3  
DHHS Information Security Requirements**



**A. Definitions**

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

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

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

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

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**New Hampshire Department of Health and Human  
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mail, all of which may have the potential to put the data at risk of unauthorized access, use, disclosure, modification or destruction.

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

**I. RESPONSIBILITIES OF DHHS AND THE CONTRACTOR**

**A. Business Use and Disclosure of Confidential Information.**

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

**New Hampshire Department of Health and Human  
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request for disclosure on the basis that it is required by law, in response to a subpoena, etc., without first notifying DHHS so that DHHS has an opportunity to consent or object to the disclosure.

3. If DHHS notifies the Contractor that DHHS has agreed to be bound by additional restrictions over and above those uses or disclosures or security safeguards of PHI pursuant to the Privacy and Security Rule, the Contractor must be bound by such additional restrictions and must not disclose PHI in violation of such additional restrictions and must abide by any additional security safeguards.
4. The Contractor agrees that DHHS Data or derivative data disclosed to an End User must only be used pursuant to the terms of this Contract.
5. The Contractor agrees DHHS Data obtained under this Contract shall not be used for any other purposes that are not indicated in this Contract.
6. The Contractor agrees to grant access to the data to the authorized representatives of DHHS for the purpose of inspecting to confirm compliance with the terms of this Contract.

**II. METHODS OF SECURE TRANSMISSION OF DATA**

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

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wireless network. End User must employ a virtual private network (VPN) when remotely transmitting via an open wireless network.

9. Remote User Communication. If End User is employing remote communication to access or transmit Confidential Data, a virtual private network (VPN) must be installed on the End User's mobile device(s) or laptop from which information will be transmitted or accessed.
10. SSH File Transfer Protocol (SFTP), also known as Secure File Transfer Protocol. If End User is employing an SFTP to transmit Confidential Data, End User will structure the Folder and access privileges to prevent inappropriate disclosure of information. SFTP folders and sub-folders used for transmitting Confidential Data will be coded for 24-hour auto-deletion cycle (i.e. Confidential Data will be deleted every 24 hours).
11. Wireless Devices. If End User is transmitting Confidential Data via wireless devices, all data must be encrypted to prevent inappropriate disclosure of information.

**III. RETENTION AND DISPOSITION OF IDENTIFIABLE RECORDS**

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

**A. Retention**

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

**New Hampshire Department of Health and Human  
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whole, must have aggressive intrusion-detection and firewall protection.

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

**B. Disposition**

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

**IV. PROCEDURES FOR SECURITY**

A. Contractor agrees to safeguard the DHHS Data received under this Contract, and any derivative data or files, as follows:

1. The Contractor will maintain proper security controls to protect Department confidential information collected, processed, managed, and/or stored in the delivery of contracted services.
2. The Contractor will maintain policies and procedures to protect Department confidential information throughout the information lifecycle, where applicable, (from creation, transformation, use, storage and secure destruction) regardless of the media used to store the data (i.e., tape, disk, paper, etc.).

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

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**New Hampshire Department of Health and Human  
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the breach, including but not limited to: credit monitoring services, mailing costs and costs associated with website and telephone call center services necessary due to the breach.

12. Contractor must, comply with all applicable statutes and regulations regarding the privacy and security of Confidential Information, and must in all other respects maintain the privacy and security of PI and PHI at a level and scope that is not less than the level and scope of requirements applicable to federal agencies, including, but not limited to, provisions of the Privacy Act of 1974 (5 U.S.C. § 552a), DHHS Privacy Act Regulations (45 C.F.R. §5b), HIPAA Privacy and Security Rules (45 C.F.R. Parts 160 and 164) that govern protections for individually identifiable health information and as applicable under State law.
13. Contractor agrees to establish and maintain appropriate administrative, technical, and physical safeguards to protect the confidentiality of the Confidential Data and to prevent unauthorized use or access to it. The safeguards must provide a level and scope of security that is not less than the level and scope of security requirements established by the State of New Hampshire, Department of Information Technology. Refer to Vendor Resources/Procurement at <https://www.nh.gov/doiit/vendor/index.htm> for the Department of Information Technology policies, guidelines, standards, and procurement information relating to vendors.
14. Contractor agrees to maintain a documented breach notification and incident response process.
15. Contractor must restrict access to the Confidential Data obtained under this Contract to only those authorized End Users who need such DHHS Data to perform their official duties in connection with purposes identified in this Contract.
16. The Contractor must ensure that all End Users:
  - a. Comply with such safeguards as referenced in Section IV A. above, implemented to protect Confidential Information that is furnished by DHHS under this Contract from loss, theft or inadvertent disclosure.
  - b. Safeguard this information at all times.
  - c. Ensure that laptops and other electronic devices/media containing PHI, PI, or PFI are encrypted and password-protected.
  - d. Send emails containing Confidential Information only if encrypted and being sent to and being received by email addresses of persons authorized to receive such information.

**New Hampshire Department of Health and Human  
Services Exhibit A-3  
DHHS Information Security Requirements**



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

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

**V. LOSS REPORTING**

The Contractor must notify the NH DHHS Information Security via the email address provided in this Exhibit, of any Security Incidents and Breaches immediately after the Contractor has determined that the aforementioned has occurred and that Confidential Data may have been exposed or compromised.

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

- 1. Identify Incidents;
- 2. Determine if personally identifiable information is involved in Incidents;
- 3. Report suspected or confirmed Incidents as required in this Exhibit or P-37;
- 4. Identify and convene a core response group to determine the risk level of Incidents and determine risk-based responses to Incidents; and
- 5. Determine whether Breach notification is required, and, if so, identify appropriate



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Breach notification methods, timing, source, and contents from among different options, and bear costs associated with the Breach notice as well as any mitigation measures.

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

**VI. PERSONS TO CONTACT**

A. DHHS contact for Data Management or Data Exchange issues:

DHHSInformationSecurityOffice@dhhs.nh.gov

B. DHHS contacts for Privacy issues:

DHHSPrivacyOfficer@dhhs.nh.gov

C. DHHS contact for Information Security issues:

DHHSInformationSecurityOffice@dhhs.nh.gov

D. DHHS contact for Breach notifications:

DHHSInformationSecurityOffice@dhhs.nh.gov

DHHSPrivacy.Officer@dhhs.nh.gov

**University of New Hampshire**  
**Rapid Response Data Collection and Performance Management**  
**Exhibit A, Item F-1**

Budget Items	SFY 2021 Budget	SFY 2022 Budget	Total
1. Salaries & Wages	\$ 27,953	\$ 7,198	
2. Employee Fringe Benefits	\$ 12,299	\$ 3,153	
3. Travel	\$ 900	\$ 255	
4. Supplies and Services	\$ 900	\$ 381	
5. Equipment			
6. Facilities & Admin Costs	\$ 6,308	\$ 1,648	
<b>Totals</b>	<b>\$ 48,360</b>	<b>\$ 12,635</b>	<b>\$ 60,995.00</b>

SS-2021-DBH-06-RAPID-01  
University of New Hampshire

Exhibit A, Item F-1  
Page 1 of 1

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Campus Authorized Official  
Date 10/13/2020