



STATE OF NEW HAMPSHIRE

DEPARTMENT OF HEALTH AND HUMAN SERVICES



MJT 49

OFFICE OF INFORMATION SERVICES

129 PLEASANT STREET, CONCORD, NH 03301-3857
603-271-8160 1-800-852-3345 Ext. 8160
Fax: 271-4912 TDD Access: 1-800-735-2964 www.dhhs.nh.gov

Nicholas A. Toumpas
Commissioner

William L. Baggeroer
Chief Information
Officer/Director

November 26, 2013

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

ARRA Funds
100% Federal funds

REQUESTED ACTION

Authorize the Department of Health and Human Services, Office of Information Services, to enter into a participation agreement with the New Hampshire Health Information Organization Corporation, 125 Airport Road, Concord, New Hampshire (Vendor#225807), in the amount of \$107,500 to provide Health Information Exchange capability across the department effective December 20, 2013, or upon the Governor and Council approval date, whichever is later through December 31, 2016. Funds are available in State Fiscal Year 2014 with authority to adjust amounts between State Fiscal Years if needed and justified.

05-95-95-954010-0917, HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVC,
HHS: COMMISSIONER, OFFICE OF INFORMATION SERVICES, HEALTH INFORMATION
EXCHANGE FEDERAL FUNDS

Table with columns: State, Fiscal Year, Class/Code, Object, Class Title, Amount. Row 1: 2014, 102-500731, Contract for Program Services, \$107,500. Row 2: Total, \$107,500.

EXPLANATION

The purpose of the participation agreement with the New Hampshire Health Information Organization Corporation is to enable the Department of Health and Human Services to exchange medical related data with health care providers and other authorized organizations. Pursuant to Chapter 232 (House Bill 489), Laws of 2011, the New Hampshire Health Information Organization Corporation was formed to establish both an intra-state (within New Hampshire) and an inter-state (across states) capable Health Information Exchange. Because the New Hampshire Health Information Organization Corporation is the state's designated Health Information Exchange, the Department of Health and Human Services is required to enter into an agreement with this organization if it is to use the State's designated Health Information Exchange to exchange health care related data in a more secure, private, timely and accurate manner and at less cost.

On February 17, 2009, the President signed the American Recovery and Reinvestment Act of 2009. This statute includes The Health Information Technology for Economic and Clinical Health Act of 2009 that sets forth a plan for advancing the appropriate use of health Information Technology to improve quality of care and establish a foundation for health care reform. The Office of the National Coordinator for Health Information Technology within the U.S. Department of Health and Human Services serves as the principal federal entity charged with coordinating the overall effort to implement a nationwide Health Information Technology infrastructure that allows for the electronic use and exchange of health information.

The Health Information Technology for Economic and Clinical Health Act of 2009 authorized the establishment of several new grant programs that provide resources to pursue establishment of a nationwide Health Information Technology infrastructure. These funding programs include the Health Information Technology Extension Program, the Information Technology Professionals in Health Care, and the State Health Information Exchange Cooperative Agreements Program. Governor John Lynch in April of 2009 designated the Department of Health and Human Services as the State Designated Entity to pursue funding from the State Health Information Exchange Cooperative Agreement.

The objectives of the Department of Health and Human Services align with the New Hampshire Health Information Organization Corporation's mission to provide secure, reliable, and cost effective electronic data communication across the health care community. The Department of Health and Human Services believes participation in the New Hampshire Health Information Organization Corporation will facilitate the Department of Health and Human Services in realizing its goals to improve the quality of care for patients and reduce administrative costs through efficiently exchanging health care related data with authorized organizations.

If the participation agreement with the New Hampshire Health Information Organization Corporation is not approved, the Department of Health and Human Services would be unable to utilize federal funds that expire on February 7, 2014 to participate in the New Hampshire Health Information Organization Corporation's Health Information Exchange. Failure to utilize the Health Information Exchange by the Department of Health and Human Services would hinder the ability of the department to support the New Hampshire Health Information Organization Corporation as established in Chapter 232 (House Bill 489), Laws of 2011 and would compromise the Department of Health and Human Services goals for improved care and reduced administrative costs.

Source of Funds: 100% federal funds.

Geographic Area to be Served: Statewide.

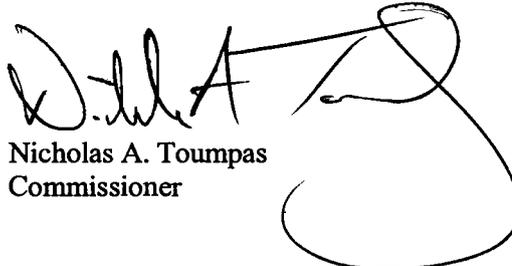
In the event that the Federal Funds become no longer available, General Funds will not be requested to support this program.

Respectfully submitted,



William L. Baggeroer
Chief Information Officer/Director

Approved by:



Nicholas A. Toumpas
Commissioner



Peter C. Hastings
Commissioner

STATE OF NEW HAMPSHIRE
DEPARTMENT OF INFORMATION TECHNOLOGY

27 Hazen Dr., Concord, NH 03301
Fax: 603-271-1516 TDD Access: 1-800-735-2964
www.nh.gov/doit

December 3, 2013

Nicholas A. Toumpas, Commissioner
State of New Hampshire
Department of Health and Human Services
129 Pleasant Street
Concord, NH 03301-3857

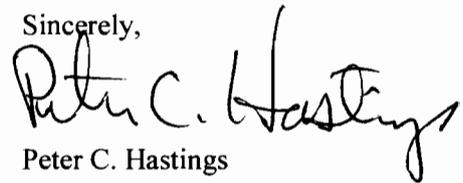
Dear Commissioner Toumpas:

This letter represents formal notification that the Department of Information Technology (DoIT) has approved your agency's request to enter into a participation agreement with New Hampshire Health Information Organization Corporation, 125 Airport Road, Concord, New Hampshire (Vendor #225807), as described below and referenced as DoIT No. 2014-102.

To enter into a participation agreement with the New Hampshire Health Information Organization Corporation to provide Health Information Exchange capability across the Department effective upon the Governor and Council approval date through December 31, 2016. The amount of the agreement is \$107,500. This project was added to the Department of Health and Human Services Strategic Information Technology Plan upon receipt of federal ARRA funds and is now in an operational phase.

A copy of this letter should accompany the Department of Health and Human Services' submission to the Governor and Executive Council for approval.

Sincerely,



Peter C. Hastings

PCH/ltn

Contract #2014-102

cc: Elizabeth Shields, DHHS
Leslie Mason, DoIT

Subject: FORM NUMBER P-37 (version 1/09)

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name <div style="border: 1px solid black; padding: 2px;">Department of Health and Human Services</div>		1.2 State Agency Address <div style="border: 1px solid black; padding: 2px;">129 Pleasant Street, Concord NH 03301</div>	
1.3 Contractor Name <div style="border: 1px solid black; padding: 2px;">New Hampshire Health Information Organization Corporation</div>		1.4 Contractor Address <div style="border: 1px solid black; padding: 2px;">125 Airport Road, Concord NH 03301</div>	
1.5 Contractor Phone Number <div style="border: 1px solid black; padding: 2px;">(603) 225-0900</div>	1.6 Account Number <div style="border: 1px solid black; padding: 2px;">010-095-09170000-500731</div>	1.7 Completion Date <div style="border: 1px solid black; padding: 2px;">12/31/2016</div>	1.8 Price Limitation <div style="border: 1px solid black; padding: 2px;">\$107,500</div>
1.9 Contracting Officer for State Agency <div style="border: 1px solid black; padding: 2px;">Nicholas A. Toumpas, Commissioner</div>		1.10 State Agency Telephone Number <div style="border: 1px solid black; padding: 2px;">(603) 271-9446</div>	
1.11 Contractor Signature <div style="border: 1px solid black; padding: 2px;"></div>		1.12 Name and Title of Contractor Signatory <div style="border: 1px solid black; padding: 2px;">Jeffrey B. Loughlin, Acting Executive Director</div>	
1.13 Acknowledgement: State of NH , County of Rockingham On 11/26/13 , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace <div style="border: 1px solid black; padding: 2px;"></div>			
1.13.2 Name and Title of Notary or Justice of the Peace <div style="border: 1px solid black; padding: 2px;"> <p style="text-align: center;">ROBERTA JANE ARQUETTE Notary Public - New Hampshire My Commission Expires October 2, 2018</p> </div>			
1.14 State Agency Signature <div style="border: 1px solid black; padding: 2px;"></div>		1.15 Name and Title of State Agency Signatory <div style="border: 1px solid black; padding: 2px;">Nicholas A. Toumpas, Commissioner</div>	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: Director, On:			
1.17 Approval by the Attorney General (Form, Substance and Execution) By: On: 11-27-13			
1.18 Approval by the Governor and Executive Council By: On:			

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.
5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

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

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

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.
7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

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

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

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

- 8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;
- 8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;
- 8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or
- 8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

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

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

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination

Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

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

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

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

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

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

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be

attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

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

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

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

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

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

19. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual

intent, and no rule of construction shall be applied against or in favor of any party.

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

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

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

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

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

Exhibit A
Scope of Services

CONTRACT PERIOD: December 20, 2013 to December 31, 2016

CONTRACTOR:

NAME: New Hampshire Health Information Organization Corporation
ADDRESS: 125 Airport Road
Concord, NH 03301

GOVERNING DOCUMENT

The following documents agreed upon between the State of New Hampshire, Department of Health and Human Services and the New Hampshire Health Information Organization Corporation are incorporated into Exhibit A:

1. NH Health Information Organization Participation Agreement
 - a. Addendum 1-HIE Service Addendum
 - b. Addendum 2-Policies and Procedures
 - c. Addendum 3-Delegated Administration Agreement

Initial & Date All Pages
NHHIO Initials: JBL
Date: 11/26/13

NH HEALTH INFORMATION ORGANIZATION PARTICIPATION AGREEMENT

This Agreement is entered into by and between the New Hampshire Health Information Organization Corporation (NHHIO) and the New Hampshire Department of Health and Human Services (DHHS) (the "Participant") effective December 20, 2013 or date of Governor and Council approval, whichever is later. This agreement replaces the existing Participation Agreement dated May 13, 2013.

1. Background and Scope.

1.1 Background.

The New Hampshire Health Information Organization (NHHIO) is the public instrumentality for administration of the New Hampshire state-wide health information exchange (HIE). In order to promote the widespread adoption of the HIE, NHHIO, with the guidance of multiple stakeholders, is deploying a statewide HIE infrastructure (the "NH Health Information Exchange") that will be widely available, and will provide an additional method for healthcare organizations to use to exchange health information. The NH Health Information Exchange will provide a secure data transmission conduit for members of the healthcare community to exchange clinical information regarding patients, consistent with laws, regulations, and patient consent as further detailed below, among participants who have a variety of computer systems in place. The NH Health Information Exchange and/or its Contractors will perform the necessary data transformations so that the information is usable by any participant having appropriate electronic communication access.

1.2 Scope.

This Agreement governs the terms, conditions and limitations of Participant's access to and use of the NH Health Information Exchange and its related online tools and services. Nothing in this Agreement shall preclude any Participant from exchanging information with the State of New Hampshire and its departments and agencies or with other providers who may or may not participate in the NH Health Information Exchange, using other methods of communication, including but not limited to telephone, hard copy delivery, facsimile, and other HIE networks other than the NH Health Information Exchange, and nothing in this Agreement shall apply to any such method of other communication. The NH Health Information Exchange will support the sharing of information between Participants but will not provide Participants the ability to query and retrieve data.

1.3 Role of NHHIO.

NHHIO is making the NH Health Information Exchange available to Authorized Users (as defined in Section 4.2) for use authorized under this Agreement, as one method to promote improved

communication. NHHIO has no responsibility for (a) Participant's determination whether, when, and how to use the NH Health Information Exchange to exchange information with other Participants, or (b) for any decisions and actions taken or not taken by the Participant and/or the Participant's Authorized Users with respect to use of the NH Health Information Exchange. NHHIO will not be able to access Participant data in the ordinary course of business, and will not be responsible for accessing, assessing, managing, or archiving the content of any message sent or received using the NH Health Information Exchange. Participants understand that the NH Health Information Exchange model is a decentralized model where participants and their authorized users shall maintain their own information, using the NH Health Information Exchange as one means to share that information with other participants and their authorized users.

1.4 Terms of Access.

The terms under which the Participant and its Authorized Users may access the NH Health Information Exchange are set forth in this Agreement, including the HIE Service Addendum described in Section 2.3 hereof, the Delegated Administration Agreement Addendum described in Section 4.2 hereof, and the Policies and Procedures Addendum ("Policies and Procedures") described in Section 4.1. Execution of and compliance with this Agreement, including the attached Addenda, are required for participation in and access to the NH Health Information Exchange.

2. Participation Requirements.

2.1 Permitted Uses and Users.

2.1.1 Determination of permitted uses and users. NHHIO shall have sole authority to determine permitted uses and users of the NH Health Information Exchange in accordance with applicable law. The initial permitted uses and users are set forth in subsection 2.1.2 and 2.1.3 below. NHHIO may, in its sole discretion:

- a) allow additional participants and/or authorized users;
- b) allow additional uses;
- c) deny or suspend participation, or use, for any Participant or Authorized User;
- d) de-authorize and/or terminate the privileges of Participant and/or any Authorized Users.

Without in any way limiting NHHIO's foregoing rights, NHHIO may, at any time, suspend Participant's and/or any Authorized Users' access and privileges to the NH Health Information Exchange, in its sole discretion, to prevent unauthorized use of the NH Health Information Exchange, to prevent, investigate, or remedy a privacy breach or security incident, or to protect the integrity of the information systems operated by NHHIO and its Contractors and/or for non-payment of fees hereunder. Restoration of such access or account shall be at NHHIO's sole

discretion.

2.1.2 Permitted uses. It is the ultimate goal of NHHIO that the NH Health Information Exchange shall be used for the exchanges of information that are allowed by law and that are related to treatment, payment, or healthcare operations as defined by HIPAA, and for public health reporting purposes. Under current New Hampshire Law (i.e., NH RSA 332-I:3), only the following uses of the NH Health Information Exchange are permitted:

- a) a health care provider or a business associate of a health care provider may transmit an individual's protected health information through the health information organization;
- b) only a health care provider, for purposes of treatment, may have access to protected health information transmitted through the health information organization;
- c) health care providers otherwise required or authorized by law to submit data to the department of health and human services may do so through a health information organization; provided, that such transmissions meet the same standards for privacy and security of protected health information that apply when such information is exchanged between providers.

Until such time as NHHIO determines otherwise, use of the NH Health Information Exchange shall be **solely** in accordance with the purposes set out in subsections a – c above. As used in this Agreement, “protected health information”, also referred to herein as “PHI”, has the meaning given to it under HIPAA.

2.1.3 Permitted users. Initial participation in the NH Health Information Exchange is open to New Hampshire-licensed health care providers and to the New Hampshire Department of Health and Human Services (“DHHS”), and certain employees and agents of the foregoing authorized as users under Sec. 4.2 below. “Health care provider” is defined under NH RSA 332-I:1(II)(b) to mean “any person, corporation, facility, or institution either licensed by this state or otherwise lawfully providing health care services, including, but not limited to, a physician, hospital, office, clinic, health center or other health care facility, dentist, nurse, optometrist, pharmacist, podiatrist, physical therapist, or mental health professional, and any officer, employee, or agent of such provider acting in the course and scope of employment or agency related to or supportive of health care services.” “Treatment” is defined under 45 CFR § 164.501 to mean “the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.” New Hampshire law adopts this definition (NH RSA 332-I:1(II)(a)(4)). The following terms have the same meaning as given in the regulations under the applicable sections in HIPAA: (1) Business associate; (2) Use; (3) Disclosure; and (4) Protected health information. “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended, and all regulations and rules related

thereto. "HITECH" means the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A of the American Recovery and Reinvestment Act of 2009 and all regulations and rules related thereto.

2.2 Technical, Security, and Administrative Requirements.

NHHIO shall establish, and may, from time to time update, the Policies and Procedures containing technical, security, administrative, and other requirements for participation in the NH Health Information Exchange, the current version of which is attached as an Addendum and is available at NHHIO's web site, (www.nhhio.org). It is the sole responsibility of the Participant to ensure compliance with NH RSA 332-I:3 and associated amendments.

2.3 NH Health Information Exchange Service Addendum.

NHHIO will provide the Participant with access to the NH Health Information Exchange and related services, as more specifically described in one or more HIE Service Addenda that the Participant shall execute contemporaneously with this Participation Agreement, or from time to time thereafter.

2.4 Participation Fees.

NHHIO will establish the participation fees for the NH Health Information Exchange contract period. Such fees, as further described in the Fee Schedule attached hereto as Exhibit 1 and incorporated herein by reference, shall be paid by DHHS in order to access the NH Health Information Exchange. The Fees will be set on a contract basis and shall be paid as specified in the Fee Schedule. DHHS is solely responsible for the cost of integrating its systems with the NHHIO network and maintaining such integration over time, including, but not limited to: interface development, hardware, software, internet connectivity, staff resources and support and maintenance fees associated with integration.

3. NHHIO Responsibilities

3.1 Execution of Participation Agreements.

Execution of this Agreement is required before being granted access to the NH Health Information Exchange.

3.2 Compliance of NHHIO with Laws and Regulations.

NHHIO will comply with applicable federal and state laws and regulations relating to its operation of the NH Health Information Exchange.

3.3 Business Associate Terms.

Unless otherwise provided in an HIE Service Addendum entered into by and between NHHIO and the Participant, NHHIO does not intend or anticipate that in performing any services under this Agreement it will access, use, or disclose any PHI or other personally identifiable information that Participant will send via the NH Health Information Exchange. However, if in connection with any services provided by NHHIO to Participant under this Agreement, NHHIO is a business associate of the Participant as that term is defined by the HIPAA Privacy Rule, then in addition to the terms of this Agreement, NHHIO will be bound by the additional terms specified in Business Associate Agreement (the "BAA") Addendum attached hereto and incorporated herein by reference.

3.4 Security Procedures.

NHHIO will implement safeguards that are reasonable and appropriate to ensure the security of the NH Health Information Exchange. Such security procedures shall include administrative, physical, and technical security safeguards, as more specifically described in the Policies and Procedures.

3.5 Metrics.

NHHIO will track metrics associated with the usage of NH Health Information Exchange, including, but not limited to, usage details, transaction volumes, certificate management and application status.

4. Obligations of Participant.

4.1 Compliance with NH Health Information Exchange Policies and Procedures.

Participant agrees to use the NH Health Information Exchange in accordance with this Agreement, and the Policies and Procedures which NHHIO may update from time to time.

4.2 Delegated Administration.

The Participant shall be solely responsible for determining which of its employees and agents require access to the NH Health Information Exchange, and for complying with the requirements established by NHHIO for designating such employees and independent contractors as authorized users of the NH Health Information Exchange ("Authorized Users"). The Participant must designate a NH Health Information Exchange access administrator ("Access Administrator") by completing and executing the Delegated Administration Agreement Addendum in the form attached hereto. The Access Administrator must sign an Access Administrator Agreement Addendum in the form attached hereto. Only such Access Administrator will be able to designate

Authorized Users for the Participant. Additional information about the designation of Authorized Users is contained in the Policies and Procedures and the Delegated Administration Agreement Addenda. Subject to Section 2.1.1 and to any rights of NHHIO, the Participant's Access Administrator shall be responsible for de-authorizing and terminating the rights of Authorized Users when such individual(s) no longer require access to the NH Health Information Exchange by reason of termination of employment, change in employment function, or as otherwise required in the Policies and Procedures. Participant shall be responsible for its Authorized Users' compliance with this Agreement and applicable law.

4.3 Compliance with Laws and Regulations.

Participant agrees that it and its Authorized Users shall comply with all applicable federal and state laws and regulations relating to and in its use of the NH Health Information Exchange, including without limitation the transmission and/or receipt of PHI.

4.4 Participant Use, Transmission and Receipt of Information.

- a) Participant acknowledges that information and data ("Information") sent via the NH Health Information Exchange, consistent with information sent by other methods, is subject to subsequent use and disclosure by the recipient.
- b) Only Participants (and their Authorized Users) may transmit or receive Information via the NH Health Information Exchange.
- c) If Participant receives Information in error, it is the responsibility of the Participant to comply with all federal and state laws and regulations as to the proper handling/destruction and notifications relating to such Information, and if no such laws or regulations apply, then to notify the sender and to appropriately destroy such Information.
- d) Participant is responsible for the security and privacy of content downloaded or transmitted via the NH Health Information Exchange.
- e) Participant acknowledges that Participant is responsible for selecting and addressing the intended recipient(s) of all Information Participant sends over the NH Health Information Exchange.
- f) Participant acknowledges and agrees that Participant shall be liable for all acts and omissions of its Authorized Users, and for any other of its employees and agents who access the NH Health Information Exchange without proper authorization.

4.5 Patient Consent.

Except as provided for pursuant to NH RSA 332-1:3, VIII and section 2.1.2(c) of this Agreement, Participant shall give all individuals an opportunity to opt out of sharing their names and addresses and PHI through the NH Health Information Exchange. Participant is responsible for obtaining any and all necessary patient consents and authorizations relating to the use and exchange of patient information, including without limitation consent to release HIV test results, genetic test

information, substance abuse information, psychological/mental health information, and as otherwise required by law. In addition, Participant is responsible for providing opt out notices that individuals who choose not to opt out of having their PHI and Information shared using the NH Health Information Exchange thereby consent that any disputes, claims and actions pertaining to such sharing and use of the NH Health Information Exchange shall be governed by and interpreted in accordance with the laws of the State of New Hampshire, without regard to its conflict of law provisions, and that the State of New Hampshire shall be the sole forum for resolution of disputes regarding disputes, claims and actions and agrees to the exclusive personal jurisdiction of the courts located in the State of New Hampshire over the individual with regard to the same. NHHIO may audit Participant and/or request Participant to certify that it is complying with the provisions of this Section 4.5.

4.6 Security Procedures.

Participant will implement safeguards that are reasonable and appropriate regarding access and use of the NH Health Information Exchange to ensure the security of the NH Health Information Exchange and the NHHIO. Such security procedures shall include any and all administrative, physical, and technical security safeguards set forth in the Policies and Procedures.

4.7 Audits.

(a) Compliance with Policies. Participant will be responsible for performing periodic internal reviews or audits to monitor Participant's compliance with this Agreement, including the Policies and Procedures, and for reporting the findings of such reviews/audits to NHHIO. Such audits shall be conducted as reasonably requested by NHHIO, and/or as further provided in the Policies and Procedures.

(b) PHI Transmitted via the NH Health Information Exchange. Participant shall be responsible for maintaining audit trails and access logs as necessary for Participant to meet its obligations under any applicable state or federal law, including HIPAA and HITECH, to provide patients with any notice, reports, and/or accountings regarding access to, or use or disclosure of, a patient's PHI or other personally identifiable information that Participant sends or receives via the NH Health Information Exchange. Without limiting the foregoing, Participant will comply with NH RSA 332-I:3(III), which provides in relevant part that:

The parties transmitting or receiving information through the health information organization shall maintain audit logs in accordance with nationally accepted interoperability standards, practices, regulations, and statutes, including but not limited to:

- (a) The identity of the health care provider accessing the information;
- (b) The identity of the individual whose protected health information was accessed by the health care provider;

- (c) The date the protected health information was accessed; and
- (d) The area of the record that was accessed.

4.8 Investigations and Remediation.

Participant shall adopt policies and procedures for the investigation and remediation of security incidents and privacy breaches, including security incidents and privacy breaches as those terms or versions thereof are defined under HIPAA, HITECH, and other applicable federal and state laws, and shall make such policies and procedures available to NHHIO on request. Participant shall promptly inform NHHIO of any security incident or privacy breach related to Participant's access or use of the NH Health Information Exchange of which the Participant or its Authorized Users become aware, and shall cooperate with NHHIO in the investigation of any security incident or privacy breach relating to Participant's communications. Without limiting the generality of the foregoing, Participant agrees to comply with the requirements of NH RSA 359-C and HIPAA and HITECH.

5. Use, Ownership, and Intellectual Property.

5.1 Retention of Ownership Rights.

Participant, and NHHIO and/or its Contractors, as the case may be, retain all of their respective Proprietary Rights not expressly granted herein, including but not limited to each party's rights to and ownership of their respective content, data, Confidential Information, and any other information or materials. By way of clarification and not limitation, neither Participant nor its Authorized Users or any third party shall obtain no rights in or to NHHIO Technology other than any such rights expressly granted to Participant by the terms of this Agreement. "NHHIO Technology" means the Services, any and all NHHIO or NHHIO Contractor software, hardware, equipment or appliances, private keys or other devices, and all components thereof, including but not limited to the LAND Appliance, the Software, the Documentation, and any other materials provided to or accessed by Participant and/or its Authorized Users, and all Intellectual Property and Proprietary Rights therein. "Proprietary Rights" means any and all ownership rights and other proprietary rights and interests worldwide, including but not limited to, Intellectual Property and privacy rights. "Intellectual Property" means patents, copyrights, business names, trade names, trademarks and service marks and the good will associated with all such names and marks, trade secrets, and any other intellectual, industrial or other proprietary rights of any type in any form protected or protectable under the laws of the United States, any foreign country, or any political subdivision of any country, including, without limitation, any intellectual, industrial or proprietary rights protected or protectable by legislation, by common law or at equity, copyrighted materials, unpublished research and development information, engineering, technical and product specifications, designs, processes, unpatented inventions, mask ware, mask works, know how, show how, methods and procedures, logos, designs, technical data, licenses to practice any of the foregoing, and physical embodiments of any of the foregoing, and any applications and

registrations or issuances and associated proceedings related to the same.

5.2 HIE Services.

Participant agrees to comply with the terms of use, ownership, and Intellectual Property terms stated in any HIE Service Addenda that the Participant may execute contemporaneously with this Participation Agreement, or from time to time thereafter.

5.3 Participant obligations as to NHHIO Technology.

Participant acknowledges and agrees that its possession, installation or use of any NHHIO Technology in conjunction with its use of the NH Health Information Exchange, the payment of any fee hereunder, or otherwise, will not transfer to Participant any title to the NHHIO Technology and Participant agrees to comply with any terms of use related to such NHHIO Technology. Any NHHIO Technology must be securely stored at the Participant's location. If any NHHIO Technology is compromised, it is the responsibility of the Participant to notify NHHIO immediately after discovery such compromise of the NHHIO Technology and to take such steps as required under law to address the same, and to take appropriate steps to mitigate any harm and to cooperate with NHHIO with regard to addressing the same.

5.4 Confidential Information.

Participant and NHHIO agree that any information disclosed by one party to the other or obtained or received by one party from the other, including third party information obtained from or through a party to this Agreement, and information obtained from a Contractor or third parties, that does not fall within one of the exceptions listed in the next sentence, shall constitute Confidential Information, and shall include, but not be limited to, PHI and all Code and Documentation. Information shall not be considered confidential to the extent, but only to the extent, that such information is: (i) already known to the receiving party free of any restriction at the time it is obtained from the disclosing party, (ii) subsequently learned from an independent third party free of any restriction and without breach of this Agreement; (iii) is or becomes publicly available through no wrongful act of the receiving party; or (iv) is independently developed by the receiving Party without reference to information which is confidential information of the disclosing Party. The receiving Party may disclose Confidential Information of the disclosing party when required by applicable law or judicial process, but only after providing prompt written notice to the disclosing party of such request for confidential information, which notice shall include an indication of how the receiving party's intends to handle such request, and the opportunity for the disclosing party to oppose such disclosure requirement. NHHIO may disclose protected health information to its employees, and also to its Contractors and agents who are bound in writing to maintain the confidentiality of the Confidential Information. Where applicable, NHHIO also may disclose Confidential Information in accordance with the terms of the BAA, and in the case of any conflict between the BAA and this Agreement, the BAA shall govern. A party to this Agreement

also may disclose Confidential Information its legal counsels who are under an obligation of confidentiality.

6. Miscellaneous Terms and Conditions.

6.1 Term and Termination.

6.1.1 The term of this Agreement shall commence upon the Effective Date and shall remain in effect for three (3) years from the Effective Date of this Agreement (the "Initial Term"). NHHIO shall provide the Participant in writing 60 days prior to the expiration of the Initial Term or the subsequent renewal terms a renewal notice in additional one year terms. If no action is taken by Participant prior to the expiration, the current term shall automatically renew in one year terms. After the Initial Term, either Participant or NHHIO may terminate this Agreement without cause upon not less than thirty (30) days prior written notice, at which time this Agreement, and Participant's access to and use of the NH Health Information Exchange, shall terminate.

6.1.2 Either party may terminate this Agreement effective immediately by written notice to the other if: (a) the other party, or any person to whom that party has disclosed Confidential Information of the other, breaches any confidentiality provisions of this Agreement or otherwise violates an obligation of confidentiality with regard to such Confidential Information, including any BAA, (b) the other party becomes insolvent or bankrupt, or institutes or has instituted against it bankruptcy, liquidation or insolvency proceedings, appointment of a trustee or receiver for its property or business, or any assignment, reorganization or arrangement for the benefit of its creditors, (c) suspends or ceases to conduct business in the ordinary course, or (d) NHHIO or any Contractor determines that any NHHIO Technology may be infringing and that no commercially reasonable alternative is available.

6.1.3 Upon termination or expiration of this Agreement, and/or as required by any BAA, both parties shall promptly: (a) discontinue use of all of the other's Confidential Information; (b) permanently remove all such Confidential Information from all computers and human and machine-readable media, memory and storage devices; (c) return to the other or destroy all such Confidential Information and confirm in writing the same. These same obligations shall apply to any Confidential Information disclosed to third parties. In addition, all licenses and any other rights and services provided to Participant as set forth in this Agreement shall terminate immediately upon termination and Participant and its Authorized Users shall cease all uses of NHHIO Technology and shall promptly return to NHHIO, at Participant's sole cost, all NHHIO Technology that is in tangible for such as the LAND Appliance, Documentation, and the like.

6.1.4 Payment obligation upon termination. Upon termination or expiration of this Agreement, NHHIO shall retain all fees paid. Participant understands that under the fee schedule attached as Exhibit 1, in order to receive the discounted fee pricing Participant must participate in the NH Health Information Exchange and pay the applicable fees for a period of three years from the Effective Date. If this Agreement is terminated by NHHIO for cause, prior to the expiration of such three year period, Participant shall, within thirty (30) business days of termination, pay to NHHIO all remaining fees due under the Initial Term fee schedule.

6.2 Amendments.

6.2.1 Amendment of Policies and Procedures. NHHIO may unilaterally amend the Policies and Procedures from time to time as necessary in its judgment to comply with changes in the applicable laws and regulations, to comply with changes regarding Contractor agreements and/or requirements, or as it otherwise deems necessary for the security and proper operation of the NH Health Information Exchange. NHHIO will provide notice of changes by email to the Participant's designated Access Administrator and by posting changes to the NH Health Information Exchange website in a manner and form that makes the changes apparent and readily available for review. NHHIO will post any such amendments on the NH Health Information Exchange website at least thirty days before implementation of the amendment, but reserves the right to provide less notice, including no prior notice, if NHHIO reasonably determines that less notice is necessary for the security of the NH Health Information Exchange or NHHIO, or the amendment is required in order for NHHIO, the Participant, or any other participant(s) of the NH Health Information Exchange to comply with applicable laws or regulations. In that case, NHHIO may implement the amendment within a shorter period of time as NHHIO reasonably determines is appropriate under the circumstances, but will provide as much notice of the amendment as reasonably possible. It is the responsibility of the Participant to check the NH Health Information Exchange Website periodically for such updates. Participant's continued use of the NH Health Information Exchange constitutes acceptance of the changes.

6.2.2 Amendment of Agreement. Participant agrees that it will execute amendments of this Agreement in a form and substance determined by NHHIO if NHHIO determines that such amendments are required by applicable law or by changes related to Contractor agreements. The parties also may agree to amend this Agreement. All amendments to this Agreement must be in writing and signed by duly authorized representatives of each party.

6.3 Accuracy of Information.

6.3.1 Participant hereby acknowledges that all information available through the NH Health Information Exchange originates from and is controlled by the Participant and/or other participants of the NH Health Information Exchange and not NHHIO. All such information is subject to change arising from numerous factors, including without limitation, changes to patient health information made at the request of the patient, changes in the patient's health condition, the

passage of time and other factors. NHHIO neither initiates the transmission of any information nor monitors the content of information being transmitted. NHHIO has no responsibility for and assumes no liability related to the accuracy, content, currency, completeness, or delivery of any information either provided or accessed by the Participant or its Authorized Users via the NH Health Information Exchange. In time sensitive or life threatening situations, it is the sole responsibility of the Participant to use additional means of communication, and not rely solely on the NH Health Information Exchange to communicate.

6.3.2 The Participant acknowledges and agrees that any information accessed by the Participant or its Authorized Users is provided on an "AS IS" basis, and the Participant will take all reasonable steps necessary to inform recipients of such information of their responsibility to review, update and confirm the accuracy of any information accessed through the NH Health Information Exchange.

6.3.3 Use of the NH Health Information Exchange is not a substitute for a health care provider's standard practice or professional judgment. Any decisions with respect to the appropriateness of diagnoses or treatments or the validity or reliability of information are the sole responsibility of the Participant.

6.4 DISCLAIMER OF LIABILITY.

EXCEPT AS MAY BE REQUIRED BY LAW (AND IN THAT CASE, ONLY TO THE EXTENT REQUIRED BY LAW), NHHIO DISCLAIMS ALL LIABILITY WHATSOEVER ARISING OUT OF OR RELATED TO PARTICIPANT'S OR ITS AUTHORIZED USERS' ACCESS TO AND USE OF THE NH HEALTH INFORMATION EXCHANGE, REGARDLESS OF WHETHER A CLAIM FOR ANY SUCH LIABILITY IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, NEGLIGENCE OR OTHER TORT, OPERATION OF LAW OR ANY OTHER THEORIES OF LIABILITY, EXPRESS OR IMPLIED, AND IT IS AGREED THAT NEITHER NHHIO NOR ITS CONTRACTORS, NOR THEIR RESPECTIVE MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES, NOR ALL OF THEIR RESPECTIVE HEIRS, ESTATES, SUCCESSORS AND ASSIGNS ("NHHIO PARTIES") SHALL HAVE ANY SUCH LIABILITY. WITHOUT IN ANY WAY LIMITING THE FOREGOING DISCLAIMER OF LIABILITY, IT IS EXPRESSLY AGREED THAT IN NO EVENT WILL NHHIO PARTIES BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR ENHANCED DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, LOSS OF INFORMATION OR DATA, OR BUSINESS INTERRUPTION, REGARDLESS OF WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON

BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, NEGLIGENCE OR OTHER TORT, OPERATION OF LAW OR ANY OTHER THEORIES OF LIABILITY, EXPRESS OR IMPLIED, EVEN IF SUCH PARTY HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. NHHIO DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION OR INTERNET SERVICE PROVIDERS OR THE NH HEALTH INFORMATION EXCHANGE. IN THE EVENT A COURT OF APPROPRIATE JURISDICTION DETERMINES THAT THE EXCLUSION OF LIABILITY AGREED TO HEREIN IS UNENFORCEABLE IN WHOLE OR IN PART, THEN THE PARTIES AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL NHHIO PARTIES' AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT, BASED ON ANY THEORY OF LIABILITY OR CAUSE OF ACTION, EXCEED THE TOTAL AMOUNT OF SIXTY THOUSAND DOLLARS (\$60,000.00).

6.5 NO WARRANTIES.

ACCESS TO AND USE OF THE NH HEALTH INFORMATION EXCHANGE, INCLUDING BUT NOT LIMITED TO THROUGH THE PROVISION OF ANY NHHIO TECHNOLOGY, THE NHHIO TECHNOLOGY, AND THE INFORMATION OBTAINED OR TRANSMITTED BY THE PARTICIPANT OR AUTHORIZED USERS BY OR THROUGH USE OF THE NH HEALTH INFORMATION EXCHANGE, ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, TITLE, NON-INFRINGEMENT, ABSENCE OF ANY LIEN, ENCUMBRANCE OR SECURITY INTEREST, AND/OR QUIET ENJOYMENT. THE PARTICIPANT IS SOLELY RESPONSIBLE FOR ANY AND ALL ACTS OR OMISSIONS TAKEN OR MADE IN RELIANCE ON THE NH HEALTH INFORMATION EXCHANGE OR THE INFORMATION OBTAINED OR TRANSMITTED BY USE OF THE NH HEALTH INFORMATION EXCHANGE, INCLUDING INACCURATE OR INCOMPLETE INFORMATION.

6.6 Indemnity.

Participant shall be responsible for any claims brought against Participant by a third party arising out of or based on the actual or alleged (a) negligence, recklessness, and/or intentional or willful misconduct (including fraud and criminal conduct) of, or (b) material breach of this Agreement by, Participant and/or its Authorized Users. NHHIO shall be responsible for any claims brought against NHHIO by a third party arising out of or based on the actual or alleged (a) negligence, recklessness, and/or intentional or willful misconduct (including fraud and criminal conduct) of, or (b) material breach of this Agreement by, NHHIO.

6.7 Severability.

Any provision, in whole or in part, of this Agreement which is determined to be invalid or unenforceable will be ineffective to only to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

6.8 Governing Laws.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of New Hampshire, without regard to its conflict of law provisions, and the State of New Hampshire shall be the sole forum for resolution of disputes regarding this Agreement or the subject matter thereof. The parties hereto agree to the exclusive personal jurisdiction and venue of the courts located in the State of New Hampshire over them with regard to the same.

6.9 Survival.

Sections 2.4, 4.3 - 4.7, 5, 6.1., 6.3 – 6.15, and the BAA Addendum shall survive the termination of this Agreement, as shall any other provisions which by their nature and/or context would normally be deemed or expected to survive. Except as otherwise provided in this Agreement, upon termination of this Agreement, all other rights, privileges, obligations and responsibilities of the each party with respect to the other party shall terminate.

6.10 Contractors.

“Contractor” means contractor, subcontractor, licensor, and/or supplier.

6.11 Interpretation.

This Agreement shall not be subject to any rules of construction against the drafter of this Agreement. Headings are for informational purposes only. The terms “including” and “without limitation” shall mean “including, but not limited to.”

6.12 Assignment; Agency.

Participant may not assign its rights under this Agreement without the consent of NHHIO and any such unauthorized assignment shall be null and void and without legal effect. Neither party is an agent of the other, but instead they are independent contractors, and neither party may bind the other in any way without the other’s express written consent.

6.13 Force Majeure.

Without limiting the provisions of Sections 6.4 and 6.5, neither NHHIO nor its Contractors shall in any circumstance be in breach of this Agreement nor liable for delay in performing, or failure to perform, any obligations under this Agreement if such delay or failure results from a cause reasonably beyond their control.

6.14 Notices.

All notices provided for herein shall be in writing and sent via certified mail, return receipt requested to the contact addresses set forth on the signature page or to such other addresses as the parties indicate by appropriate notice under this Section. Notice shall be deemed to have been given upon delivery with confirmation of receipt (unless received after 5 pm in the place of receipt, in which case receipt shall be deemed to have occurred on the next business day). In case delivery as provided for herein is not accepted, notice shall be deemed given on the third business day after mailing.

6.15 Complete Agreement.

This Participation Agreement along with the HIE Service Addendum, The BAA Addendum, the Policies and Procedures Addendum, the Delegated Administration Agreement Addendum and attached Access Administrator Designation Form, the Access Administrator Agreement Addendum, and any and all schedules, attachments and exhibits to the foregoing, as may be amended from time to time, comprise the complete agreement between the parties (collectively the "Agreement"), and constitutes the complete understanding and agreement of the parties with respect to the subject matter thereof. All other representations, promises, understandings and agreements are superseded by this Agreement. Except as otherwise provided in this Agreement, nothing in this Agreement shall be construed as giving any third party any right, remedy or claim. In the event of a conflict between the Participation Agreement and the BAA, the terms of the BAA shall take precedence and control; as to conflicts between the Participation Agreement and any other Addendum, the terms of the Participation Agreement shall take precedence and control. Unless otherwise specifically provided in the Addenda, capitalized terms shall have the same meaning as they have in the Participation Agreement. Any terms defined in any Addenda which are not defined in the Participation Agreement or in any other Addenda shall have the meaning ascribed to them for all aspects of the Agreement except in the case of an inconsistency with the Agreement, which in that case shall govern. Except for the BAA, each Addendum is subject to the terms of the Participation Agreement, including, but not limited to, provisions governing termination, warranties and disclaimer of liability.

The parties hereby execute this Agreement by signing in the places allocated below according to the convention /s/ Name, and agrees said electronic signature shall be valid and binding under NH RSA 294-E (Uniform Electronic Transactions Act) and the E-Signatures in Global and National Commerce Act (where applicable) and other applicable law.

Initial & Date All Pages
NHHIO Initials: JBL
Date: 11/26/13

Participant

New Hampshire Department of Health and Human Services

By (signature):

Name:

Nicholas A. Toumpas

Title:

Commissioner

Date:

 11/26/13

NHHIO

By (signature):

Name:

Jeffrey B. Loughlin

Title:

Acting Executive Director

Date:

11/26/13

Initial & Date All Pages

NHHIO Initials: JBL

Date: 11/26/13

ADDENDUM 1 - HIE SERVICE ADDENDUM

This HIE Service Addendum supplements the terms of and is made a part of the Participation Agreement (“the “Agreement”) entered into by and between NHHIO and Participant.

1.0 Policies and Procedures.

This HIE Service Addendum and the Services used by Participant are subject to the provisions of the NHHIO Policies and Procedures Addendum. The current version of the Policies and Procedures is available at NHHIO’s web site, (www.nhhio.org).

2.0 Services.

2.1 Services to be provided. The Participant, by executing this HIE Service Addendum and by complying with its terms and with the terms of the Agreement, including the Policies and Procedures, will be authorized to: (a) connect to the NH Health Information Exchange using one or more methods specified below, (b) conduct direct secure messaging over the NH Health Information Exchange; (c) access and use the NHHIO Web Portal, Provider Directory service, Electronic Master Person Index (subparts a – c , together with the LAND Appliance and any other appliances, devices, equipment and/or hardware, and all Software, and any and all components thereof, provided to Participant and/or its Authorized Users for use in connection with this HIE Service Addendum and the NH Health Information Exchange are referred to collectively as the “Services”). The Services provided in this HIE Service Addendum are provided through NHHIO Contractors. The Participant may select more than one service and may execute more than one HIE Service Addendum to include additional services as available if desired at a later date, all of which services shall be considered Services under this HIE Service Addendum and the Agreement.

Methods of connecting to the HIE:

Direct XDR/SOAP Direct SMTP/SMIME

Local Access Network Distribution (LAND) Appliance

Direct Webmail

2.2 Contractors. Participant acknowledges that the Services being provided under this Addendum are provided by one of more Contractors of NHHIO, and the ability of NHHIO to provide the Services are subject to the terms and continued existence and effectiveness of those third party contractual arrangements. Participant will agree to amendment and/or termination of this HIE Service Addendum and any other agreements between it and NHHIO that are necessitated by virtue of any change(s) in the provisions and/or status of such third

Page 1 of 10

Initial & Date All Pages

NHHIO Initials: JBL

Date: 11/26/13

party agreements. NHHIO will use reasonable efforts to provide Participant with prior notice of the need for such amendment or termination, unless the circumstances are such that immediate action is required.

2.3 General Restrictions and Limitations. In addition to any other restrictions and limitations contained in the Agreement, with regard to the NHHIO Technology, Participant acknowledges and agrees that neither it, nor its Authorized Users nor any other person under its control, shall or shall instruct or cause others to:

2.3.1 install or configure any NHHIO Technology other than in accordance with the terms of the Agreement and any instructions, Documentation, and/or Specifications provided by NHHIO or its Contractors to Participant or its Authorized Users;

2.3.2 reverse assemble, reverse compile, reverse engineer or otherwise attempt to access or derive the Source Code of the NHHIO Technology;

2.3.3 copy, distribute, disclose, modify, enhance or create Derivative Works of the NHHIO Technology;

2.3.4 lease, sublease, sublicense, sell, distribute, rent, or grant other rights in the NHHIO Technology or engage in service bureau work, application service provider services or time-sharing arrangements with respect to the NHHIO Technology;

2.3.5 allow any unauthorized person(s) access to the NHHIO Technology;

2.3.6 use or transfer the NHHIO Technology outside of the United States;

2.3.7 use the NHHIO Technology other than in accordance with the terms of the Agreement;

2.3.8 assign, market, encumber the NHHIO Technology, or take any action that would cause the NHHIO Technology to be placed in the public domain;

2.3.9 remove, or knowingly allow (through act or omission) to be removed, any copyright, trade secret or other proprietary rights notice from the NHHIO Technology;

2.3.10 request, permit or authorize anyone other than as permitted or instructed by NHHIO to provide any support services in respect of the NHHIO Technology;

2.3.11 create separate license keys that enable the NHHIO Technology, including the LAND Software and LAND Appliance;

2.3.12 transfer, sublicense, loan, sell, lease or use for timesharing or service bureau purposes the NHHIO Technology;

2.3.13 ship, divert, transship, transfer, export or re-export the NHHIO Technology thereof into any country or use it in any manner prohibited by any export control laws, restrictions, or regulations, including those administered by the U.S. Commerce Department's Bureau of Export Administration, the U.S. Department of Treasury's Office of Foreign Assets Control or any other applicable government agency; or

2.3.14 use the NHHIO Technology for High Risk Activities, and, WITHOUT IN ANY WAY LIMITING THE DISCLAIMERS OF WARRANTIES AND LIABILITY CONTAINED IN THE AGREEMENT, NHHIO FOR ITSELF AND ITS CONTRACTORS SPECIFICALLY DISCLAIMS ALL WARRANTIES AND LIABILITY FOR ANY USE OF THE NHHIO TECHNOLOGY FOR HIGH RISK ACTIVITIES.

2.4 General Obligations. In addition to any other obligations of Participant set forth in the Agreement between the parties, Participant agrees that Participant will:

2.4.1 maintain at its own expense a VPN connection or other mutually agreeable communication link to enable remote access to its systems by NHHIO and/or its Contractors for the purpose of diagnosing reported errors. Participant will provide NHHIO or Contractors designated by NHHIO with all reasonably relevant and necessary information and access to enable NHHIO or its Contractors to duplicate any error;

2.4.2 upgrade to the latest of version of Software, if applicable, as requested by NHHIO;

2.4.3 have valid license agreements for all applications that interface with the NH Health Information Exchange and the NHHIO Technology, and notify NHHIO and get prior permission from NHHIO as to upgrades or other modifications to such interfaced applications;

2.4.4 cooperate with NHHIO and its Contractors, including but not limited to providing reasonable access to Participant's records, systems, facilities and premises as may be required for NHHIO and its Contractors to fulfill their contractual and/or legal obligations;

2.4.5 use the NHHIO Technology only for purposes of the NH Health Information Exchange and only in accordance with the terms of the Agreement between the parties;

2.4.6 have sole responsibility for maintaining the confidentiality and security of the passwords used to access the NHHIO Technology by Participant and its Authorized Users. WITHOUT IN ANY WAY LIMITING THE DISCLAIMERS OF WARRANTIES AND LIABILITY CONTAINED IN THE AGREEMENT, NEITHER NHHIO NOR ITS CONTRACTORS SHALL HAVE ANY LIABILITY TO PARTICIPANTS, AUTHORIZED USERS OR ANY THIRD PARTY FOR UNAUTHORIZED ACCESS OF NHHIO TECHNOLOGY OR ANY INTERFACED APPLICATIONS RESULTING FROM A FAILURE OF PARTICIPANT OR ITS AUTHORIZED USERS TO MAINTAIN THE CONFIDENTIALITY AND SECURITY OF THEIR PASSWORDS, OR FOR ANY PHI WHICH MAY BE OBTAINED AS A RESULT THEREOF;

2.4.7 require that each Authorized User of the NHHIO Technology has access restrictions appropriate to that Authorized User's position;

2.4.8 install and maintain appropriate security solutions to avoid unauthorized access to its network, if any, including without limitation adequate firewall, intrusion detection, anti-virus, anti-malware and security solutions;

2.4.9 advise NHHIO in writing prior to undertaking any modifications or other changes to Participant's technical environment, Participant hereby acknowledging that amendments to the configuration of its systems and technical environment may impact the Services;

2.4.10 ensure that all information and materials that it provides to NHHIO or NHHIO's Contractors will be accurate and complete. Participant acknowledges that NHHIO and its Contractors will rely on the accuracy and completeness of any information and materials provided. NHHIO and its Contractors shall have no obligation for failure to provide Services where such failure is directly and proximately caused by (i) modifications or alterations to the NHHIO Technology not made by NHHIO or its Contractors or approved in writing by NHHIO, (ii) malfunctions of Participant's equipment or third party software or equipment; or (iii) any act or omission of Participant;

2.4.11 use the NHHIO Technology only in accordance with the Agreement and the Documentation;

2.4.12 ensure that Authorized Users are appropriately trained in the use of the Services;

2.4.13 not alter or modify the Documentation or in any way whatsoever permit the Documentation to be combined with other Intellectual Property to form a combined work or Derivative Work, and not reproduce the Documentation without NHHIO's written consent;

2.4.14 during the term of the Agreement, and except as otherwise specifically permitted in the Agreement, not request, permit or authorize anyone other than as approved by NHHIO to provide any services, including support, in respect of the Services;

2.4.15 implement, and require Authorized Users to implement, appropriate safeguards to prevent unauthorized access to or use of the Services, including unauthorized access and use in violation of applicable laws and regulations;

2.4.16 maintain, and require Authorized Users to maintain, the secrecy of all information required to access the Services, including user names and passwords;

2.4.17 promptly notify NHHIO of any unauthorized access or use of the NHHIO Technology of which Participant or any Authorized User becomes aware;

2.4.18 use the Services, including the LAND Appliance, only with the software, hardware, equipment and accessories specified in the Documentation;

2.4.19 appropriately train all Authorized Users with regard to use of the services;

2.4.20 not infringe, misappropriate, violate, or challenge the Proprietary Rights, including Intellectual Property, of NHHIO or its Contractors in or to any NHHIO Technology; and

2.4.21 use any Software only in Executable Code form and only for the purposes of using the NH Health Information Exchange.

2.5 Prohibited Uses. Any use of the NHHIO Technology not expressly permitted by this Agreement is prohibited.

2.6 Ownership. If Customer suggests new features or functionality that NHHIO, in its sole discretion, adopts for the NHHIO Technology, such new features or functionality will be the sole and exclusive property of NHHIO or its Contractors (as the case may be). Any portion of the Software merged into or used in conjunction with other software or hardware will continue to be the property of NHHIO or its Contractors (as the case may be) and subject to the terms and conditions of the Agreement. Any and all trademarks, trade names, logos, service marks, trade dress and other proprietary indicia of NHHIO or its Contractors (collectively, the "Marks") are and shall remain the exclusive property of NHHIO or its Contractors (as the case may be). The Participant has no rights in and to the Marks and may not modify the Marks or utilize the Marks for any purpose without the prior written consent of NHHIO. Any unauthorized use or misuse of the Marks by Participant or its Authorized Users shall constitute an infringement of NHHIO's or its Contractors' (as the case may be) rights in and to the Marks and shall constitute a material breach of the Agreement.

For the avoidance of doubt, nothing in the Agreement grants to Participant or any Authorized User any rights whatsoever in or relating to the Source Code of any Software.

3. Support.

Support will be provided to Participant by NHHIO and/or its Contractors in accordance with Exhibit 1 attached hereto and incorporated herein by reference

4.0 Direct XDR/SOAP and SMTP/SMIME Additional Terms.

If the Participant has selected Direct XDR/SMIME services in Section 3 of this HIE Service Addendum, the following additional provisions shall apply.

The Direct XDR/SOAP and/or Direct SMTP/SMIME service is provided to Participants through a Contractor in the form of Software as a Service ("SaaS"). If Participant elects to use the Direct XDR/SOAP and/or Direct SMTP/SMIME service ("SaaS Service"), Participant shall comply with

the following additional terms:

4.1 ensure that use of the SaaS Service and underlying Software is performed in accordance with the Documentation, but only to the extent any documentation is provided to Participants;

4.2 ensure that the use of the SaaS Service and underlying software is performed by trained employees or persons under their supervision;

4.3 ensure that the SaaS Service and underlying software is used in a technical environment that meets the standards set forth in the Contractor requirements which will be provided to Participant by NHHIO; and

5.0 Local Access for Network Distribution (LAND) Appliance Additional Terms.

If the Participant has elected to use LAND Appliance services ("LAND Services") in Section 3 of this HIE Service Addendum, the following additional provisions shall apply. Without limiting the generality of Contractor defined above, as used in this HIE Service Addendum, "LAND Contractor" shall mean any Contractor(s) used by NHHIO to provide hardware, software, or services in connection with the LAND Appliance (defined below).

5.1 LAND Provisioning.

NHHIO or its LAND Contractor will ship a LAND Appliance to Participant within five (5) business days of NHHIO providing to its LAND Contractor the necessary order form subsequent to NHHIO's receipt of Participant's election to use the LAND Services under this HIE Service Addendum. LAND Contractor shall deliver a pre-configured LAND Appliance to Participant based on Participant's specific requirements as NHHIO and LAND Contractor agree. LAND Contractor shall provide telephone support to Participants and Authorized Users as set forth on Exhibit 1 hereto.

5.2 LAND License Grant.

Subject to the terms and conditions of the Agreement, NHHIO hereby provides and Participant agrees to comply with a non-exclusive, limited perpetual license to enable its Participants and Authorized Users to use (i) the LAND Appliance (which includes the LAND software that is installed on the LAND Appliance), and (ii) certain proprietary documentation in the form generally made available by LAND Contractor to its customers for use with these deliverables, (all together, the "LAND Appliance") for the purposes set forth. To the extent allowed under the Agreement, the LAND Appliance may be used by the Participant and its Authorized Users to (a) transmit and receive data to and from the NH Health Information Exchange servers, including NHHIO's own servers as well as servers provided on its behalf by third parties as designated or permitted by NHHIO, and (b) exchange information between Participants

5.3 License Term and Termination.

The term of the license provided hereunder commences upon installation of the LAND Appliance by Participant. NHHIO may terminate this HIE Service Addendum, in whole or in part, as set forth in Section 6 of the Agreement.

6.0 Webmail

If the Participant has selected Webmail services in Section 3 of this HIE Service Addendum, the following additional provisions shall apply.

6.1 Security Procedures.

Participant will implement safeguards that are reasonable and appropriate to ensure the security of the NH Health Information Exchange and the NHHIO. Security of any Participant Authorized Users' PCs, laptops, tablets or other devices which use Webmail is the responsibility of the Participant. Participant is also responsible for having processes in place to reduce vulnerabilities for data breach. Security of webmail content downloaded via the NHHIO Webmail interface is the responsibility of the Participant. Such security procedures shall include administrative procedures, physical security measures, and technical security safeguards, as more specifically described in the NHHIO Policies and Procedures.

6.2 Webmail Capacity.

NHHIO will notify an Authorized User when the Authorized User's webmail account has reached its storage capacity limit, after which the webmail account will not be able to receive additional messages until messages have been removed to allow additional storage. Although NHHIO will not delete or archive messages in an Authorized User's webmail account, it **will not deliver** messages to an account when it is over its storage capacity limit. PARTICIPANT, FOR ITSELF AND ITS AUTHORIZED USERS, AGREES AND ACKNOWLEDGES THAT THEY WILL NOT BE ABLE TO RECEIVE MESSAGES SENT TO THEIR WEBMAIL ACCOUNTS WHEN THE ACCOUNTS ARE OVER THE STORAGE LIMIT CAPACITY. It is the responsibility of Participant and its Authorized Users to make sure that all Webmail accounts are managed appropriately to provide sufficient capacity.

6.3 Webmail Exchange Restrictions.

Participant is not allowed Webmail exchange with anyone other than (a) participants who are party to a similar agreement with NHHIO to use the NH Health Information Exchange, and (b) such participants respective authorized users.

6.4 Supported Browsers.

The HIE will support browsers based on a default or medium security browser setting in accordance with the Policies and Procedures. A list of specific browsers supported is included in the Policies and Procedures.

7.0 NHHIO Web Portal Terms.

The following additional provisions shall apply to the use of NHHIO Web Portal.

7.1 Workforce and Permitted Users.

Participant shall be responsible for training its own workforce regarding the fundamentals of operating the NHHIO Web Portal. Participant shall comply with all NHHIO policies relating to the use of the Portal, including without limitation NHHIO privacy, information security, and acceptable use policies as further described in the Policies and Procedures.

7.2 Suspension of Account.

NHHIO may at any time suspend Participant's access to the NHHIO Web Portal or suspend any Authorized User (as defined in the Agreement) as required to prevent unauthorized use of the NHHIO Web Portal, to prevent, investigate, or remedy a privacy breach or security incident (as those terms are defined under applicable state and federal laws and regulations), or to protect the integrity of the information systems operated by NHHIO and its Contractors. NHHIO will restore such access as determined by NHHIO in its sole discretion.

7.3 NHHIO Safeguards.

Participant will not attempt to disable, modify or circumvent any security safeguard adopted by NHHIO or its Contractors. Participant acknowledges and agrees that NHHIO may monitor, record and audit Participant's and is Authorized Users' use of the NHHIO Web Portal in order to protect patient privacy, protect the security of information maintained in databases, protect the security of NHHIO's systems and to protect the NH Health Information Exchange.

7.4 Participant Safeguards.

Participant shall implement reasonable and appropriate safeguards to protect the confidentiality, integrity and availability of the information it maintains, stores, transmits and receives using the NHHIO Web Portal and all information made available to Participant, including but not limited to keeping information such as user names and passwords confidential.

8.0 Definitions.

"Code" means computer programming code. If not otherwise specified, Code refers to Source,

Page 8 of 10

Initial & Date All Pages

NHHIO Initials: JBL

Date: 11/26/13

Object, and/or Executable Code as defined below.

“Derivative Work” means any work that is based upon one or more preexisting works, such as a revision, enhancement, modification, translation, abridgement, condensation, expansion, or any other form in which such preexisting works may be recast, transformed or adapted, and that, if prepared without authorization of the owner of the copyright in such preexisting work, would constitute copyright infringement. For purposes hereof, a Derivative Work shall also include any compilation or combination that incorporates such preexisting work.

“Documentation” means any NHHIO or NHHIO Contractor produced documentation, including, but not limited to end-user manuals and operating guides, whether in print or electronic media, provided by NHHIO or any NHHIO Contractor for use with the NHHIO Technology and includes all Specifications.

“Executable code” means executable Code derived by preprocessing, and compilation, and linking from Source Code and Object Code, together with any necessary dynamically loadable libraries, configuration files, or installation procedures or Code necessary for execution.

“High Risk Activities” means uses of the Services, including but not limited to the LAND Appliance, where the failure of the Services or LAND Appliance could lead to death, personal injury, or environmental damage, including, but not limited to, on-line control equipment in hazardous environments requiring fail-safe performance, the operation of nuclear facilities, air traffic control, or life support systems.

“Object code” means Code in machine-readable form generated by preprocessing and/or compilation of Source Code and suitable for linking into Executable Code as defined herein.

“Software” means software provided or made available to Participant and/or its Authorized Users by NHHIO or any of its Contractors, either through download or temporarily accessed online, and specifically includes software contained in the LAND Appliance and any other provided appliance, device, equipment and/or hardware.

“Source code” means Code in programming languages suitable for preprocessing and/or compilation into Object Code, including all relevant comments and procedural Code such as compile and build scripts.

“Specifications” means a description of the essential technical requirements of the NHHIO Technology provided to Participant and/or its Authorized Users by NHHIO or any NHHIO Contractors.

Participant hereby executes this Addendum by signing in the places allocated below according to the convention /s/ Name, and agrees said electronic signature shall be valid and binding under NH RSA 294-E (Uniform Electronic Transactions Act) and the E-Signatures in Global and

Initial & Date All Pages

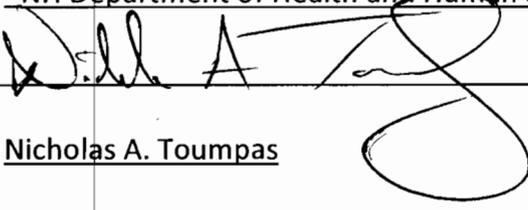
NHHIO Initials: JBL

Date: 11/26/13

National Commerce Act (where applicable) and other applicable law.

Participant

Participant Name: NH Department of Health and Human Services

By (signature):  _____

Name: Nicholas A. Toumpas

Title: Commissioner

Date: 11/26/13

ADDENDUM 2 - POLICIES AND PROCEDURES

Table of Contents

1.0 Scope and Application3
1.1 Scope.3
1.2 Acceptance of Terms. 3
1.3 Incorporation by Reference..... 3
2.0 Access to the NHHIO.3
2.1 Participation Agreement. 3
2.2 Delegated Administration Agreement. 3
2.3 NHHIO Service Addendum.....3
2.4 Identification of Authorized Users..... 4
2.5 Assignment of Usernames and Passwords. 4
2.6 Training. 4
2.7 Termination of Authorized Users. 4
3.0 Acceptable Uses 5
3.1 Acceptable Uses. 5
3.2 Prohibited Uses. 5
4.0 Information and Network Security 5
4.1 Participant Safeguards. 5
4.2 NHHIO Safeguards. 6
4.3 Suspension of Account. 6
4.4 Duty to Report..... 6
4.5. Non-disclosure of Security Information. 6
4.6 Physical Security. 6
4.7 Network Security. 6
4.8 Access to Webmail. 7
5.0 Privacy and Patient Engagement7
6.0 Audit7
6.1. NHHIO Audits..... 7
6.2 Audit Process. 7
7.0 Webmail7
7.1 Policies and Procedures Applicable to Webmail. 7
7.2 User Agreement. 8
7.3 Webmail Capacity. 8
7.4 Webmail Supported Browsers. 8
8.0 Other8
8.1 Breach Response. 8
8.2 Amendments. 9

Initial & Date All Pages
NHHIO Initials: JBL
Date: 11/26/13

1. Scope and Application.

1.1 Scope.

The policies and procedures described in this document ("Policies and Procedures") apply to all Participants and Authorized Users using the NH Health Information Exchange and are intended to ensure that the NH Health Information Exchange is used in an effective, efficient, ethical, and lawful manner.

1.2 Acceptance of Terms.

Use of the NH Health Information Exchange constitutes acceptance of, and agreement to abide by, all the requirements in these Policies and Procedures.

1.3 Incorporation by Reference.

All the provisions of these Policies and Procedures are incorporated by reference into the Participation Agreement. All capitalized terms used in this document shall have the definitions in the Participation Agreement or the HIE Services Addendum, unless otherwise provided herein.

2. Access to the NHHIO.

2.1 Participation Agreement.

An individual who is authorized to legally bind the Participant must execute and sign a Participation Agreement before being granted access to the NH Health Information Exchange.

2.2 Delegated Administration Agreement.

Each Participant must execute a Delegated Administration Agreement before being granted access to the NH Health Information Exchange. Each Participant must identify at least one individual to serve as an Access Administrator, as provided in the Delegated Administration Agreement. Each Participant's Access Administrator is responsible for administration of the Participant's Authorized Users and must sign the Access Administrator Agreement. NHHIO may require Participant to terminate the privileges of any Access Administrator and to appoint a new Access Administrator in that person's stead.

2.3 NHHIO Service Addendum.

Each Participant must execute a NHHIO HIE Service Addendum before being granted access to services on the NH Health Information Exchange. Participants may execute more than one HIE Service

Addendum as their need for HIE services evolves.

2.4 Identification of Authorized Users.

Each Participant's Access Administrator must provide the NHHIO with a list of the Participant's Authorized Users, and such other information about such Authorized Users as NHHIO may reasonably require. Each Participant's process for identifying Authorized Users must include verifying each individual's identity, the individual's affiliation with the Participant, the individual's functional role with the Participant, and whether it is appropriate for the individual to send or receive information using the NH Health Information Exchange.

2.5 Assignment of Usernames and Passwords.

NHHIO or the Participant (as determined by NHHIO) shall provide Authorized Users with a user name and a password to access the NH Health Information Exchange. Authorized Users are prohibited from sharing their user names and/or passwords with others and from using the user names and/or passwords of others.

2.6 Training.

Each Participant is responsible for training its Authorized Users and ensuring that the NHHIO Policies and Procedures have been read and understood by all of its Authorized Users. Each Participant shall ensure that all of its Authorized Users comply with the NHHIO Policies and Procedures and comply with Participant's own privacy and security policies and procedures.

2.7 Termination of Authorized Users.

Each Participant shall terminate access to the NH Health Information Exchange immediately for any Authorized User who no longer requires access by reason of termination of employment, and as soon as reasonably practicable for Authorized Users who no longer require access by reason of change in function. Each Participant shall immediately terminate access to the NH Health Information Exchange for any Authorized User that engages in conduct that could undermine the security and integrity of the NH Health Information Exchange or NHHIO. Each Participant shall notify NHHIO immediately upon termination of any Authorized User's account. NHHIO also may terminate access immediately to the NH Health Information Exchange for any Authorized User that engages in conduct that could undermine the security and integrity of the NH Health Information Exchange or NHHIO or as otherwise provided in the Participation Agreement or any Exhibits and Addenda thereto.

3. **Acceptable Uses.**

Initial & Date All Pages

NHHIO Initials: JBL

Date: 11/26/13

3.1 Acceptable Uses.

Participant agrees that it will use the NH Health Information Exchange, including transmission and disclosure of PHI, only for the permitted uses allowed under the Participation Agreement or any Exhibits and Addenda thereto and in accordance with all applicable federal and state laws, including without limitation the HIPAA Privacy Rule.

3.2 Prohibited Uses.

Each Participant shall ensure that its Authorized Users do not use the NH Hampshire Health Information Exchange for any illegal or improper use, including but not limited to, of the following prohibited uses:

- a. For illegal purposes or to further illegal activities including, without limitation, any upload, download, posting, distribution or facilitating the distribution of any material that constitutes unauthorized use or reproduction of material protected by copyright, trademark, trade secret or other intellectual property right; or otherwise in any way contrary to law.
- b. For any purpose or activity that is, or may be perceived as, obscene, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, or invasive of another's privacy.
- c. For any unauthorized access to or inappropriate use of data, systems, and networks including, but not limited to, any probe or attempted probe, scan or vulnerability testing without the express authorization of NHHIO.
- d. To interfere with the service of any user, host or network, including deliberate attempts to overload a server, network connected device, or network component.
- e. To propagate malware, viruses, or malformed data or network traffic resulting in damage to, or disruption of, a service or network connected device.
- f. To forge data with the intent to misrepresent the origination user or source.
- g. To send unsolicited, mass electronic mail messages to one or more recipients or systems, including, without limitation, commercial advertising and informational announcements.
- h. To forge electronic mail headers (including any portion of the IP packet header and/or electronic mail address) or to use any other method to forge, disguise, or conceal the user's identity or IP address.
- i. Any use contrary to the Participation Agreement and Exhibit and Addenda thereto.

4. **Information and Network Security.**

4.1 Participant Safeguards.

Each Participant shall implement reasonable and appropriate administrative, physical, technical and other safeguards to protect the security and integrity of the NH Health Information Exchange, including

Initial & Date All Pages

NHHIO Initials: JBL

Date: 11/26/13

maintaining compliance at all times with the HIPAA Security Rule.

4.2 NHHIO Safeguards.

Participants may not attempt to disable, modify, or circumvent any security safeguards adopted by the NHHIO or its Contractors. Participant acknowledges and agrees that NHHIO may monitor, record, and Audit (see Section 6) use of the NH Health Information Exchange in order to protect the security of the same.

4.3 Suspension of Account.

NHHIO may at any time suspend access to the NH Health Information Exchange by the Participant, Access Administrator and/or any of its Authorized Users as required to prevent unauthorized use of the NH Health Information Exchange; to prevent, investigate, or remedy a breach or security incident; to protect the integrity of the information systems operated by NHHIO and its contractors; or for violation of any of the requirements of these Policies and Procedures. NHHIO will restore such access as determined by NHHIO in its sole discretion.

4.4 Duty to Report.

Authorized Users should immediately report any weaknesses in or breach of system security and/or any incidents of possible misuse or violations of these Policies and Procedures, or the Participation Agreement including any Exhibits or Addenda thereto, to NHHIO.

4.5 Non-disclosure of Security Information.

Participant and its Authorized Users shall not divulge connectivity details, passwords, or other access control information that could be used by a third party to gain unauthorized access to the NH Health Information Exchange.

4.6 Physical Security.

Participant and Authorized Users shall take reasonable precautions to secure their physical working environment to guard against unauthorized access including, but not limited to workstations, laptops or NHHIO Technology, certificates, private keys or network connected devices. In addition, the Participant

and Authorized Users shall take security precautions in the workspace such as the use of password screen locks, session timeouts, logging out of workstations at the end of the working day and strong passwords.

4.7 Network Security.

Participant must maintain a secure network through measures such as multiple firewalls configured for high availability and minimal vulnerability and the latest versions of operating system and antivirus and malware protection.

4.8 Access to Webmail.

Participant and Authorized Users shall not use public computers for accessing the NH Health Information Exchange, including Webmail, due to security and privacy concerns.

5. Privacy and Patient Engagement.

Participant is responsible for obtaining any and all necessary patient consents and authorizations relating to the use and exchange of patient information, including without limitation consent to release HIV test results, genetic test information, substance abuse information, psychological/mental health information, and as otherwise required by law. In addition, Participant is responsible for providing patients with appropriate opt-out and other notices required by applicable law. It is the responsibility of the Participant to maintain these consents and permissions as required by law and Participant's policies. The method by which the Participant maintains the consents will be determined by the Participant but proof of consent may be subject to Audit by NHHIO as set forth in Section 6 of these Policies and Procedures.

6. Audit.

6.1 NHHIO Audits.

NHHIO (or a third party engaged by NHHIO) may audit Participant on a periodic basis. The purpose of these audits will be to confirm compliance with (a) the Participation Agreement and Exhibits and Addenda thereto, including the HIE Service Addendum, the Delegated Administration Agreement, and these Policies and Procedures, (b) proper use of the NH Health Information Exchange, and/or (c) to comply with applicable state or federal requirements ("Audit").

6.2 Audit Process.

Audits will take place during normal business hours and at mutually agreeable times and shall be limited to such records, personnel and other resources of the Participant as are deemed necessary to

accomplish the purposes set forth in Section 6.1.

7. Webmail.

7.1 Policies and Procedures Applicable to Webmail.

The provisions of this Section 7 of the Policies and Procedures shall apply to Participant and its Authorized Users who use the Webmail service of the NH Health Information Exchange.

7.2 User Agreement.

Each Authorized User must execute and sign a User Agreement before being granted access to Webmail.

7.3 Webmail Capacity.

Each Authorized User's Webmail account will be subject to a storage capacity limit of 10MB per attachment and 1GB for the mailbox itself. NHHIO will notify an Authorized User when the Authorized User's webmail account has reached its storage capacity limit, after which the Webmail account will not be able to receive additional messages until messages have been removed to allow additional storage. Although NHHIO will not delete or archive messages in an Authorized User's Webmail account, it will not deliver messages to an account when it is over its storage capacity limit. PARTICIPANT, FOR ITSELF AND ITS AUTHORIZED USERS, AGREES AND ACKNOWLEDGES THAT THEY WILL NOT BE ABLE TO RECEIVE MESSAGES SENT TO THEIR WEBMAIL ACCOUNTS WHEN THE ACCOUNTS ARE OVER THE STORAGE LIMIT CAPACITY. It is the responsibility of Participant and its Authorized Users to make sure that all Webmail accounts are managed appropriately to provide sufficient capacity.

7.4 Webmail Supported Browsers.

Webmail will be supported on browsers with a default or medium browser security setting as specified below:

Browser version support for PC/Mac:

Internet Explorer 8+
Firefox 5+
Safari 5+

8. Other.

8.1 Breach Response.

Initial & Date All Pages
NHHIO Initials: JBL
Date: 11/26/13

Participant must report all breach events and security incidents, including breach events and security incidents as defined under HIPAA and under applicable New Hampshire law, to its Access Administrator and to Participant's privacy and security officer(s) immediately after their discovery. The Access Administrator will advise NHHIO of the breach event or security incident as the case may be. If a breach or security incident occurs at the Participant level, then any required public and other notification and any other measures required under applicable law is the responsibility of the Participant. If the breach or security incident occurs at the NHHIO level, then the responsibility is of NHHIO to report the breach or security incident to the Participant, who will in turn make any required public or other notifications and undertake any other measures required under applicable law..

8.2 Amendments.

NHHIO may amend these Policies and Procedures as provided in Section 6 of the Participation Agreement.

Initial & Date All Pages
NHHIO Initials: JBL
Date: 11/26/13

ADDENDUM 3 - DELEGATED ADMINISTRATION AGREEMENT

This Agreement is entered into by and between the NHHIO and the Participant.

1. Background and Scope.

Prior to the execution of this Delegated Administration Agreement ("DAA"), the Participant has entered into a Participation Agreement with NHHIO governing the Participant's access to and use of the NH Health Information Exchange. This DAA governs the Participant's creation, oversight, and termination of Authorized Users of the NH Health Information Exchange. Unless otherwise stated, capitalized terms shall have the same meaning as in the Participation Agreement and/or the HIE Service Addendum.

2. Authorized Signatory.

This DAA must be executed by the same person who executed the Participation Agreement on behalf of the Participant, or that person's successor, or another person with the authority to contractually bind the Participant.

3. Training and Compliance with Policies.

The Participant is solely responsible for training its own workforce regarding the use of the NH Health Information Exchange. NHHIO may require the Participant to cause its Authorized Users to participate in training programs provided by or approved by NHHIO with respect to the NH Health Information Exchange. The Participant shall cause each member of its workforce with access to the NH Health Information Exchange to be aware of and in compliance with the information security policies adopted by NHHIO, as more fully described in the Policies and Procedures.

4. Designation of Access Administrator.

The Participant will designate in Attachment 1 hereto two (2) individuals to serve as Access Administrators in connection with the creation, oversight, and termination of Participant's Authorized Users. If Participant feels that two Access Administrators are not sufficient to manage its Authorized Users, Participant may separately request that NHHIO credential additional Access Administrators; such request should contain a detailed rationale for why additional Access Administrators are necessary. Allowing for additional Access Administrators will be at the sole discretion of NHHIO.

5. Termination of Access Administrator Privileges.

The Participant is responsible for promptly disabling the designated individual's access to the NH Health Information Exchange when such individual can no longer perform the role of designated Access

Administrator by reason of termination of employment, change in employment function, or as otherwise required in the Participation Agreement or the Policies and Procedures.

6. Replacement of Access Administrator.

The Participant is responsible for having at least one (1) Access Administrator at all times, and for designating, by submitting an additional copy of Attachment 1 for replacement Access Administrators, as necessary.

7. Access Administrator Responsibilities.

The Access Administrator shall have the following responsibilities:

- (a) Access Administrator shall verify and credential each Authorized User as an employee or independent contractor of Participant and assess their need for access to the NH Health Information Exchange prior to creating an account and granting access rights.
- (b) Access Administrator shall advise and require all Authorized Users to keep their user names and passwords private.
- (c) Access Administrator shall review the Participant's Authorized User accounts and update any account that needs to be updated, including with information related to the account's listing in the Provider Directory. This shall be done as often as often as Participant reasonably deems necessary, but in no event less often than quarterly.
- (d) Access Administrator shall immediately terminate access to the NH Health Information Exchange for any Authorized User who no longer requires access by reason of termination of employment.
- (e) Access Administrator shall terminate access to the NH Health Information Exchange for any Authorized User who no longer requires access by reason of change in employment function or other reason as soon as reasonably practicable.
- (f) Access Administrator shall suspend access to NH Health Information Exchange for any Authorized User who has information that would lead a reasonable person to believe that his/her account may have been breached, and shall promptly notify NHHIO of the suspected breach.
- (g) Access Administrator shall train and educate Authorized Users on the appropriate uses of the NH Health Information Exchange as described in the Policies and Procedures or as otherwise directed by NHHIO.

8. Written Designation.

Initial & Date All Pages
NHHIO Initials: JBL
Date: 11/26/13

The Participant shall require all Access Administrators to certify in writing (by signing the Access Administrator Agreement) the following and provide a copy of such certification to NHHIO upon request.

(a) I certify that I am duly authorized to act on behalf of the Participant regarding the delegated administration, including the creation of accounts, for the NH Health Information Exchange.

(b) My NH Health Information Exchange username and password will be issued to me exclusively for the purpose of enabling me to have delegated administrative functions, including the creations of accounts for the NH Health Information Exchange on behalf of the Participant.

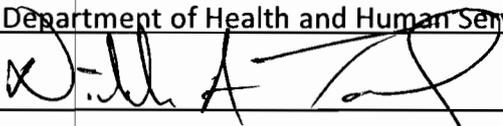
(c) I will keep my Access Administrator credentials confidential, and will not knowingly share them with anyone else, including co-workers, to use for any reason.

(d) I will immediately report to the Participant, and to NHHIO, any information that would lead a reasonable person to believe that someone else other than me has obtained access to my Access Administrator credentials.

Participant hereby executes this Addendum by signing in the places allocated below according to the convention /s/ Name.

Participant

Participant Name: NH Department of Health and Human Services

By (signature): 

Name: Nicholas A. Toumpas 

Title: Commissioner

Date: 11/26/13

Exhibit B
Methods and Conditions of Payment

CONTRACT PERIOD: December 20, 2013 to December 31, 2016

CONTRACTOR:

NAME: New Hampshire Health Information Organization Corporation
ADDRESS: 125 Airport Road
Concord, NH 03301

GOVERNING DOCUMENT

The following document agreed upon between the State of New Hampshire, Department of Health and Human Services and the New Hampshire Health Information Organization Corporation are incorporated into Exhibit 1 of Exhibit B NH Health Information Organization Participation-Fee Schedule.

Initial & Date All Pages
NHHIO Initials: JBL
Date: 11/26/13

Page 1 of 1

EXHIBIT 1 TO PARTICIPATION AGREEMENT – FEE SCHEDULE

1. Background and Scope.

Participant, the New Hampshire Department of Health and Human Services (DHHS), has entered into a Participation Agreement with the New Hampshire Health Information Organization (NHHIO) governing the Participant's access to and use of the NH Health Information Exchange during the NHHIO in accordance with section 2.4 and section 6.1 of the Participation Agreement. This Fee Schedule determines DHHS participation fees associated with its participation in the NHHIO.

2. Participation Fee.

DHHS shall manage participation in NHHIO at the Department level. The Commissioner, Nicholas Toumpas, has delegated this responsibility to the Office of Information Services (OIS) and the Office of Health Information Technology (OHIT) within it. The participation fee covers services for all DHHS Divisions and other sub-organizations.

Considerations:

Total DHHS fee for the three-year term will take into account:

- NHHIO existing fee cap
- NHHIO standard discounts
- Expected level of participation by DHHS Divisions/sub-organizations during the Initial Term
 - Health information required or authorized by law to be reported to DHHS including Syndromic Surveillance, Electronic Lab Reporting, Cancer Registry, etc.
 - New Hampshire Hospital
 - Glenclyff Home
 - Other DHHS divisions/sub-organizations as allowed by law

DHHS will pay a Participation Fee payable on December 20, 2013 or date of Governor and Council approval of this agreement, whichever is later in the amount of \$107,500 as calculated below.

▪ NHHIO Participation Fee at Level 4 Cap	\$150,000
▪ Less Standard NHHIO Discounts	\$42,500
▪ Total Participation Agreement Fee	\$107,500

Initial & Date All Pages

NHHIO Initials: JBL

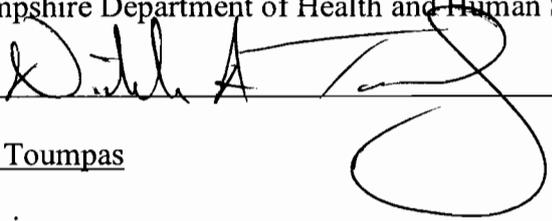
Date: 11/26/13

Participant hereby executes this Exhibit by signing in the places allocated below.

Participant

Participant Name: New Hampshire Department of Health and Human Services

By (signature):



Name:

Nicholas Toumpas

Title:

Commissioner

Date:

11/26/13

Initial & Date All Pages

NHHIO Initials: JBL

Date: 11/26/13



SPECIAL PROVISIONS

Contractors Obligations: The Contractor covenants and agrees that all funds received by the Contractor under the Contract shall be used only as payment to the Contractor for services provided to eligible individuals and, in the furtherance of the aforesaid covenants, the Contractor hereby covenants and agrees as follows:

1. **Compliance with Federal and State Laws:** If the Contractor is permitted to determine the eligibility of individuals such eligibility determination shall be made in accordance with applicable federal and state laws, regulations, orders, guidelines, policies and procedures.
2. **Time and Manner of Determination:** Eligibility determinations shall be made on forms provided by the Department for that purpose and shall be made and remade at such times as are prescribed by the Department.
3. **Documentation:** In addition to the determination forms required by the Department, the Contractor shall maintain a data file on each recipient of services hereunder, which file shall include all information necessary to support an eligibility determination and such other information as the Department requests. The Contractor shall furnish the Department with all forms and documentation regarding eligibility determinations that the Department may request or require.
4. **Fair Hearings:** The Contractor understands that all applicants for services hereunder, as well as individuals declared ineligible have a right to a fair hearing regarding that determination. The Contractor hereby covenants and agrees that all applicants for services shall be permitted to fill out an application form and that each applicant or re-applicant shall be informed of his/her right to a fair hearing in accordance with Department regulations.
5. **Gratuities or Kickbacks:** The Contractor agrees that it is a breach of this Contract to accept or make a payment, gratuity or offer of employment on behalf of the Contractor, any Sub-Contractor or the State in order to influence the performance of the Scope of Work detailed in Exhibit A of this Contract. The State may terminate this Contract 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.
6. **Retroactive Payments:** Notwithstanding anything to the contrary contained in the Contract or in any other document, contract or understanding, it is expressly understood and agreed by the parties hereto, that no payments will be made hereunder to reimburse the Contractor for costs incurred for any purpose or for any services provided to any individual prior to the Effective Date of the Contract and no payments shall be made for expenses incurred by the Contractor for any services provided prior to the date on which the individual applies for services or (except as otherwise provided by the federal regulations) prior to a determination that the individual is eligible for such services.
7. **Conditions of Purchase:** Notwithstanding anything to the contrary contained in the Contract, nothing herein contained shall be deemed to obligate or require the Department to purchase services hereunder at a rate which reimburses the Contractor in excess of the Contractors costs, at a rate which exceeds the amounts reasonable and necessary to assure the quality of such service, or at a rate which exceeds the rate charged by the Contractor to ineligible individuals or other third party fundors for such service. If at any time during the term of this Contract or after receipt of the Final Expenditure Report hereunder, the Department shall determine that the Contractor has used payments hereunder to reimburse items of expense other than such costs, or has received payment in excess of such costs or in excess of such rates charged by the Contractor to ineligible individuals or other third party fundors, the Department may elect to:
 - 7.1. Renegotiate the rates for payment hereunder, in which event new rates shall be established;
 - 7.2. Deduct from any future payment to the Contractor the amount of any prior reimbursement in excess of costs;

New Hampshire Department of Health and Human Services
Exhibit C



- 7.3. Demand repayment of the excess payment by the Contractor in which event failure to make such repayment shall constitute an Event of Default hereunder. When the Contractor is permitted to determine the eligibility of individuals for services, the Contractor agrees to reimburse the Department for all funds paid by the Department to the Contractor for services provided to any individual who is found by the Department to be ineligible for such services at any time during the period of retention of records established herein.

RECORDS: MAINTENANCE, RETENTION, AUDIT, DISCLOSURE AND CONFIDENTIALITY:

8. **Maintenance of Records:** In addition to the eligibility records specified above, the Contractor covenants and agrees to maintain the following records during the Contract Period:
- 8.1. **Fiscal Records:** books, records, documents and other data evidencing and reflecting all costs and other expenses incurred by the Contractor in the performance of the Contract, and all income received or collected by the Contractor during the Contract Period, said records to 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.
- 8.2. **Statistical Records:** Statistical, enrollment, attendance or visit records for each recipient of services during the Contract Period, which records shall include all records of application and eligibility (including all forms required to determine eligibility for each such recipient), records regarding the provision of services and all invoices submitted to the Department to obtain payment for such services.
- 8.3. **Medical Records:** Where appropriate and as prescribed by the Department regulations, the Contractor shall retain medical records on each patient/recipient of services.
9. **Audit:** Contractor shall submit an annual audit to the Department within 60 days after the close of the agency fiscal year. It is recommended that the report be prepared in accordance with the provision of Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non Profit Organizations" and the provisions of Standards for Audit of Governmental Organizations, Programs, Activities and Functions, issued by the US General Accounting Office (GAO standards) as they pertain to financial compliance audits.
- 9.1. **Audit and Review:** During the term of this Contract and the period for retention hereunder, the Department, the United States Department of Health and Human Services, and any of their designated representatives shall have access to all reports and records maintained pursuant to the Contract for purposes of audit, examination, excerpts and transcripts.
- 9.2. **Audit Liabilities:** In addition to and not in any way in limitation of obligations of the Contract, it is understood and agreed by the Contractor that the Contractor shall be held liable for any state or federal audit exceptions and shall return to the Department, all payments made under the Contract to which exception has been taken or which have been disallowed because of such an exception.
10. **Confidentiality of Records:** All information, reports, and records maintained hereunder or collected in connection with the performance of the services and the Contract shall be confidential and shall not be disclosed by the Contractor, provided however, that pursuant to state laws and the regulations of the Department regarding the use and disclosure of such information, disclosure may be made to public officials requiring such information in connection with their official duties and for purposes directly connected to the administration of the services and the Contract; and provided further, that the use or disclosure by any party of any information concerning a recipient for any purpose not directly connected with the administration of the Department or the Contractor's responsibilities with respect to purchased services hereunder is prohibited except on written consent of the recipient, his attorney or guardian.

New Hampshire Department of Health and Human Services
Exhibit C



Notwithstanding anything to the contrary contained herein the covenants and conditions contained in the Paragraph shall survive the termination of the Contract for any reason whatsoever.

11. **Reports:** Fiscal and Statistical: The Contractor agrees to submit the following reports at the following times if requested by the Department.
 - 11.1. **Interim Financial Reports:** Written interim financial reports containing a detailed description of all costs and non-allowable expenses incurred by the Contractor to the date of the report and containing such other information as shall be deemed satisfactory by the Department to justify the rate of payment hereunder. Such Financial Reports shall be submitted on the form designated by the Department or deemed satisfactory by the Department.
 - 11.2. **Final Report:** A final report shall be submitted within thirty (30) days after the end of the term of this Contract. The Final Report shall be in a form satisfactory to the Department and shall contain a summary statement of progress toward goals and objectives stated in the Proposal and other information required by the Department.
12. **Completion of Services: Disallowance of Costs:** Upon the purchase by the Department of the maximum number of units provided for in the Contract and upon payment of the price limitation hereunder, the Contract and all the obligations of the parties hereunder (except such obligations as, by the terms of the Contract are to be performed after the end of the term of this Contract and/or survive the termination of the Contract) 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.
13. **Credits:** All documents, notices, press releases, research reports and other materials prepared during or resulting from the performance of the services of the Contract shall include the following statement:
 - 13.1. The preparation of this (report, document etc.) was financed under a Contract with the State of New Hampshire, Department of Health and Human Services, with funds provided in part by the State of New Hampshire and/or such other funding sources as were available or required, e.g., the United States Department of Health and Human Services.
14. **Prior Approval and Copyright Ownership:** All materials (written, video, audio) produced or purchased under the contract shall have prior approval from DHHS before printing, production, distribution or use. The DHHS will retain copyright ownership for any and all original materials produced, including, but not limited to, brochures, resource directories, protocols or guidelines, posters, or reports. Contractor shall not reproduce any materials produced under the contract without prior written approval from DHHS.
15. **Operation of Facilities: Compliance with Laws and Regulations:** In the operation of any facilities for providing services, the Contractor shall comply with all laws, orders and regulations of federal, state, county and municipal authorities and with any direction of any Public Officer or officers pursuant to laws which shall impose an order or duty upon the contractor with respect to the operation of the facility or the provision of the services at such facility. If any governmental license or permit shall be required for the operation of the said facility or the performance of the said services, the Contractor will procure said license or permit, and will at all times comply with the terms and conditions of each such license or permit. In connection with the foregoing requirements, the Contractor hereby covenants and agrees that, during the term of this Contract the facilities shall comply with all rules, orders, regulations, and requirements of the State Office of the Fire Marshal and the local fire protection agency, and shall be in conformance with local building and zoning codes, by-laws and regulations.
16. **Subcontractors:** DHHS recognizes that the Contractor may choose to use subcontractors with greater expertise to perform certain health care services or functions for efficiency or convenience, but the Contractor shall retain the responsibility and accountability for the function(s). Prior to

Exhibit C – Special Provisions

Contractor Initials JBL



subcontracting, the Contractor shall evaluate the subcontractor's ability to perform the delegated function(s). This is accomplished through a written agreement that specifies activities and reporting responsibilities of the subcontractor and provides for revoking the delegation or imposing sanctions if the subcontractor's performance is not adequate. Subcontractors are subject to the same contractual conditions as the Contractor and the Contractor is responsible to ensure subcontractor compliance with those conditions.

When the Contractor delegates a function to a subcontractor, the Contractor shall do the following:

- 16.1. Evaluate the prospective subcontractor's ability to perform the activities, before delegating the function
- 16.2. Have a written agreement with the subcontractor that specifies activities and reporting responsibilities and how sanctions/revocation will be managed if the subcontractor's performance is not adequate
- 16.3. Monitor the subcontractor's performance on an ongoing basis
- 16.4. Provide to DHHS an annual schedule identifying all subcontractors, delegated functions and responsibilities, and when the subcontractor's performance will be reviewed
- 16.5. DHHS shall, at its discretion, review and approve all subcontracts.

If the Contractor identifies deficiencies or areas for improvement are identified, the Contractor shall take corrective action.

DEFINITIONS

As used in the Contract, the following terms shall have the following meanings:

COSTS: Shall mean those direct and indirect items of expense determined by the Department to be allowable and reimbursable in accordance with cost and accounting principles established in accordance with state and federal laws, regulations, rules and orders.

DEPARTMENT: NH Department of Health and Human Services.

FINANCIAL MANAGEMENT GUIDELINES: Shall mean that section of the Contractor Manual which is entitled "Financial Management Guidelines" and which contains the regulations governing the financial activities of contractor agencies which have contracted with the State of NH to receive funds.

PROPOSAL: If applicable, shall mean the document submitted by the Contractor on a form or forms required by the Department and containing a description of the Services to be provided to eligible individuals by the Contractor in accordance with the terms and conditions of the Contract and setting forth the total cost and sources of revenue for each service to be provided under the Contract.

UNIT: For each service that the Contractor is to provide to eligible individuals hereunder, shall mean that period of time or that specified activity determined by the Department and specified in Exhibit B of the Contract.

FEDERAL/STATE LAW: Wherever federal or state laws, regulations, rules, orders, and policies, etc. are referred to in the Contract, the said reference shall be deemed to mean all such laws, regulations, etc. as they may be amended or revised from the time to time.

CONTRACTOR MANUAL: Shall mean that document prepared by the NH Department of Administrative Services containing a compilation of all regulations promulgated pursuant to the New Hampshire Administrative Procedures Act, NH RSA Ch 541-A, for the purpose of implementing State of NH and federal regulations promulgated thereunder.

SUPPLANTING OTHER FEDERAL FUNDS: The Contractor guarantees that funds provided under this Contract will not supplant any existing federal funds available for these services.



CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

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

ALTERNATIVE I - FOR GRANTEES OTHER THAN INDIVIDUALS

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

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

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

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

New Hampshire Department of Health and Human Services
Exhibit D



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

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

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

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

Contractor Name:

Name: Jeffrey B. Loughlin

Title: Acting Executive Director

11/26/13
Date

Contractor Initials JBL

Date 11/26/13



CERTIFICATION REGARDING LOBBYING

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

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

Programs (indicate applicable program covered):

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

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

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

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

11/26/13
Date

Contractor Name:

Name: Jeffrey B. Loughlin
Title: Acting Executive Director



**CERTIFICATION REGARDING DEBARMENT, SUSPENSION
AND OTHER RESPONSIBILITY MATTERS**

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

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal (contract), the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the NH Department of Health and Human Services' (DHHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when DHHS determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, DHHS may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the DHHS agency to whom this proposal (contract) is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549: 45 CFR Part 76. See the attached definitions.
6. The prospective primary participant agrees by submitting this proposal (contract) that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by DHHS.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," provided by DHHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or involuntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (of excluded parties).
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and



information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, DHHS may terminate this transaction for cause or default.

PRIMARY COVERED TRANSACTIONS

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

LOWER TIER COVERED TRANSACTIONS

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

Contractor Name:

11/26/13
Date

Name: Jeffrey B. Loughlin
Title: Acting Executive Director



**CERTIFICATION REGARDING
THE AMERICANS WITH DISABILITIES ACT COMPLIANCE**

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

1. By signing and submitting this proposal (contract) the Contractor agrees to make reasonable efforts to comply with all applicable provisions of the Americans with Disabilities Act of 1990.

Contractor Name:

A handwritten signature in black ink, appearing to read "Jeffrey B. Loughlin", written over a horizontal line.

11/26/13
Date

Name: Jeffrey B. Loughlin
Title: Acting Executive Director



CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

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

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

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

Contractor Name:

A handwritten signature in black ink, appearing to read "JBL", written over a horizontal line.

Name:
Title:

Jeffrey B. Loughlin
Acting Executive Director

11/26/13
Date

NH Department of Health and Human Services

STANDARD EXHIBIT I
HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT
BUSINESS ASSOCIATE AGREEMENT

The Contractor identified in Section 1.3 of the General Provisions of the Agreement agrees to comply with the Health Insurance Portability and Accountability Act, Public Law 104-191 and with the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160 and 164 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 State of New Hampshire, Department of Health and Human Services.

BUSINESS ASSOCIATE AGREEMENT

(1) Definitions.

- a. "Breach" shall have the same meaning as the term "Breach" in Title XXX, Subtitle D. Sec. 13400.
- b. "Business Associate" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- c. "Covered Entity" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- d. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR Section 164.501.
- e. "Data Aggregation" shall have the same meaning as the term "data aggregation" in 45 CFR Section 164.501.
- f. "Health Care Operations" shall have the same meaning as the term "health care operations" in 45 CFR Section 164.501.
- g. "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act, Title XIII, Subtitle D, Part 1 & 2 of the American Recovery and Reinvestment Act of 2009.
- h. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160, 162 and 164.
- i. "Individual" shall have the same meaning as the term "individual" in 45 CFR Section 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.501(g).
- j. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.

- k. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR Section 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- l. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR Section 164.501.
- m. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- n. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C, and amendments thereto.
- o. "Unsecured Protected Health Information" means protected health information that is not secured by a technology standard that renders protected health information unusable, unreasonable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.
- p. Other Definitions - All terms not otherwise defined herein shall have the meaning established under 45 C.F.R. Parts 160, 162 and 164, as amended from time to time, and the HITECH Act.

(2) 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 shall not, and shall ensure that its directors, officers, employees and agents, do not use, disclose, maintain or transmit PHI in any manner that would constitute a violation of the Privacy and Security Rule.
- b. Business Associate may use or disclose PHI:
 - I. For the proper management and administration of the Business Associate;
 - II. As required by law, pursuant to the terms set forth in paragraph d. below; or
 - III. For data aggregation purposes for the health care operations of Covered Entity.
- c. To the extent Business Associate is permitted under the Agreement to disclose PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from the third party that such PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party; and (ii) an agreement from such third party to notify Business Associate, in accordance with the HITECH Act, Subtitle D, Part 1, Sec. 13402 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.

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

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

- a. Business Associate shall report to the designated Privacy Officer of Covered Entity, in writing, any use or disclosure of PHI in violation of the Agreement, including any security incident involving Covered Entity data, in accordance with the HITECH Act, Subtitle D, Part 1, Sec. 13402.
- b. The Business Associate shall comply with all sections of the Privacy and Security Rule as set forth in, the HITECH Act, Subtitle D, Part 1, Sec. 13401 and Sec.13404.
- c. 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.
- d. 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)b and (3)k 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 standard provision #13 of this Agreement for the purpose of use and disclosure of protected health information.
- e. Within five (5) business days of receipt of a written request from Covered Entity, Business Associate shall make available during normal business hours at its offices all records, books, agreements, policies and procedures relating to the use and disclosure of PHI to the Covered Entity, for purposes of enabling Covered Entity to determine Business Associate's compliance with the terms of the Agreement.
- f. 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.
- g. 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.

- h. 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.
- i. 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.
- j. 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.
- k. Within ten (10) business days of termination of the Agreement, for any reason, the Business Associate shall return or destroy, as specified by Covered Entity, all PHI received from, or created or received by the Business Associate in connection with the Agreement, and shall not retain any copies or back-up tapes of such PHI. If return or destruction is not feasible, or the disposition of the PHI has been otherwise agreed to in the Agreement, Business Associate shall continue to extend the protections of the Agreement, to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. If Covered Entity, in its sole discretion, requires that the Business Associate destroy any or all PHI, the Business Associate shall certify to Covered Entity that the PHI has been destroyed.

(4) Obligations of Covered Entity

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

(5) **Termination for Cause**

In addition to standard provision #10 of this Agreement the Covered Entity may immediately terminate the Agreement upon Covered Entity's knowledge of a breach by Business Associate of the Business Associate Agreement set forth herein as Exhibit 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**

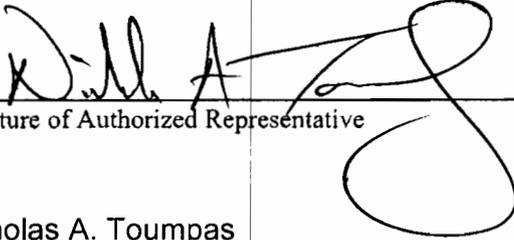
- a. **Definitions and Regulatory References.** All terms used, but not otherwise defined herein, shall have the same meaning as those terms in the Privacy and Security Rule, and the HITECH Act as amended from time to time. A reference in the Agreement, as amended to include this Exhibit I, to a Section 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, from time to time as is necessary for Covered Entity to comply with the changes in the requirements of HIPAA, the Privacy and Security Rule, and applicable federal and state law.
- c. **Data Ownership.** The Business Associate acknowledges that it has no ownership rights with respect to the PHI provided by or created on behalf of Covered Entity.
- d. **Interpretation.** The parties agree that any ambiguity in the Agreement shall be resolved to permit Covered Entity to comply with HIPAA, the Privacy and Security Rule 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 the Agreement in section 3 k, the defense and indemnification provisions of section 3 d and standard contract provision #13, shall survive the termination of the Agreement.

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

NH Department of Health and Human Services New Hampshire Health Information Organization

The State Agency Name

Name of the Contractor





Signature of Authorized Representative

Signature of Authorized Representative

Nicholas A. Toumpas

Jeffrey B. Loughlin

Name of Authorized Representative

Name of Authorized Representative

Commissioner

Acting Executive Director

Title of Authorized Representative

Title of Authorized Representative

11/26/13

11/26/13

Date

Date



**CERTIFICATION REGARDING THE FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY
ACT (FFATA) COMPLIANCE**

The Federal Funding Accountability and Transparency Act (FFATA) requires prime awardees of individual Federal grants equal to or greater than \$25,000 and awarded on or after October 1, 2010, to report on data related to executive compensation and associated first-tier sub-grants of \$25,000 or more. If the initial award is below \$25,000 but subsequent grant modifications result in a total award equal to or over \$25,000, the award is subject to the FFATA reporting requirements, as of the date of the award.

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

1. Name of entity
2. Amount of award
3. Funding agency
4. NAICS code for contracts / CFDA program number for grants
5. Program source
6. Award title descriptive of the purpose of the funding action
7. Location of the entity
8. Principle place of performance
9. Unique identifier of the entity (DUNS #)
10. Total compensation and names of the top five executives if:
 - 10.1. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25M annually and
 - 10.2. Compensation information is not already available through reporting to the SEC.

Prime grant recipients must submit FFATA required data by the end of the month, plus 30 days, in which the award or award amendment is made.

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

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

Contractor Name:

Name: Jeffrey B. Loughlin
Title: Acting Executive Director

11/26/13
Date

New Hampshire Department of Health and Human Services
Exhibit J



FORM A

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

1. The DUNS number for your entity is: 078477806
2. In your business or organization's preceding completed fiscal year, did your business or organization receive (1) 80 percent or more of your annual gross revenue in U.S. federal contracts, subcontracts, loans, grants, sub-grants, and/or cooperative agreements; and (2) \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements?

NO YES

If the answer to #2 above is NO, stop here

If the answer to #2 above is YES, please answer the following:

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

NO YES

If the answer to #3 above is YES, stop here

If the answer to #3 above is NO, please answer the following:

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

Name: _____	Amount: _____

State of New Hampshire Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that New Hampshire Health Information Organization Corporation is a New Hampshire corporation, formed by the laws of 2011 effective July 5, 2011. I further certify that articles of dissolution have not been filed.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 25th day of November, A.D. 2013

A handwritten signature in black ink, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State

CERTIFICATE OF VOTE
(Corporation without Seal)

I, Kirsten Platte, do hereby certify that:
(Name of Clerk of the Corporation; cannot be contract signatory)

1. I am a duly elected Clerk of New Hampshire Health Information Organization Corp.
(Corporation Name)
2. The following are true copies of two resolutions duly adopted at a meeting of the Board of Directors of the Corporation duly held on 24 April 2013:
(Date)

RESOLVED: That this Corporation enter into a contract with the State of New Hampshire, acting through its Department of Health and Human Services, DHHS for the provision of

Health Information Exchange services.

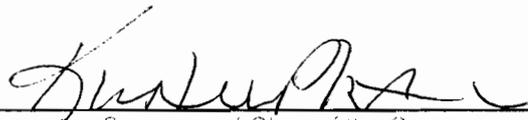
RESOLVED: That the Acting Executive Director
(Title of Contract Signatory)

is hereby authorized on behalf of this Corporation to enter into the said contract with the State and to execute any and all documents, agreements and other instruments, and any amendments, revisions, or modifications thereto, as he/she may deem necessary, desirable or appropriate.

3. The forgoing resolutions have not been amended or revoked, and remain in full force and effect as of the 26 day of NOV, 2013
(Date Contract Signed)

4. Jeffrey B. Loughlin is the duly elected
Acting Executive Director
(Name of Contract Signatory) (Title of Contract Signatory)

of the Corporation.

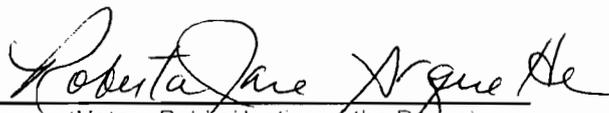

(Signature of Clerk of the Corporation)

STATE OF NEW HAMPSHIRE

County of Rockingham

The forgoing instrument was acknowledged before me this 26th day of Nov, 2013.

By Kirsten Platte
(Name of Clerk of the Corporation)


(Notary Public/Justice of the Peace)

Commission Expires: 10/2/18

ROBERTA JANE ARQUETTE
Notary Public - New Hampshire
My Commission Expires October 2, 2018

Form **990**
 Department of the Treasury
 Internal Revenue Service

Return of Organization Exempt From Income Tax
 Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation)

OMB No. 1545-0047
2012
 Open to Public

The organization may have to use a copy of this return to satisfy state requirements

A For the 2012 calendar year, or tax year beginning and ending

B Check if applicable:
 Address change
 Name change
 Initial return
 Terminated
 Amended return
 Application pending

C Name of organization
NEW HAMPSHIRE HEALTH INFORMATION ORGANIZATION

Doing Business As

Number and street (or P.O. box if mail is not delivered to street address) Room/suite
125 AIRPORT ROAD

City, town, or post office, state, and ZIP code
CONCORD, NH 03301

F Name and address of principal officer: **DENISE PURRINGTON**
125 AIRPORT ROAD, CONCORD, NH 03301

H(b) Are all affiliates included? Yes No
 If "No," attach a list. (see instructions)

I Tax-exempt status: 501(c)(3) 501(c) () (insert no.) 4947(a)(1) or 527

J Website: **NHHIO.ORG**

H(c) Group exemption number

K Form of organization: Corporation Trust Association Other

L Year of formation: **2011** **M** State of legal domicile: **NH**

Part I Summary

1 Briefly describe the organization's mission or most significant activities: TO ESTABLISH AN ELECTRONIC NETWORK TO TRANSMIT PATIENT HEALTH INFORMATION BETWEEN HEALTH CARE			
2 Check this box <input type="checkbox"/> if the organization discontinued its operations or disposed of more than 25% of its net assets.			
Activities & Governance	3 Number of voting members of the governing body (Part VI, line 1a)	3	17
	4 Number of independent voting members of the governing body (Part VI, line 1b)	4	17
	5 Total number of individuals employed in calendar year 2012 (Part V, line 2a)	5	0
	6 Total number of volunteers (estimate if necessary)	6	0
	7a Total unrelated business revenue from Part VIII, column (C), line 12	7a	0.
	b Net unrelated business taxable income from Form 990-T, line 34	7b	0.
	Revenue	8 Contributions and grants (Part VIII, line 1h)	Prior Year
9 Program service revenue (Part VIII, line 2g)			359,435.
10 Investment income (Part VIII, column (A), lines 3, 4, and 7d)			0.
11 Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)			0.
12 Total revenue - add lines 8 through 11 (must equal Part VIII, column (A), line 12)			359,435.
Expense	13 Grants and similar amounts paid (Part IX, column (A), lines 1-3)		0.
	14 Benefits paid to or for members (Part IX, column (A), line 4)		0.
	15 Salaries, other compensation, employee benefits (Part IX, column (A), lines 5-10)		0.
	16a Professional fundraising fees (Part IX, column (A), line 11e)		0.
	b Total fundraising expenses (Part IX, column (D), line 25)		0.
	17 Other expenses (Part IX, column (A), lines 11a-11d, 11f-24e)		283,325.
	18 Total expenses. Add lines 13-17 (must equal Part IX, column (A), line 25)		283,325.
19 Revenue less expenses. Subtract line 18 from line 12		76,110.	
Net Assets or Fund Balances	20 Total assets (Part X, line 16)	Beginning of Current Year	End of Year
	21 Total liabilities (Part X, line 26)		114,624.
	22 Net assets or fund balances. Subtract line 21 from line 20		38,514.
			76,110.

Part II Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Sign Here
 Signature of officer: **Carol N. LaCross, Treasurer** Date: **15 August 2013**
 Type or print name and title: **Carol N. LaCross**

Paid Preparer Use Only
 Print/Type preparer's name: **STEPHEN LAWLOR, CPA** Preparer's signature: *[Signature]* Date: **AUG 12 2013**
 Firm's name: **NATHAN WECHSLER & COMPANY, P.A.**
 Firm's address: **70 COMMERCIAL STREET, SUITE 401 CONCORD, NH 03301**

May the IRS discuss this return with the preparer shown above? (see instructions) Yes No

NEW HAMPSHIRE HEALTH INFORMATION ORGANIZATION

Form 990 (2012)

45-3247637 Page 2

Part III Statement of Program Service Accomplishments

Check if Schedule O contains a response to any question in this Part III [X]

1 Briefly describe the organization's mission:

TO ESTABLISH AN ELECTRONIC NETWORK TO TRANSMIT PATIENT HEALTH INFORMATION BETWEEN HEALTH CARE PROVIDERS IN A TIMELY, SECURE AND CONFIDENTIAL MANNER. THIS NEW SYSTEM WILL REPLACE PHONE, PAPER AND FAX TRANSACTIONS TO IMPROVE DELIVERY OF PATIENT CARE, ACCURACY OF

2 Did the organization undertake any significant program services during the year which were not listed on the prior Form 990 or 990-EZ? [] Yes [X] No

3 Did the organization cease conducting, or make significant changes in how it conducts, any program services? [] Yes [X] No

4 Describe the organization's program service accomplishments for each of its three largest program services, as measured by expenses. Section 501(c)(3) and 501(c)(4) organizations are required to report the amount of grants and allocations to others, the total expenses, and revenue, if any, for each program service reported.

4a (Code:) (Expenses \$ 245,241. including grants of \$) (Revenue \$ 359,435.) WORK TO ESTABLISH AN ELECTRONIC NETWORK TO TRANSMIT PATIENT HEALTH INFORMATION BETWEEN HEALTH CARE PROVIDERS IN A TIMELY, SECURE AND CONFIDENTIAL MANNER. THIS NEW SYSTEM WILL REPLACE PHONE, PAPER AND FAX TRANSACTIONS TO IMPROVE DELIVERY OF PATIENT CARE, ACCURACY OF MEDICAL RECORDS, REDUCE COSTS, AND PROTECT PATIENT INFORMATION.

4b (Code:) (Expenses \$ including grants of \$) (Revenue \$)

4c (Code:) (Expenses \$ including grants of \$) (Revenue \$)

4d Other program services (Describe in Schedule O.)

(Expenses \$ including grants of \$) (Revenue \$)

4e Total program service expenses 245,241.

Form 990 (2012)

**New Hampshire Health Information Organization
125 Airport Road
Concord NH 03301**

Our mission is to design and implement a secure and robust health information exchange which will lead to the reduction in healthcare cost and improve quality, efficiency, and safety of patient care.

New Hampshire Health Information Organization, 125 Airport Road, Concord NH 03301

Member Name	Board Position
David Briden	NHHA - Large Hospitals
Patricia Witthaus	NHHA - CAH Hospitals
Kirsten Platte	BSPCA - Community Health Centers NHHIO Secretary Chair - Governance Committee
Daniel Waszkowski, MD	NHMS - Independent Providers
Vacant - Pharmacy Board	NHBOP - Retail Pharmacy
Mark Guptil	NHBHA - Mental Health Centers
Deb Mullen	NH Home Care Association - VNA
Bill Baggeroer*	At-Large Member Chair - Technology Committee
Mary Beth Eldredge	At-Large Member NHHIO Vice-Chair Chair - Outreach Committee
Victor St. Pierre	At-Large Member Chair - Legislative Committee
David Querusio*	At-Large Member
Richard Lafleur, MD	At-Large Member
Michael Lehrman	At-Large Member
Denise Purington	At-Large Member NHHIO Chair
Carol LaCross	At-Large Member NHHIO Treasurer Chair - Finance Committee
Christine Rosenwasser, MD	At-Large Member
Lorraine Nichols*	At-Large Member Chair - Nominating Committee

* - Out of State Members