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26


STATE OF NEW HAMPSHIRE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

*NEW HAMPSHIRE HOSPITAL*

Lori A. Weaver
Commissioner

Ellen M. Lapointe
Chief Executive Officer

36 CLINTON STREET, CONCORD, NH 03301
603-271-5300 1-800-852-3345 Ext. 5300
Fax: 603-271-5395 TDD Access: 1-800-735-2964
www.dhhs.nh.gov


November 15, 2024

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

**REQUESTED ACTION**

Authorize the Department of Health and Human Services, New Hampshire Hospital, to enter into an amendment to an existing contract with Johnson Controls, Inc. (VC #177721), Manchester, NH, to continue routine inspections, preventative maintenance, corrective repairs, and emergency services for chillers located at New Hampshire Hospital, by exercising a contract renewal option by increasing the price limitation by $134,970 from $174,184 to $309,154 and extending the completion date from June 30, 2025 to June 30, 2027, effective upon Governor and Council approval. 70% General Funds. 30% Other Funds (Provider Fees).

The original contract was approved by Governor and Council on May 5, 2021, (Item #11), amended with Governor and Council approval on April 6, 2022, (Item #9A), and most recently amended on February 8, 2023 (Item #27).

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

**5-95-94-940010-8410 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVCS. HHS: NEW HAMPSHIRE HOSPITAL, NEW HAMPSHIRE HOSPITAL, NHH FACILITY/PATIENT SUPPORT**

| State Fiscal Year | Class / Account | Class Title | Job Number | Current Budget | Increased (Decreased) Amount | Revised Budget |
|---|---|---|---|---|---|---|
| 2022 | 048-500226 | Contract Repairs; Bldg & Grnds | 94024000 | $30,092 | $0 | $30,092 |
| 2023 | 048-500226 | Contract Repairs; Bldg & Grnds | 94024000 | $30,092 | $0 | $30,092 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 2024 | 048-500226 | Contract Repairs; Bldg & Grnds | 94024000 | $31,000 | $0 | $31,000 |
| 2025 | 048-500226 | Contract Repairs; Bldg & Grnds | 94024000 | $32,000 | $0 | $32,000 |
| 2026 | 048-500226 | Contract Repairs; Bldg & Grnds | 94024000 | $0 | $34,200 | $34,200 |
| 2027 | 048-500226 | Contract Repairs; Bldg & Grnds | 94024000 | $0 | $35,540 | $35,540 |
| | | | ***Subtotal*** | ***$123,184*** | ***$69,740*** | ***$192,924*** |

**05-95-094-940030-5267 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVCS, HHS: NEW HAMPSHIRE HOSPITAL, NEW HAMPSHIRE HOSPITAL, CHILLERS & AS 15-220:1-VII-F**

| State Fiscal Year | Class / Account | Class Title | Job Number | Current Budget | Increased (Decreased) Amount | Revised Budget |
|---|---|---|---|---|---|---|
| 2022 | 034-500162 | Capital Projects | 94024000 | $51,000 | $0 | $51,000 |
| 2025 | 034-500162 | Capital Projects | 94024000 | $0 | $49,230 | $49,230 |
| | | | ***Subtotal*** | ***$51,000*** | ***$49,230*** | ***$100,230*** |

**5-95-94-940010-3171 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVCS. HHS: NEW HAMPSHIRE HOSPITAL, NEW HAMPSHIRE HOSPITAL, NHH FACILITY/PATIENT SUPPORT**

| State Fiscal Year | Class / Account | Class Title | Job Number | Current Budget | Increased (Decreased) Amount | Revised Budget |
|---|---|---|---|---|---|---|
| 2027 | 048-500226 | Contract Repairs; Bldg & Grnds | 94054000 | $0 | $16,000 | $16,000 |
| | | | ***Subtotal*** | ***$0*** | ***$16,000*** | ***$16,000*** |
| | | | **Total** | **$174,184** | ***$134,970*** | ***$309,154*** |

## EXPLANATION

The purpose of this request is for the Contractor to continue providing routine inspections, preventative maintenance, corrective repairs and emergency services for two (2) Magnetic Bearing YMC2-S1055AAS chillers located at New Hampshire Hospital in the Acute Psychiatric Services Building and eventually for two (2) additional chillers in the planned High Security Unit when they are installed and operating. In addition, the Contractor will convert the cooling system for the variable speed drive (VSD) tube on the two (2) York/Johnson Controls Magnetic Bearing YMC2-S1055AAS chillers in the Acute Psychiatric Services Building from condenser water cooling to chill water cooling to assist with more efficient operation of the equipment.

The Contractor provides routine operating inspections and preventative maintenance three (3) times per year on two (2) Johnson Controls York Magnetic Bearing Chillers, Model #YNCW-S1055AAS in the Acute Psychiatric Services Building. In addition, the Contractor provides scheduled corrective repairs and maintenance if needed, and emergency service repairs 24 hours per day, 7 days per week at the Department's request. The Contractor will provide the same services for the chillers at the planned High Security Unit after the new chillers are installed and operating.

The magnetic bearing chillers are state-of-the-art technology, which must be serviced by specially trained and licensed technicians. The hospital staff lacks the necessary expertise to perform the required maintenance and repairs. The Joint Commission requires New Hampshire Hospital to maintain a proper "Environment of Care" for patients at all times. This technology tracks and monitors functionality to ensure the building maintains the proper climate and temperature. Without proper maintenance of these chillers, New Hampshire Hospital's patient care units, support staff areas, and general communal areas, would become uncomfortably hot during the warmer-weather months.

The Department will continue to monitor services by observing the Contractor's work while on the premises at New Hampshire Hospital.

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

Should the Governor and Council not authorize this request, the Department may not be able to maintain the chillers in accordance with the warranty requirements, which may lead to additional costly repairs, and/or complete failure of the equipment and the inability to maintain the ambient air temperature within the acceptable range.

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

Respectfully submitted,

Lori A. Weaver
Commissioner

**State of New Hampshire**
**Department of Health and Human Services**
**Amendment #3**

This Amendment to the Chiller Inspection and Preventative Maintenance Services contract is by and between the State of New Hampshire, Department of Health and Human Services ("State" or "Department") and Johnson Controls, Inc. ("the Contractor").

WHEREAS, pursuant to an agreement (the "Contract") approved by the Governor and Executive Council on May 5, 2021 (Item #11), as amended on April 6, 2022 (Item #9A) and on February 8, 2023 (Item #27), the Contractor agreed to perform certain services based upon the terms and conditions specified in the Contract as amended and in consideration of certain sums specified; and

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

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

1. Form P-37 General Provisions, Block 1.6, Account Number, to read:

   TBD.

2. Form P-37 General Provisions, Block 1.7, Completion Date, to read:
3. June 30, 2027.
4. Form P-37, General Provisions, Block 1.8, Price Limitation, to read:

   $309,154.

5. Modify Exhibit B, Scope of Services; Section 1.5, to read:

   1.5 The Contractor shall provide routine operational inspections, annual preventative maintenance, parts replacement using only Original Equipment Manufactured parts and clarifications, and repairs not covered under warranty at New Hampshire Hospital for two (2) York/Johnson Controls Magnetic Bearing YMC2-S1055AAS chillers in the Acute Psychiatric Services Building and for two (2) Evapco Company chillers in the planned High Security Unit when they are in service.

6. Modify Exhibit B, Scope of Services; by adding Section 1.27, to read:

   1.27. The Contractor shall provide all parts, labor, materials and necessary permits to convert the cooling system for the variable speed drive (VSD) on the two (2) York/Johnson Controls Magnetic Bearing YMC2-S1055AAS chillers in the Acute Psychiatric Services Building from condenser water cooling to chill water cooling. The Contractor shall:

   1.27.1. Plug the condenser water piping that feeds the VSD tubes and shell heat exchangers;

   1.27.2. Weld new taps as needed on the chill water piping;

   1.27.3. Install new tubing from the chill water piping taps to the VSD tubes and shell heat exchangers;

   1.27.4. Install a control valve in the new chill water tubing for each of the chillers;

   1.27.5. Install dew point sensor for each of the chillers and connect it to the main control panel;

   1.27.6. Test the new systems for both chillers when complete; and

   1.27.7. Train Department personnel to operate the new system.

7. Modify Exhibit C, Payment Terms; Section 1, to read:

1. This Agreement is funded by:

1.1. 75.01% General Funds.

1.2. 24.99% Other (Agency Funds and Provider Fees.)

8. Modify Exhibit C, Payment Terms, Section 2, to read:

2. Payment for said services shall be made as follows:

2.1. Payment for annual start-up, mid-season, and shutdown services provided in accordance with Exhibit B, Scope of Services, shall be paid at an all-inclusive rate of $8,144 for each of the Preventative Maintenance services for no more than three (3) scheduled service visits per year through June 30, 2025.

2.2. Payment for annual start-up, mid-season, and shutdown services provided in accordance with Exhibit B, Scope of Services for two (2) York/Johnson Controls Magnetic Bearing YMC2-S1055AAS chillers in the Acute Psychiatric Services Building shall be paid at the all-inclusive rate of:

2.2.1. $34,172 for services in State Fiscal Year 2026. Payment will be on a quarterly basis of $8,543 for each quarter, and

2.2.2. $35,540 for services in State Fiscal Year 2027. Payment will be on a quarterly basis of $8,885 for each quarter.

2.3. Payment for annual start-up, mid-season, and shutdown services provided in accordance with Exhibit B, Scope of Services for two (2) Evapco Company chillers in the planned High Security Unit shall be paid at an all-inclusive rate of up to $8,068 in State Fiscal Year 2027. Payment will be on a quarterly basis of $2,017 for each quarter, effective when the new chillers are in service, as scheduled by the Department.

2.4. Payment for scheduled corrective and emergency service repairs provided during normal business hours shall be reimbursed at an hourly rate of $163 per hour.

2.5. Payment for emergency service provided outside of normal business hours shall be reimbursed at an hourly rate of $245 per hour.

2.6. Payment for all services to convert the cooling systems for the variable speed drive (VSD) tube on two (2) of the York/Johnson Controls Magnetic Bearing YMC2-S1055AAS chillers in the Acute Psychiatric Services Building from condenser water cooling to chill water cooling as described in Exhibit B, Statement of Work, Section 1.27 shall be reimbursed as a flat fee of $49,229.58, upon Department approval of the bill received upon completion of the work.

2.7. For the purposes of this agreement, normal business hours are from 7:00 AM to 3:30 PM, Monday through Friday, excluding State holidays.

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

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

State of New Hampshire
Department of Health and Human Services

11/7/2024
Date

DocuSigned by:
Ellen Lapointe
Name: Ellen Lapointe
Title: Chief Executive Officer

Johnson Controls, Inc.

11/4/2024
Date

Signed by:
Shea McCarthy
Name: Shea McCarthy
Title: Branch Service Manager

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

OFFICE OF THE ATTORNEY GENERAL

11/7/2024
Date

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

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

OFFICE OF THE SECRETARY OF STATE

Date

Name:
Title:

# State of New Hampshire

# Department of State

CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that JOHNSON CONTROLS, INC. is a Wisconsin Profit Corporation registered to transact business in New Hampshire on January 02, 1958. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: **2045**

Certificate Number: **0006803760**


IN TESTIMONY WHEREOF,
I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 5th day of November A.D. 2024.

David M. Scanlan
Secretary of State

# CERTIFICATE OF AUTHORITY

I, Richard Herkkinen, hereby certify that:
(Name of the elected Officer of the Corporation/LLC; cannot be contract signatory)

1. I am a duly elected Clerk/Secretary/Officer of Johnson Controls, Inc.
(Corporation/LLC Name)

2. The following is a true copy of a vote taken at a meeting of the Board of Directors/shareholders, duly called and held on 4/24, 2023, at which a quorum of the Directors/shareholders were present and voting.
(Date)

VOTED: That Shea McCarthy (may list more than one person)
(Name and Title of Contract Signatory)

is duly authorized on behalf of Johnson Controls Inc to enter into contracts or agreements with the State
(Name of Corporation/ LLC)

of New Hampshire and any of its agencies or departments and further is authorized to execute any and all documents, agreements and other instruments, and any amendments, revisions, or modifications thereto, which may in his/her judgment be desirable or necessary to effect the purpose of this vote.

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

Dated: 11/5/24

Signature of Elected Officer
Name: Richard Herkkinen
Title: Market General Manager

Docusign Envelope ID: E900515B-A734-4074-8CD7-2AD8441F7844

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 11/7/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| PRODUCER | CONTACT NAME: | Chad Mannella | | |
|---|---|---|---|---|
| Marsh USA Inc.<br>540 West Madison Street<br>Suite 1200<br>Chicago, IL 60661 | PHONE (A/C, No, Ext): | (866) 966-4664 | FAX (A/C, No): | (212) 948-5167 |
| | E-MAIL ADDRESS: | JCI.CertRequest@marsh.com | | |

| INSURER(S) AFFORDING COVERAGE | | NAIC # |
|---|---|---|
| INSURER A: | OLD REPUBLIC INSURANCE CO | 24147 |
| INSURER B: | | |
| INSURER C: | | |
| INSURER D: | | |
| INSURER E: | | |
| INSURER F: | | |

INSURED
Johnson Controls US Holdings, Inc.
Johnson Controls, Inc.
Johnson Controls Fire Protection LP
Johnson Controls Security Solutions LLC (see attached Acord 101)
5757 North Green Bay Avenue
Milwaukee, WI 53209
BE3

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSR | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | |
|---|---|---|---|---|---|---|---|---|
| A | ☒ COMMERCIAL GENERAL LIABILITY | | | MWZY 313947 24 | 10/01/2024 | 10/01/2025 | EACH OCCURENCE | $5,000,000 |
| | ☐ CLAIMS MADE ☒ OCCUR | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) | $5,000,000 |
| | ☒ CONTRACTUAL LIABILITY | | | | | | MED EXP (Any one person) | $50,000 |
| | ☒ XCU Included | | | | | | PERSONAL & ADV INJURY | $5,000,000 |
| | GEN'L AGGREGATE LIMIT APPLIES PER: | | | | | | GENERAL AGGREGATE | $5,000,000 |
| | ☒ POLICY ☐ PROJECT ☐ LOC | | | | | | PRODUCTS - COMP/OP AGG | INC IN GEN AGG |
| | ☐ OTHER | | | | | | | |
| A | AUTOMOBILE LIABILITY | | | MWTB 313946-24 (Excludes NH) | 10/01/2024 | 10/01/2025 | COMBINED SINGLE LIMIT (Ea Accident) | $5,000,000 |
| A | ☒ ANY AUTO | | | MWTB 313949-24 (Primary NH $250k) | 10/01/2024 | 10/01/2025 | BODILY INJURY (Per person) | |
| A | ☐ OWNED AUTOS ONLY | | | MWZX 313950-24 (Excess NH $4.750mm) | 10/01/2024 | 10/01/2025 | BODILY INJURY (Per accident) | |
| | ☐ SCHEDULED AUTOS ONLY | | | Excess NH Auto is follow form to Primary NH Auto | | | PROPERTY DAMAGE (Per accident) | |
| | ☐ HIRED AUTOS ONLY | | | | | | | |
| | ☐ NON-OWNED AUTOS ONLY | | | | | | | |
| | ☐ UMBRELLA LIAB ☐ OCCUR | | | | | | EACH OCCURRENCE | |
| | ☐ EXCESS LIAB ☐ CLAIMS-MADE | | | | | | AGGREGATE | |
| | ☐ DED ☐ RETENTION $ | | | | | | | |
| A | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N | N/A | | MWC 313943 24 (AOS – See Pg 2) | 10/01/2024 | 10/01/2025 | ☒ PER STATUTE ☐ OTH-ER | |
| A | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [N] (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | | | MWXS 313944 24 (OH & WA) | 10/01/2024 | 10/01/2025 | E.L. EACH ACCIDENT | $1,000,000 |
| | | | | | | | E.L. DISEASE - EA EMPLOYEE | $1,000,000 |
| | | | | | | | E.L. DISEASE - POLICY LIMIT | $1,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

JCI / Tyco Contract Number:
JCI / Tyco Project Name:
Customer PO Number:

CERTIFICATE HOLDER

State of NH
Department of Health and Human Services
129 Pleasant Street
Concord, NH 03301-3857

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh USA Inc.
by Julie Nelsen

Julie Nelsen

 ARC

27

STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
*NEW HAMPSHIRE HOSPITAL*

Lori A. Weaver
Interim Commissioner

Ellen M. Lapointe
Chief Executive Officer

36 CLINTON STREET, CONCORD, NH 03301-3857
603-271-5300 1-800-852-3345 Ext. 5300
Fax: 603-271-5395 TDD Access: 1-800-735-2964 www.dhhs.nh.gov

January 9, 2022

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

**REQUESTED ACTION**

Authorize the Department of Health and Human Services, New Hampshire Hospital, to amend an existing contract with Johnson Controls, Inc. (VC #177721), Manchester, NH, for the continued provision of routine inspections, preventative maintenance, corrective repairs, and emergency services for two (2) magnetic bearing YMC2-S1055AAS chillers located at the Acute Psychiatric Services Building at New Hampshire Hospital, by exercising a contract renewal option by increasing the price limitation by $63,000 from $111,184 to $174,184 and extending the completion date from June 30, 2023 to June 30, 2025, effective July 1, 2023 upon Governor and Council approval. 70% General Funds. 30% Other Funds (Provider Fees).

The original contract was approved by Governor and Council on May 5, 2021, item #11 and most recently amended with Governor and Council approval on April 6, 2022, item #9A.

Funds are anticipated to be available in the following accounts for State Fiscal Years 2024 and 2025, upon the availability and continued appropriation of funds in the future operating budget, with the authority to adjust budget line items within the price limitation and encumbrances between state fiscal years through the Budget Office, if needed and justified.

**05-95-94-940010-8410 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVCS, HHS: NEW HAMPSHIRE HOSPITAL, NEW HAMPSHIRE HOSPITAL, NHH FACILITY/PATIENT SUPPORT**

| State Fiscal Year | Class / Account | Class Title | Job Number | Current Budget | Increased (Decreased) Amount | Revised Budget |
|---|---|---|---|---|---|---|
| 2022 | 048-500226 | Contract Repairs: Bldg & Grnds | 94024000 | $30,092 | $0 | $30,092 |
| 2023 | 048-500226 | Contract Repairs: Bldg & Grnds | 94024000 | $30,092 | $0 | $30,092 |
| 2024 | 048-500226 | Contract Repairs; Bldg & Grnds | 94024000 | $0 | $31,000 | $31,000 |
| 2025 | 048-500226 | Contract Repairs; Bldg & Grnds | 94024000 | $0 | $32,000 | $32,000 |
| | | | *Subtotal* | *$60,184* | *$63,000* | *$123,184* |

**05-95-094-940030-5267 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVCS, HHS: NEW HAMPSHIRE HOSPITAL, NEW HAMPSHIRE HOSPITAL, CHILLERS & AS 15-220:1-VII-F**

| State Fiscal Year | Class / Account | Class Title | Job Number | Current Budget | Increased (Decreased) Amount | Revised Budget |
|---|---|---|---|---|---|---|
| 2022 | 034-500162 | Capital Projects | 94024000 | $51,000 | $0 | $51,000 |
| | | | *Subtotal* | *$51,000* | *$0* | *$51,000* |
| | | | **Total** | **$111,184** | **$63,000** | **$174,184** |

## EXPLANATION

The purpose of this request is for the Contractor to continue providing routine inspections, preventative maintenance, corrective repairs and emergency services for two (2) Magnetic Bearing YMC2-S1055AAS chillers located at the Acute Psychiatric Services Building at New Hampshire Hospital.

The Contractor provides routine operating inspections and preventative maintenance three (3) times per year on two (2) Johnson Controls York Magnetic Bearing Chillers, Model #YNCW-S1055AAS, located at New Hampshire Hospital's Acute Psychiatric Services building. In addition, the Contractor provides scheduled corrective repairs and maintenance if needed, and emergency service repairs 24 hours per day, 7 days per week at the Department's request.

The magnetic bearing chillers are state-of-the-art technology, which must be serviced by specially trained and licensed technicians. The hospital staff lacks the necessary expertise to perform the required maintenance and repairs.

The Joint Commission requires the New Hampshire Hospital to maintain a proper "Environment of Care" for patients at all times. The state-of-the-art technology tracks and monitors functionality to ensure the building maintains the proper climate and temperature. Without proper maintenance of these chillers, the Acute Psychiatric Services Building at New Hampshire Hospital including patient care units, support staff areas, and general communal areas, would become uncomfortably hot during the warmer-weather months.

Approximately 3,000 individuals will be served during State Fiscal Years 2024 and 2025.

The Department will continue to monitor services by observing the Contractor's work while on the premises at New Hampshire Hospital.

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

Should the Governor and Council not authorize this request, the Department may not be able to maintain the chillers in accordance with the warranty requirements, which may lead to additional costly repairs, and/or complete failure of the equipment. Should the chillers not be able to maintain the ambient air temperature within the acceptable range, New Hampshire Hospital may be found in violation of The Joint Commission's standard for an "Environment of Care."

Area served: Acute Psychiatric Services Building at New Hampshire Hospital

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

Respectfully submitted,

Lori A. Weaver
Interim Commissioner

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

This Amendment to the Chiller Inspection and Preventative Maintenance Services contract is by and between the State of New Hampshire, Department of Health and Human Services ("State" or "Department") and Johnson Controls, Inc. ("the Contractor").

WHEREAS, pursuant to an agreement (the "Contract") approved by the Governor and Executive Council on May 5, 2021 (Item #11), as amended on April 6, 2022 (Item #9A), the Contractor agreed to perform certain services based upon the terms and conditions specified in the Contract as amended and in consideration of certain sums specified; and

WHEREAS, pursuant to Form P-37, General Provisions, Paragraph 17, and Exhibit A, Revisions to Standard Agreement Provisions, Section 1, the Contract may be amended upon written agreement of the parties and approval from the Governor and Executive Council; and

WHEREAS, the parties agree to extend the term of the agreement and increase the price limitation to support continued delivery of these services; and

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

1. Form P-37 General Provisions, Block 1.6, Account Number, to read:

   05-95-94-094010-8410
   05-95-94-940030-5267

2. Form P-37 General Provisions, Block 1.7, Completion Date, to read:

   June 30, 2025

3. Form P-37, General Provisions, Block 1.8, Price Limitation, to read:

   $174,184

4. Form P-37, General Provisions, Block 1.9, Contracting Officer for State Agency, to read:

   Robert W. Moore, Director

5. Modify Exhibit C, Payment Terms, Section 1, to read:

   1. This Agreement is funded by:

      1.1. 79% General Funds

      1.2. 10% Other Funds (Agency Fees)

      1.3. 11% Other Funds (Provider Fees)

6. Modify Exhibit C, Payment Terms, Section 2, to read:

   2. Payment for said services shall be made as follows:

      2.1. Payment for annual start-up, mid-season, and shutdown services provided in accordance with Exhibit B, Scope of Services, shall be paid at an all-inclusive rate of $8,144 for each of the Preventative Maintenance services for no more than three (3) scheduled service visits per year.

      2.2. Payment for scheduled corrective and emergency service repairs provided during normal business hours shall be reimbursed at an hourly rate of $163 per hour.

      2.3. Payment for emergency service provided outside of normal business hours shall be reimbursed at an hourly rate of $245 per hour.

      2.4. For the purposes of this agreement, normal business hours are from 7:00 AM to 3:30 PM, Monday through Friday, excluding State holidays.

All terms and conditions of the Contract and prior amendments not modified by this Amendment remain in full force and effect. This Amendment shall be effective July 1, 2023 upon Governor and Council approval.

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

State of New Hampshire
Department of Health and Human Services

1/4/2023
Date

DocuSigned by:
Ellen Marie Lapointe
Name: Ellen Marie Lapointe
Title: Chief Executive Officer

Johnson Controls, Inc.

1/4/2023
Date

DocuSigned by:
David Plummer
Name: David Plummer
Title: Area Service Manager

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

OFFICE OF THE ATTORNEY GENERAL

1/6/2023
Date

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

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

OFFICE OF THE SECRETARY OF STATE

_____
Date

_____
Name:
Title:

MAR22'22 AM10:41 RCVD

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Lori A. Shibinette
Commissioner

Ellen M. Lapointe
Chief Executive Officer

**STATE OF NEW HAMPSHIRE**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

***NEW HAMPSHIRE HOSPITAL***

36 CLINTON STREET, CONCORD, NH 03301
603-271-5300 1-800-852-3345 Ext. 5300
Fax: 603-271-5395 TDD Access: 1-800-735-2964
www.dhhs.nh.gov

March 15, 2022

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

**REQUESTED ACTION**

Authorize the Department of Health and Human Services, New Hampshire Hospital, to enter into a **Retroactive** amendment to an existing contract with Johnson Controls, Inc. (VC #177721), Manchester, NH for preventative maintenance completed to apply a Belzona coating on the condenser tube sheets, end bells and water boxes of two magnetic bearing YMC2-S1055AAS chillers located at the Acute Psychiatric Services Building at New Hampshire Hospital by increasing the price limitation by $51,000 from $60,184 to $111,184 with no change to the contract completion date of June 30, 2023, effective retroactive to January 1, 2022, upon Governor and Council approval. 100% General Funds.

The original contract was approved by Governor and Council on May 5, 2021, Item #11.

Funds are available in the following accounts for State Fiscal Years 2022 and 2023, with the authority to adjust budget line items within the price limitation and encumbrances between state fiscal years through the Budget Office, if needed and justified.

**05-95-94-940010-8410 HEALTH AND SOCIAL SERVICES DEPT OF HEALTH AND HUMAN SVCS, HHS: NEW HAMPSHIRE HOSPITAL, NEW HAMPSHIRE HOSPITAL, NHH FACILITY/PATIENT SUPPORT**

| State Fiscal Year | Class / Account | Class Title | Job Number | Current Budget | Increased (Decreased) Amount | Revised Budget |
|---|---|---|---|---|---|---|
| 2022 | 048-500226 | Contract Repairs: Bldg & Grnds | 94024000 | $30,092 | $0 | $30,092 |
| 2023 | 048-500226 | Contract Repairs: Bldg & Grnds | 94024000 | $30,092 | $0 | $30,092 |
| | | | *Subtotal* | *$60,184* | *$0* | *$60,184* |

**05-95-094-940030-5267 HEALTH AND SOCIAL SERVICES DEPT OF HEALTH AND HUMAN SVCS, HHS: NEW HAMPSHIRE HOSPITAL, NEW HAMPSHIRE HOSPITAL, CHILLERS & AS 16-220:1-VII-F**

| State Fiscal Year | Class / Account | Class Title | Job Number | Current Budget | Increased (Decreased) Amount | Revised Budget |
|---|---|---|---|---|---|---|
| 2022 | 034-500162 | Capital Projects | 94024000 | $0 | $51,000 | $51,000 |
| | | | ***Subtotal*** | ***0*** | ***$51,000*** | ***$51,000*** |
| | | | **Total** | **$60,184** | **$51,000** | **$111,184** |

## EXPLANATION

The Department previously had an agreement with the Contractor for chiller inspection and maintenance services, which expired in June 2021 and included the application of the Belzona coating. The Department anticipated that the application of Belzona coating would be completed in June 2021; therefore, the application work was not included in the current competitively bid contract that was awarded to the Contractor and approved by Governor and Council on May 5, 2021. However, the application work was delayed due to COVID-19 restrictions within New Hampshire Hospital's Acute Psychiatric Services facility and could not be completed until January 2022. The application work was inadvertently authorized by staff prior to realizing the services were not included in the current contract. Consequently, this request is **Retroactive** because the Department is seeking to add funding and the Belzona application services to the current contract in order to pay the Contractor for the worked completed in January 2022.

The purpose of this request is to pay for costs associated with the application of a Belzona coating on condenser tube sheets, end bells and water boxes of two (2) Magnetic Bearing YMC2-S1055AAS chillers located at the Acute Psychiatric Services Building at New Hampshire Hospital to protect them against moisture and corrosion. Magnetic bearing chillers are state-of-the-art technology that must be serviced by specially trained and licensed technicians. The hospital staff lacks the necessary expertise to perform the required maintenance and repairs.

The Contractor successfully completed the work, which included opening the condensers, preparing the equipment surfaces with abrasives and blasting, applying metal glide to tube sheets to bring tube surfaces flush with tube ends, and applying two (2) layers of Belzona coating to all prepped surfaces. The Contractor is also providing a five-year warranty for the Belzona coating, effective from the date of application.

As referenced in Exhibit A, Revisions to Standard Agreement Provisions, of the original agreement, the parties have the option to extend the agreement for up to four (4) additional years, contingent upon satisfactory delivery of services, available funding, agreement of the parties and Governor and Council approval. The Department is not exercising its option to renew at this time.

Should the Governor and Council not authorize this request, the Department will not be able to pay the Contractor, which is based in Manchester, NH and has reliably provided these services to New Hampshire Hospital for approximately five (5) years, for the necessary maintenance work to the magnetic bearing chillers at New Hampshire Hospital.

Respectfully submitted,

Lori A. Shibinette
Commissioner

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

This Amendment to the Chiller Inspection and Preventative Maintenance Services contract is by and between the State of New Hampshire, Department of Health and Human Services ("State" or "Department") and Johnson Controls, Inc. ("the Contractor").

WHEREAS, pursuant to an agreement (the "Contract") approved by the Governor and Executive Council on May 5, 2021 (Item #11), the Contractor agreed to perform certain services based upon the terms and conditions specified in the Contract and in consideration of certain sums specified; and

WHEREAS, pursuant to Form P-37, General Provisions, Paragraph 17, the Contract may be amended upon written agreement of the parties and approval from the Governor and Executive Council; and

WHEREAS, the parties agree to increase the price limitation or modify the scope of services to support continued delivery of these services; and

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

1. Form P-37, General Provisions, Block 1.8, Price Limitation, to read:

   $111,184.

2. Modify Exhibit B, Scope of Services Section 1, Statement of Work, Subsection 1.25, Warranty, by adding Paragraph 1.25.3, to read:

   1.25.3 The Contractor shall guarantee the Belzona coating described in Subsection 1.26 below for no less than five (5) years from the date of application and shall perform any necessary repairs or reapplications of the Belzona coating at no cost to the Department.

3. Modify Exhibit B, Scope of Services, Section 1, Statement of Work, by adding Subsection 1.26, to read:

   1.26 The Contractor shall apply a Belzona coating on the condenser tube sheets, end bells and water boxes of the two chillers described in Subsection 1.5, above, including, but not limited to:

   1.26.1 Preparing the surfaces using an abrasive blasting method, to be approved by the Department;

   1.26.2 Applying metal glide to tube sheets to bring tube surfaces flush with tube ends;

   1.26.3 Applying two layers of Belzona coating to all prepped surfaces;

   1.26.4 Reassembling equipment; and

   1.26.5 Returning the equipment to operation, upon approval from the Department.

All terms and conditions of the Contract not modified by this Amendment remain in full force and effect. This Amendment shall be effective retroactive to January 1, 2022, upon Governor and Council approval.

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

State of New Hampshire
Department of Health and Human Services

3/16/2022
Date

DocuSigned by:
Joseph T. Caristi
Name: Joseph T. Caristi
Title: Chief Financial Officer, NH Hospital

Johnson Controls, Inc.

3/16/2022
Date

DocuSigned by:
David Plummer
Name: David Plummer
Title: Area Service Manager

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

OFFICE OF THE ATTORNEY GENERAL

3/16/2022
Date

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

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

OFFICE OF THE SECRETARY OF STATE

_____
Date

_____
Name:
Title:

APR21'21 AM11:41 RCVD

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Lori A. Shibinette
Commissioner

Heather M. Moquin
Chief Executive Officer

STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
*NEW HAMPSHIRE HOSPITAL*

36 CLINTON STREET, CONCORD, NH 03301
603-271-5300 1-800-852-3345 Ext. 5300
Fax: 603-271-5395 TDD Access: 1-800-735-2964
www.dhhs.nh.gov

April 19, 2021

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

## REQUESTED ACTION

Authorize the Department of Health and Human Services, New Hampshire Hospital, to enter into a contract with Johnson Controls, Inc. (VC #177721), Manchester, NH in the amount of $60,184 for routine inspections, preventative maintenance, and corrective and emergency service repairs for two magnetic bearing YMC2-S1055AAS chillers located at the Acute Psychiatric Services Building at New Hampshire Hospital, with the option to renew for up to four (4) additional years, effective upon Governor and Council approval through June 30, 2023. 70% General Funds, 30% Other Funds (Agency Fees).

Funds are anticipated to be available in the following account for State Fiscal Years 2022 and 2023 upon the availability and continued appropriation of funds in the future operating budget, with the authority to adjust budget line items within the price limitation and encumbrances between state fiscal years through the Budget Office, if needed and justified.

**05-95-94-940010-8410-048-500226 HEALTH AND SOCIAL SERVICES DEPT OF HEALTH AND HUMAN SVCS, HHS: NEW HAMPSHIRE HOSPITAL, NEW HAMPSHIRE HOSPITAL, NHH FACILITY/PATIENT SUPPORT**

| State Fiscal Year | Class / Account | Class Title | Job Number | Total Amount |
|---|---|---|---|---|
| 2022 | 048-500226 | Contracts Repairs; Bldg & Grnds | 94024000 | $30,092 |
| 2023 | 048-500226 | Contracts Repairs; Bldg & Grnds | 94024000 | $30,092 |
| | | | Total | $60,184 |

## EXPLANATION

The purpose of this request is to provide routine inspections, preventative maintenance, and corrective and emergency service repairs for two Magnetic Bearing YMC2-S1055AAS chillers located at the Acute Psychiatric Services Building at New Hampshire Hospital.

The Contractor will provide routine operating inspections and preventative maintenance three times per year on two (2) Johnson Controls York Magnetic Bearing Chillers Model # YNCW-S1055AAS located in NH Hospital's Acute Psychiatric Services building. The Contractor will also provide scheduled corrective repairs and maintenance if needed, and emergency service repairs 24 hours per day, seven days per week at the Department's request.

Magnetic bearing chillers are state-of-the-art technology that must be serviced by specially-trained and licensed technicians. The hospital staff lacks the necessary expertise to perform the required maintenance and repairs.

The Joint Commission requires the New Hampshire Hospital to maintain a proper "Environment of Care" for patients at all times. By using state-of-the-art technology to track and monitor functionality, these chillers ensure that New Hampshire Hospital maintains the proper climate and temperature. Without these chillers, the Acute Psychiatric Services Building at New Hampshire Hospital, including patient care units, support staff areas, and general communal areas, would become extremely hot during warm temperature months.

The Department will monitor contracted services by overseeing Contractor activity while performing the services onsite, and reviewing a service report that the Contractor will be required to provide after each service call.

The Department selected the Contractor through a competitive bid process using a Request for Bids (RFB) that was posted on the Department's website from January 22, 2021 through March 5, 2021. The Department received one (1) bid. The Bid Summary Sheet is attached.

As referenced in Exhibit A, Revisions to Standard Agreement Provisions, Section 1, Revisions to Form P-37, General Provisions, Subsection 1.2 of the attached contract, the parties have the option to extend the agreement for up to four (4) additional years, contingent upon satisfactory delivery of services, available funding, agreement of the parties, and Governor and Council approval.

Should the Governor and Council not authorize this request, the Department may not be able to maintain the chillers in accordance with the warranty requirements, which may lead to additional costly repairs, or complete failure of the equipment. Should the chillers not be able to maintain the ambient air temperature within the acceptable range, New Hampshire Hospital could be found in violation of The Joint Commission's standard for an "Environment of Care."

Area served: Acute Psychiatric Services Building at New Hampshire Hospital.

Respectfully submitted,

Lori A. Shibinette
Commissioner

New Hampshire Department of Health and Human Services
Office of Business Operations
Contracts & Procurement Unit
Summary Scoring Sheet

Chiller Inspection and Preventative Maintenance Services
RFP Name

RFB-2022-OBH-02-CHILL
RFP Number

Bidder Name
1. Johnson Controls, Inc.

Annualized Cost Per
$30,174.00

FORM NUMBER P-37 (version 12/11/2019)

Subject: Chiller Inspection and Preventative Maintenance Services (RFB-2022-NHH-02-CHILL-01)

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

## AGREEMENT

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

## GENERAL PROVISIONS

### 1. IDENTIFICATION.

| | | | |
|---|---|---|---|
| 1.1 State Agency Name<br>New Hampshire Department of Health and Human Services | | 1.2 State Agency Address<br>129 Pleasant Street<br>Concord, NH 03301-3857 | |
| 1.3 Contractor Name<br>Johnson Controls, Inc. | | 1.4 Contractor Address<br>5757 N Green Bay Ave - PO Box 591<br>Milwaukee, WI 53209 | |
| 1.5 Contractor Phone Number<br>(603) 222-2400 | 1.6 Account Number<br>05-95-94-094100-8410-048-500226 | 1.7 Completion Date<br>June 30, 2023 | 1.8 Price Limitation<br>$60,184 |
| 1.9 Contracting Officer for State Agency<br>Nathan D. White, Director | | 1.10 State Agency Telephone Number<br>(603) 271-9631 | |
| 1.11 Contractor Signature<br>DocuSigned by: Lance J. Flagg<br>Date: 4/8/2021 | | 1.12 Name and Title of Contractor Signatory:<br>Lance J. Flagg<br>Branch Service Manager | |
| 1.13 State Agency Signature<br>DocuSigned by: Heather M. Moquin<br>Date: 4/9/2021 | | 1.14 Name and Title of State Agency Signatory.<br>Heather M. Moquin<br>Chief Executive Officer, New Hampshire Hospita | |
| 1.15 Approval by the N.H. Department of Administration, Division of Personnel *(if applicable)*.<br>By: DocuSigned by: Lorrie Rudis<br>Lorrie Rudis<br>Director, On: 4/9/2021 | | | |
| 1.16 Approval by the Attorney General (Form, Substance and Execution) *(if applicable)*<br>By: DocuSigned by:<br>Catherine Pinos<br>On: 4/16/2021 | | | |
| 1.17 Approval by the Governor and Executive Council *(if applicable)*<br>G&C Item number: | | G&C Meeting Date: | |



Contractor Initials: LJF
Date: 4/8/2021

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

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

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

4. CONDITIONAL NATURE OF AGREEMENT.

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

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

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

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

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

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

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

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

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

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

7. PERSONNEL.

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

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

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



Contractor Initials WJF

Date 4/8/2021

**8. EVENT OF DEFAULT/REMEDIES.**

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

8.1.1 failure to perform the Services satisfactorily or on schedule;

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

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

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

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

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

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

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

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

**9. TERMINATION.**

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

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

**10. DATA/ACCESS/CONFIDENTIALITY/ PRESERVATION.**

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

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

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

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

**12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.**

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

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

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



Contractor Initials: WE

Date: 4/8/2021

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

14. INSURANCE.

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

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

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

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

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

15. WORKERS' COMPENSATION.

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

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

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

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

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

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

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

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

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

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

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



Contractor Initials DS UJF

Date 4/8/2021

**New Hampshire Department of Health and Human Services**
**Chiller Inspection and Preventative Maintenance Services**

# EXHIBIT A

## Revisions to Standard Agreement Provisions

1. Revisions to Form P-37, General Provisions

1.1. Paragraph 3, Effective Date/Completion of Services, is amended by adding subparagraph 3.3 as follows:

3.3. The parties may extend the Agreement for up to four (4) additional years from the Completion Date, contingent upon satisfactory delivery of services, available funding, agreement of the parties, and approval of the Governor and Executive Council.

1.2. Paragraph 12, Assignment/Delegation/Subcontracts, is amended by adding subparagraph 12.3 as follows:

12.3. The Contractor shall ensure that no subcontractors are used to perform services.

**New Hampshire Department of Health and Human Services**
**Chiller Inspection and Preventative Maintenance Services**

# EXHIBIT B

## Scope of Services

### 1. Statement of Work

1.1. For the purposes of this agreement, all references to days shall mean calendar days.

1.2. The Contractor shall maintain active licenses to perform this work as required by the State of New Hampshire.

1.3. The Contractor shall ensure that no subcontractors are used to perform services.

1.4. The Contractor shall ensure that the Departments has access to all Johnson Controls documentation related to York YMC2 Chillers.

1.5. The Contractor shall provide routine operational inspections, annual preventative maintenance, parts replacement using only Original Equipment Manufactured parts and clarifications, and repairs not covered under warranty for two (2) York/Johnson Controls Magnetic Bearing YMC2-S1055AAS Chillers located in the Acute Psychiatric Services building of the New Hampshire Hospital.

1.6. The Contractor shall schedule an appointment with the New Hampshire Hospital (NHH) Director of Facilities, or other designated contact, for all service visits to the premises, which include but are not limited to:

1.6.1. Start-up services during the month of March each year, contingent upon weather and the availability of NHH Facilities staff.

1.6.2. Mid-Season services between July 15th and August 1st each year contingent upon the availability of NHH Facilities staff.

1.6.3. Shutdown services during the month of January each year, contingent upon weather and the availability of NHH Facilities staff.

1.7. For all emergency service calls, the Contractor shall appear on-site within two (2) hours of the call.

1.8. The Contractor shall provide all supervision, materials, equipment, tools, labor and transportation necessary for successful completion of the work.

1.9. The Contractor shall ensure emergency services are available on a twenty-four (24) hour, seven (7) day per week basis.

1.10. The Contractor shall provide a written summary of work performed after each scheduled or emergency call, and obtain the signature the New Hampshire Hospital Director of Facilities or designee before leaving the premises.

1.11. The Contractor shall provide a report via email to the Director of Facilities or designee within ten (10) days for each service call. The Contractor shall ensure the report includes, but is not limited to:

1.11.1. Maintenance tasks completed.

1.11.2. Parts replaced.

1.11.3. Analysis of coolant samples.

1.11.4. Any tests required or recommended by the equipment manufacturer.

1.11.5. A description of identified equipment deficiencies.

1.11.6. Any potential problems or pending failures identified.

1.12. The Contractor shall adhere to the following safety requirements when performing work on site:

1.12.1. Using appropriate eye protection;

1.12.2. Using appropriate head protection;

1.12.3. Using appropriate gloves;

1.12.4. Using and following fall protection safety policies;

1.12.5. Using and following the ladder safety procedures;

1.12.6. Using and following the lock-out tag-out procedures when performing work on all electrical equipment;

1.12.7. Using appropriate arc flash personal protective equipment when working on equipment voltages over 240 volts; and

1.12.8. Performing all required duties in accordance with the New Hampshire Adult Psychiatric Services Hospital safety policies.

1.13. The Contractor shall provide preventative maintenance services; which include, but are not limited to performing the following tasks at each visit:

1.13.1. Signing in and submitting to screening for communicable diseases, including screening for the COVID-19 virus, as required by the Department.

1.13.2. Reporting to the New Hampshire Hospital Facilities Office upon arrival.

1.13.3. Checking with the appropriate Department staff for any identified operational deficiencies.

1.13.4. Reviewing the control panel for proper operation and recorded fault histories.

1.13.5. Conducting refrigerant leak check.

1.13.6. Checking the overall condition of each unit.

1.13.7. Removing and disposing of any debris from any maintenance activity.

1.13.8. Documenting tasks performed during each visit and reporting any observations to Director of Facilities or designee.

1.13.9. Checking the refrigerant alarm.

1.13.10. Using the ground fault circuit interrupter safety process while working with electrical tools and equipment.

1.14. The Contractor shall provide preventative maintenance services, which include, but are not limited to performing the following duties annually during start-up:

1.14.1. Lubricating and checking capacity control and linkage.

1.14.2. Checking and tightening electrical connections.

1.14.3. Performing preventative procedures to flow proving devices.

1.14.4. Performing Variable Speed Drive (VSD) coolant change procedures.

1.14.5. Calibrating the cooler transducer.

1.14.6. Calibrating the condenser transducer.

1.14.7. Calibrating the condenser high-pressure cutout.

1.14.8. Calibrating operating controls.

1.14.9. Replacing the liquid line filter drier.

1.14.10. Checking gauges / indicator lights.

1.14.11. Inspecting the VSD arc shields.

1.14.12. Inspecting the VSD capacitors.

1.14.13. Inspecting the VSD coils & contacts.

1.14.14. Inspecting the VSD fuses and heaters.

1.14.15. Inspecting the VSD linkages.

1.14.16. Inspecting the VSD resistors.

1.14.17. Inspecting the VSD transformers.

1.14.18. Inspecting the VSD wire insulation.

1.14.19. Draining water from condenser water box.

1.14.20. Removing and replacing the condenser head.

1.14.21. Draining water from cooler water box.

1.14.22. Cleaning the condenser.

1.14.23. Cleaning and brushing condenser tubes.

1.14.24. Restoring the power.

1.14.25. Cleaning the work area.

1.14.26. Following the safety policy for working with chlorofluorocarbons (CFC), hydrochlorofluprocarbons (HCFC) and heat resistant steel casting (HRCS) refrigerants.

1.14.27. Following the process for handling and disposing of used oil.

1.14.28. Checking with appropriate customer representative to coordinate the startup of the system.

1.14.29. Removing shutdown tag from unit.

1.14.30. Verifying the chilled and condenser water valves are in their proper operating position.

1.14.31. Checking for proper condenser and chilled water flow.

1.14.32. Starting the chiller.

1.14.33. Reviewing the control panel for proper operation and recorded fault histories.

1.14.34. Checking system pressures and temperatures.

1.14.35. Checking refrigerant levels.

1.14.36. Checking capacity control.

1.14.37. Inspecting for signs of refrigerant leakage.

1.14.38. Checking for unusual noise and vibration.

1.14.39. Checking overall condition of unit.

1.14.40. Recording all operating parameters.

1.14.41. Documenting tasks performed during visit and reporting any observations to Department staff.

1.14.42. Reporting to the facilities office and obtaining signature from Department staff.

1.15. The Contractor shall conduct preventative maintenance services, which include, but are not limited to, performing the following duties annually mid-season:

1.15.1. Checking for unusual noise and vibration.

1.15.2. Checking with Department staff for operational deficiencies.

1.15.3. Recording equipment specific information for reference.

1.15.4. Starting and running equipment at normal operating conditions.

1.15.5. Recording vibration data.

1.15.6. Recording readings and delivering a vibration analysis report, which must include any with recommended corrective actions.

1.15.7. Documenting tasks performed during visit and reporting any observations to Department staff.

1.15.8. Reviewing and evaluating log readings.

1.16. The Contractor shall conduct preventative maintenance services, which include, but are not limited to, performing the following duties annually after shut-down:

1.16.1. Following the standard safety policy for working with CFCS, HCFCS and HRCS refrigerants.

1.16.2. Following the standard process for handling and working with used oil.

1.16.3. Checking with Facilities Department staff for operational deficiencies.

1.16.4. Reviewing control panel for proper operation and recorded fault histories.

1.16.5. Checking refrigerant levels.

1.16.6. Recording/logging all operating parameters.

1.16.7. Shutting down the chiller.

1.16.8. Isolating evaporator and condenser bundles.

1.16.9. Conducting refrigerant leak-check.

1.16.10. Tagging the chiller as out-of-service.

1.16.11. Disposing of debris from maintenance activity.

1.16.12. Performing Eddy Current Testing on evaporators and condensers to compare against baseline documentation for both chillers, and correcting deficiencies as needed.

1.16.13. Brushing condenser tubes by removing one head only, including, but not limited to:

1.16.13.1. Following the ground fault circuit interrupter safety process while working with electrical tools and equipment.

1.16.13.2. Replacing gasket.

1.16.13.3. Replacing head.

1.16.13.4. Disposing of debris.

1.16.13.5. Documenting tasks performed during visit and reporting any observations to Facilities Department staff.

1.17. The Contractor shall employ qualified mechanics who are trained and have a current certification to work on York YMC2 chillers.

1.18. The Contractor shall ensure mechanics are available to respond on site within two (2) hours upon notification that there is a need for emergency services. The Contractor shall ensure mechanics:

1.18.1. Have all certifications for environmental, legal and technical purposes; and

1.18.2. Have a minimum of five (5) years' experience working with equipment of equal size and complexity.

1.19. The Contractor shall maintain all necessary licenses, permits and/or certifications required by Federal, State, County and Municipal laws, ordinances, rules and regulations for the duration of the project. Additionally, the Contractor shall be:

1.19.1. Trained and certified to work on Johnson Controls Metasys Energy Management Systems.

1.19.2. Trained and certified to install and program Johnson Controls Facility Explorer Energy Management Systems.

1.20. The Contractor shall notify the Department immediately of any loss or suspension of any required licenses, permits and/or certifications.

1.21. The Contractor shall receive a safety and confidentiality orientation as provided by the Department.

1.22. The Contractor shall ensure each employee performing services onsite execute the following forms prior to the commencement of any work:

1.22.1. A Confidentiality Form signed and sent to the Department;

1.22.2. An attestation that a Criminal Record Authorization Form has been completed and submitted to the Department of Safety, Criminal Records Unit, with the appropriate fee, for each individual providing services at New Hampshire Hospital;

1.22.3. The Contractor Safety Guidelines; and

1.22.4. Proof of immunization in accordance with recommendations from the United States Department of Health and Human Services Centers for Disease Control and Prevention for the Immunization of Health Care Workers, upon the request of the Department. The Contractor shall ensure immunizations include the COVID-19 vaccination when it is widely available.

1.23. The Contractor shall provide a COVID-19 symptoms self-monitoring protocol to the Department prior to providing services in this agreement and shall follow protocols outlined in the Department's COVID Response Level Document, including but not limited to wearing a face covering over mouth and nose while

inside the New Hampshire Hospital APS building.

1.24. The Contractor shall provide an itemized invoice of all work performed within 24 hours of completing the work including, that includes, but is not limited to:

1.24.1. Parts.

1.24.2. Labor.

1.24.3. Materials.

1.25. Warranty

1.25.1. Except as otherwise specified, the Contractor shall guarantee all new parts and labor against defects resulting from the use of inferior materials, equipment or workmanship for one (1) year from the date of acceptance of work by the Department.

1.25.2. If, within any guarantee period, repairs or changes are required in connection with guaranteed work, which in the opinion of the Department is rendered necessary as a result of the use of materials, equipment or workmanship which are inferior, defective, or not in accordance with the terms of the contract must, the Contractor shall:

1.25.2.1. Place in satisfactory condition in every particular, all such guaranteed work and correct all defects therein;

1.25.2.2. Make good all damage to the building or site, or equipment or contents thereof, which in the opinion of the Contract Administrator, is the result of the use of materials, equipment or workmanship, which are inferior, defective, or not in accordance with the terms of this contract; and.

1.25.2.3. Make good any work or material, or the equipment and contents of said building or site disturbed in fulfilling any such guarantee.

2. Exhibits Incorporated

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

3. Additional Terms

3.1. Impacts Resulting from Court Orders or Legislative Changes

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

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

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

3.3. Credits and Copyright Ownership

3.3.1. All documents, notices, press releases, research reports and other materials prepared during or resulting from the performance of the services of the Agreement shall include the following statement, "The preparation of this (report, document etc.) was financed under an Contract with the State of New Hampshire, Department of Health and Human Services, with funds provided in part by the State of New Hampshire and/or such other funding sources as were available or required, e.g., the United States Department of Health and Human Services."

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

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

3.3.3.1. Brochures.

3.3.3.2. Resource directories.

3.3.3.3. Protocols or guidelines.

3.3.3.4. Posters.

3.3.3.5. Reports.

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

4. Records

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

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

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

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

# EXHIBIT C

## Payment Terms

1. This Agreement is funded by:
   1.1. 70% General funds.
   1.2. 30% Other funds (Agency fees).
2. Payment for said services shall be made as follows:
   2.1. Payment for annual start-up, mid-season, and shutdown services provided in accordance with Exhibit B, Scope of Services shall be paid at an all-inclusive rate of $8,144 for each of the Preventative Maintenance services for no more than three (3) scheduled service visits per year, not to exceed $48,864 through the Completion Date specified in Form P-37, General Provisions, Block 1.7.
   2.2. Payment for scheduled corrective and emergency service repairs provided during normal business hours shall be reimbursed at an hourly rate of $163 per hour, not to exceed $6,420 through the Completion Date specified in Form P-37, General Provisions, Block 1.7.
   2.3. Payment for emergency service provided outside of normal business hours shall be reimbursed at an hourly rate of $245 per hour, not to exceed $4,900 through the Completion Date specified in Form P-37, General Provisions, Block 1.7.
   2.4. For the purposes of this aggreement, normal business hours are from 7:00 AM to 3:30 PM, Monday through Friday, excluding State holidays.
3. The Contractor shall submit an invoice in a form satisfactory to the Department by the fifteenth (15th) working day of the following month, which identifies and requests payment for services provided in the prior month at the appropriate rates identified in Section 2, above. The Contractor shall ensure the invoice is completed, dated and returned to the Department in order to initiate payment.
4. In lieu of hard copies, all invoices may be assigned an electronic signature and emailed to NHHFinancialServices@dhhs.nh.gov or invoices may be mailed to:

   New Hampshire Hospital
   Financial Manager
   121 South Fruit Street
   Concord, NH 03301

5. The Department shall make payment to the Contractor within thirty (30) days of receipt of each invoice, subsequent to approval of the submitted invoice and if sufficient funds are available, subject to Paragraph 4 of the General Provisions Form Number P-37 of this Agreement.

6. The final invoice shall be due to the Department no later than forty (40) days after the contract completion date specified in Form P-37, General Provisions Block 1.7 Completion Date.

7. The Contractor must provide the services in Exhibit B, Scope of Services, in compliance with funding requirements.

8. The Contractor agrees that funding under this Agreement may be withheld, in whole or in part in the event of non-compliance with the terms and conditions of Exhibit B, Scope of Services.

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

10. Notwithstanding Paragraph 17 of the General Provisions Form P-37, changes limited to adjusting amounts within the price limitation and adjusting encumbrances between State Fiscal Years and budget class lines through the Budget Office may be made by written agreement of both parties, without obtaining approval of the Governor and Executive Council, if needed and justified.

11. Audits

11.1. The Contractor is required to submit an annual audit to the Department if any of the following conditions exist:

11.1.1. Condition A - The Contractor expended $750,000 or more in federal funds received as a subrecipient pursuant to 2 CFR Part 200, during the most recently completed fiscal year.

11.1.2. Condition B - The Contractor is subject to audit pursuant to the requirements of NH RSA 7:28, III-b, pertaining to charitable organizations receiving support of $1,000,000 or more.

11.1.3. Condition C - The Contractor is a public company and required by Security and Exchange Commission (SEC) regulations to submit an annual financial audit.

11.2. If Condition A exists, the Contractor shall submit an annual single audit performed by an independent Certified Public Accountant (CPA) to the Department within 120 days after the close of the Contractor's fiscal year, conducted in accordance with the requirements of 2 CFR Part 200, Subpart F of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards.

11.3. If Condition B or Condition C exists, the Contractor shall submit an annual financial audit performed by an independent CPA within 120 days after the close of the Contractor's fiscal year.

11.4. 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.

## New Hampshire Department of Health and Human Services
## Chiller Inspection and Preventative Maintenance Services
## Standard Exhibits D-H

The parties agree that the Department's Standard Exhibits D through Exhibit H are not applicable to this Agreement.

Remainder of page intentionally left blank.

## HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT BUSINESS ASSOCIATE AGREEMENT

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

(1) Definitions.

a. "Breach" shall have the same meaning as the term "Breach" in section 164.402 of Title 45, Code of Federal Regulations.

b. "Business Associate" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.

c. "Covered Entity" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.

d. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR Section 164.501.

e. "Data Aggregation" shall have the same meaning as the term "data aggregation" in 45 CFR Section 164.501.

f. "Health Care Operations" shall have the same meaning as the term "health care operations" in 45 CFR Section 164.501.

g. "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act, TitleXIII, Subtitle D, Part 1 & 2 of the American Recovery and Reinvestment Act of 2009.

h. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160, 162 and 164 and amendments thereto.

i. "Individual" shall have the same meaning as the term "individual" in 45 CFR Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.501(g).

j. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.

k. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR Section 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

l. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR Section 164.103.

m. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.

n. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C, and amendments thereto.

o. "Unsecured Protected Health Information" means protected health information that is not secured by a technology standard that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.

p. Other Definitions - All terms not otherwise defined herein shall have the meaning established under 45 C.F.R. Parts 160, 162 and 164, as amended from time to time, and the HITECH Act.

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

a. Business Associate shall not use, disclose, maintain or transmit Protected Health Information (PHI) except as reasonably necessary to provide the services outlined under Exhibit A of the Agreement. Further, Business Associate, including but not limited to all its directors, officers, employees and agents, shall not use, disclose, maintain or transmit PHI in any manner that would constitute a violation of the Privacy and Security Rule.

b. Business Associate may use or disclose PHI:
   I. For the proper management and administration of the Business Associate;
   II. As required by law, pursuant to the terms set forth in paragraph d. below; or
   III. For data aggregation purposes for the health care operations of Covered Entity.

c. To the extent Business Associate is permitted under the Agreement to disclose PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from the third party that such PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party; and (ii) an agreement from such third party to notify Business Associate, in accordance with the HIPAA Privacy, Security, and Breach Notification Rules of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.

d. The Business Associate shall not, unless such disclosure is reasonably necessary to provide services under Exhibit A of the Agreement, disclose any PHI in response to a request for disclosure on the basis that it is required by law, without first notifying Covered Entity so that Covered Entity has an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, the Business

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

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

(3) Obligations and Activities of Business Associate.

a. The Business Associate shall notify the Covered Entity's Privacy Officer immediately after the Business Associate becomes aware of any use or disclosure of protected health information not provided for by the Agreement including breaches of unsecured protected health information and/or any security incident that may have an impact on the protected health information of the Covered Entity.

b. The Business Associate shall immediately perform a risk assessment when it becomes aware of any of the above situations. The risk assessment shall include, but not be limited to:

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

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

c. The Business Associate shall comply with all sections of the Privacy, Security, and Breach Notification Rule.

d. Business Associate shall make available all of its internal policies and procedures, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of Covered Entity to the Secretary for purposes of determining Covered Entity's compliance with HIPAA and the Privacy and Security Rule.

e. Business Associate shall require all of its business associates that receive, use or have access to PHI under the Agreement, to agree in writing to adhere to the same restrictions and conditions on the use and disclosure of PHI contained herein, including the duty to return or destroy the PHI as provided under Section 3 (l). 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 Paragraph #13 of the standard contract provisions (P-37) of this Agreement for the purpose of use and disclosure of protected health information.

f. Within five (5) business days of receipt of a written request from Covered Entity, Business Associate shall make available during normal business hours at its offices all records, books, agreements, policies and procedures relating to the use and disclosure of PHI to the Covered Entity, for purposes of enabling Covered Entity to determine Business Associate's compliance with the terms of the Agreement.

g. Within ten (10) business days of receiving a written request from Covered Entity, Business Associate shall provide access to PHI in a Designated Record Set to the Covered Entity, or as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR Section 164.524.

h. Within ten (10) business days of receiving a written request from Covered Entity for an amendment of PHI or a record about an individual contained in a Designated Record Set, the Business Associate shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under 45 CFR Section 164.526.

i. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.

j. Within ten (10) business days of receiving a written request from Covered Entity for a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill its obligations to provide an accounting of disclosures with respect to PHI in accordance with 45 CFR Section 164.528.

k. In the event any individual requests access to, amendment of, or accounting of PHI directly from the Business Associate, the Business Associate shall within two (2) business days forward such request to Covered Entity. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or the Business Associate to violate HIPAA and the Privacy and Security Rule, the Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable.

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



Contractor Initials WE

Date 4/8/2021

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

(4) Obligations of Covered Entity

a. Covered Entity shall notify Business Associate of any changes or limitation(s) in its Notice of Privacy Practices provided to individuals in accordance with 45 CFR Section 164.520, to the extent that such change or limitation may affect Business Associate's use or disclosure of PHI.

b. Covered Entity shall promptly notify Business Associate of any changes in, or revocation of permission provided to Covered Entity by individuals whose PHI may be used or disclosed by Business Associate under this Agreement, pursuant to 45 CFR Section 164.506 or 45 CFR Section 164.508.

c. Covered entity shall promptly notify Business Associate of any restrictions on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(5) Termination for Cause

In addition to Paragraph 10 of the standard terms and conditions (P-37) of this Agreement the Covered Entity may immediately terminate the Agreement upon Covered Entity's knowledge of a breach by Business Associate of the Business Associate Agreement set forth herein as Exhibit 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, 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.



Contractor Initials LJF

Date 4/8/2021

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) I, the defense and indemnification provisions of section (3) e and Paragraph 13 of the standard terms and conditions (P-37), shall survive the termination of the Agreement.

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

| | |
|---|---|
| Department of Health and Human Services | Johnson Controls |
| The State | Name of the Contractor |
| Heather M. Moquin | Lance J. Flagg |
| Signature of Authorized Representative | Signature of Authorized Representative |
| Heather M. Moquin | Lance J. Flagg |
| Name of Authorized Representative | Name of Authorized Representative |
| Chief Executive Officer, New Hampshire Hospital | Branch Service Manager |
| Title of Authorized Representative | Title of Authorized Representative |
| 4/9/2021 | 4/8/2021 |
| 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:

DocuSigned by:
Lance J. Flagg

4/8/2021
Date

Name: Lance J. Flagg
Title: Branch Service Manager

## 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: 00-609-2860

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?

   X 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: _____

   Name: _____ Amount: _____

   Name: _____ Amount: _____

   Name: _____ Amount: _____

   Name: _____ Amount: _____



Contractor Initials: DS UJF

Date: 4/8/2021

# New Hampshire Department of Health and Human Services

## Exhibit K

## DHHS Information Security Requirements

A. Definitions

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

1. "Breach" means the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic. With regard to Protected Health Information, " Breach" shall have the same meaning as the term "Breach" in section 164.402 of Title 45, Code of Federal Regulations.

2. "Computer Security Incident" shall have the same meaning "Computer Security Incident" in section two (2) of NIST Publication 800-61, Computer Security Incident Handling Guide, National Institute of Standards and Technology, U.S. Department of Commerce.

3. "Confidential Information" or "Confidential Data" means all confidential information disclosed by one party to the other such as all medical, health, financial, public assistance benefits and personal information including without limitation, Substance Abuse Treatment Records, Case Records, Protected Health Information and Personally Identifiable Information.

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

4. "End User" means any person or entity (e.g., contractor, contractor's employee, business associate, subcontractor, other downstream user, etc.) that receives DHHS data or derivative data in accordance with the terms of this Contract.

5. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder.

6. "Incident" means an act that potentially violates an explicit or implied security policy, which includes attempts (either failed or successful) to gain unauthorized access to a system or its data, unwanted disruption or denial of service, the unauthorized use of a system for the processing or storage of data; and changes to system hardware, firmware, or software characteristics without the owner's knowledge, instruction, or consent. Incidents include the loss of data through theft or device misplacement, loss or misplacement of hardcopy documents, and misrouting of physical or electronic

mail, all of which may have the potential to put the data at risk of unauthorized access, use, disclosure, modification or destruction.

7. "Open Wireless Network" means any network or segment of a network that is not designated by the State of New Hampshire's Department of Information Technology, or delegate as a protected network (designed, tested, and approved, by means of the State, to transmit) will be considered an open network and not adequately secure for the transmission of unencrypted PI, PFI, PHI or confidential DHHS data.

8. "Personal Information" (or "PI") means information which can be used to distinguish or trace an individual's identity, such as their name, social security number, personal information as defined in New Hampshire RSA 359-C:19, biometric records, etc., alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc.

9. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.

10. "Protected Health Information" (or "PHI") has the same meaning as provided in the definition of "Protected Health Information" in the HIPAA Privacy Rule at 45 C.F.R. § 160.103.

11. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 164, Subpart C, and amendments thereto.

12. "Unsecured Protected Health Information" means Protected Health Information that is not secured by a technology standard that renders Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.

## I. RESPONSIBILITIES OF DHHS AND THE CONTRACTOR

A. Business Use and Disclosure of Confidential Information.

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

2. The Contractor must not disclose any Confidential Information in response to a

request for disclosure on the basis that it is required by law, in response to a subpoena, etc., without first notifying DHHS so that DHHS has an opportunity to consent or object to the disclosure.

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

## II. METHODS OF SECURE TRANSMISSION OF DATA

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

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

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

## III. RETENTION AND DISPOSITION OF IDENTIFIABLE RECORDS

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

A. Retention

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



Contractor Initials WF

Date 4/8/2021

whole, must have aggressive intrusion-detection and firewall protection.

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

B. Disposition

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

2. Unless otherwise specified, within thirty (30) days of the termination of this Contract, Contractor agrees to destroy all hard copies of Confidential Data using a secure method such as shredding.

3. Unless otherwise specified, within thirty (30) days of the termination of this Contract, Contractor agrees to completely destroy all electronic Confidential Data by means of data erasure, also known as secure data wiping.

## IV. PROCEDURES FOR SECURITY

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

1. The Contractor will maintain proper security controls to protect Department confidential information collected, processed, managed, and/or stored in the delivery of contracted services.

2. The Contractor will maintain policies and procedures to protect Department confidential information throughout the information lifecycle, where applicable, (from creation, transformation, use, storage and secure destruction) regardless of the media used to store the data (i.e., tape, disk, paper, etc.).

3. The Contractor will maintain appropriate authentication and access controls to contractor systems that collect, transmit, or store Department confidential information where applicable.

4. The Contractor will ensure proper security monitoring capabilities are in place to detect potential security events that can impact State of NH systems and/or Department confidential information for contractor provided systems.

5. The Contractor will provide regular security awareness and education for its End Users in support of protecting Department confidential information.

6. If the Contractor will be sub-contracting any core functions of the engagement supporting the services for State of New Hampshire, the Contractor will maintain a program of an internal process or processes that defines specific security expectations, and monitoring compliance to security requirements that at a minimum match those for the Contractor, including breach notification requirements.

7. The Contractor will work with the Department to sign and comply with all applicable State of New Hampshire and Department system access and authorization policies and procedures, systems access forms, and computer use agreements as part of obtaining and maintaining access to any Department system(s). Agreements will be completed and signed by the Contractor and any applicable sub-contractors prior to system access being authorized.

8. If the Department determines the Contractor is a Business Associate pursuant to 45 CFR 160.103, the Contractor will execute a HIPAA Business Associate Agreement (BAA) with the Department and is responsible for maintaining compliance with the agreement.

9. The Contractor will work with the Department at its request to complete a System Management Survey. The purpose of the survey is to enable the Department and Contractor to monitor for any changes in risks, threats, and vulnerabilities that may occur over the life of the Contractor engagement. The survey will be completed annually, or an alternate time frame at the Departments discretion with agreement by the Contractor, or the Department may request the survey be completed when the scope of the engagement between the Department and the Contractor changes.

10. The Contractor will not store, knowingly or unknowingly, any State of New Hampshire or Department data offshore or outside the boundaries of the United States unless prior express written consent is obtained from the Information Security Office leadership member within the Department.

11. Data Security Breach Liability. In the event of any security breach Contractor shall make efforts to investigate the causes of the breach, promptly take measures to prevent future breach and minimize any damage or loss resulting from the breach. The State shall recover from the Contractor all costs of response and recovery from

the breach, including but not limited to: credit monitoring services, mailing costs and costs associated with website and telephone call center services necessary due to the breach.

12. Contractor must comply with all applicable statutes and regulations regarding the privacy and security of Confidential Information, and must in all other respects maintain the privacy and security of PI and PHI at a level and scope that is not less than the level and scope of requirements applicable to federal agencies, including, but not limited to, provisions of the Privacy Act of 1974 (5 U.S.C. § 552a), DHHS Privacy Act Regulations (45 C.F.R. §5b), HIPAA Privacy and Security Rules (45 C.F.R. Parts 160 and 164) that govern protections for individually identifiable health information and as applicable under State law.

13. Contractor agrees to establish and maintain appropriate administrative, technical, and physical safeguards to protect the confidentiality of the Confidential Data and to prevent unauthorized use or access to it. The safeguards must provide a level and scope of security that is not less than the level and scope of security requirements established by the State of New Hampshire, Department of Information Technology. Refer to Vendor Resources/Procurement at https://www.nh.gov/doit/vendor/index.htm for the Department of Information Technology policies, guidelines, standards, and procurement information relating to vendors.

14. Contractor agrees to maintain a documented breach notification and Incident response process. The Contractor will notify the State's Privacy Officer and the State's Security Officer of any security breach immediately, at the email addresses provided in Section VI. This includes a confidential information breach, computer security incident, or suspected breach which affects or includes any State of New Hampshire systems that connect to the State of New Hampshire network.

15. Contractor must restrict access to the Confidential Data obtained under this Contract to only those authorized End Users who need such DHHS Data to perform their official duties in connection with purposes identified in this Contract.

16. The Contractor must ensure that all End Users:

    a. comply with such safeguards as referenced in Section IV A. above, implemented to protect Confidential Information that is furnished by DHHS under this Contract from loss, theft or inadvertent disclosure.

    b. safeguard this information at all times.

    c. ensure that laptops and other electronic devices/media containing PHI, PI, or PFI are encrypted and password-protected.

    d. send emails containing Confidential Information only if encrypted and being sent to and being received by email addresses of persons authorized to receive such information.



Contractor Initials WF

Date 4/8/2021

e. limit disclosure of the Confidential Information to the extent permitted by law.

f. Confidential Information received under this Contract and individually identifiable data derived from DHHS Data, must be stored in an area that is physically and technologically secure from access by unauthorized persons during duty hours as well as non-duty hours (e.g., door locks, card keys, biometric identifiers, etc.).

g. only authorized End Users may transmit the Confidential Data, including any derivative files containing personally identifiable information, and in all cases, such data must be encrypted at all times when in transit, at rest, or when stored on portable media as required in section IV above.

h. in all other instances Confidential Data must be maintained, used and disclosed using appropriate safeguards, as determined by a risk-based assessment of the circumstances involved.

i. understand that their user credentials (user name and password) must not be shared with anyone. End Users will keep their credential information secure. This applies to credentials used to access the site directly or indirectly through a third party application.

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

## V. LOSS REPORTING

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

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

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

5. Determine whether Breach notification is required, and, if so, identify appropriate Breach notification methods, timing, source, and contents from among different options, and bear costs associated with the Breach notice as well as any mitigation measures.

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

## VI. PERSONS TO CONTACT

A. DHHS Privacy Officer:

DHHSPrivacyOfficer@dhhs.nh.gov

B. DHHS Security Officer:

DHHSInformationSecurityOffice@dhhs.nh.gov