

8A mac



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

Jeffrey A. Meyers
Commissioner

Katja S. Fox
Director

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/dcbcs/nhh

July 24, 2017

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

REQUESTED ACTION

Authorize the Department of Health and Human Services, Division for Behavioral Health, New Hampshire Hospital, to enter into a **sole source** agreement with Joint Commission Resources, Inc., (Vendor #258505), 1515 W. 22nd St., Suite 1300W, Oak Brook, IL 60523, in an amount not to exceed \$85,000 for the provision of an independent, expert review, to be used for the purpose of evaluating the impact of staffing levels on the quality of care at New Hampshire Hospital, effective upon Governor and Council approval, through June 30, 2018. 20% Federal Funds, 34% General Funds 46% Agency Funds.

Funds are available in State Fiscal Year 2018 with authority to adjust amounts within the price limitation and adjust encumbrances between State Fiscal Years through the Budget Office if needed and justified, without approval from Governor and Executive Council.

05-95-94-940010-8750 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS DEPT OF, NEW HAMPSHIRE HOSPITAL, NEW HAMPSHIRE HOSPITAL, NHH – ACUTE PSYCHIATRIC SERVICES

Fiscal Year	Class/Account	Class Title	Job Number	Budget Amount
2018	102-500731	Contract for Program Services	94012800	\$85,000

EXPLANATION

This requested action is **sole source** because of the restricted timeframe to conduct this evaluation and the unique qualifications of this Contractor and its ability to conduct these functions within that restricted timeframe. The Contractor, which is an affiliate of the Joint Commission, is a non-profit entity whose mission is to continuously improve the safety and quality of health care in the United States and in the international community through the provision of education, publications, consultation, and evaluation services.

The Department is seeking approval to enter into an agreement with this Contractor to provide an independent, expert review, to be used to evaluate the staffing levels and their impact on the quality of care at New Hampshire Hospital from November 1, 2016 to April 30, 2017. The resulting analysis will assist the Department in determining whether staffing services, delivered under the Mary Hitchcock Memorial Hospital Physician Clinical and Administrative Services contract, affected patient access to, and quality of care. Attention will be given to the provision and monitoring of patient care by the medical staff and to medical staff credentialing/privileging in accordance with Medical Staff Organization Bylaws.

Under this Agreement, the Contractor will provide technical assistance and consultation services to the Department to include, but not be limited to, review of retrospective medical records for documentation of care; tracer activities to assess the model and process for delivering care; review of clinical care indicators; review of the Medical Staff Organization bylaws, rules, and regulations; and review of medical staff credentialing files for completeness and competencies. An executive report will follow with findings from the review activities and recommendations for improvement.

Should Governor and Executive Council not authorize this request the Department will be unable to utilize the expertise of this vendor to conduct this time sensitive evaluation.

Area served: New Hampshire Hospital

Source of Funds: 20% Federal Funds made available under the Social Security Act, Section 1923, Payment for Inpatient Hospital Services Furnished by Disproportionate Share Hospitals, 34% General Funds, and 46% Other Funds (Provider fees). All expenditures under this request, based upon agreement reached with Mary Hitchcock Memorial Hospital, shall be reduced from the upcoming payment cycle of the contract.

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

Respectfully submitted,



Katja S. Fox
Director

Approved by: 

Jeffrey A. Meyers
Commissioner

Consultation Agreement

This Consultation Agreement (the “Agreement”) is entered into by and between Joint Commission Resources, Inc. (“JCR”), an Illinois not for profit corporation whose mission is to continuously improve the safety and quality of health care in the United States and in the international community through the provision of education, publications, consultation and evaluation services, located at 1515 W. 22nd St, Ste. 1300W, Oak Brook, Illinois 60523 and New Hampshire Department of Health and Human Services, (“Client”) whose primary location is at 129 Pleasant Street, Concord, NH 03301 (each referred to herein as “Party” or collectively as the “Parties”). The Agreement is contingent on and shall be effective on the date it is approved by the Governor & Executive Council of the State of New Hampshire.

In consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

Scope of Services

Joint Commission Resources shall provide an independent, expert review, to be used solely and exclusively for Client’s internal purposes related to improving patient safety and quality, of the quality of care received by New Hampshire Hospital (“NHH”) patients from November 1, 2016 to April 30, 2017 in accordance with RSA 126-A:4, IV. In particular, JCR will help determine whether staffing services, delivered under the Mary Hitchcock Memorial Hospital Physician Clinical and Administrative Services contract, affected patient access to care, quality of care, and overall hospital performance. Attention will be given to the provision and monitoring of patient care by the medical staff and to medical staff credentialing/privileging in accordance with Medical Staff Organization Bylaws.

The review, shall include:

1. Review of 100 retrospective medical records for documentation of care giving special attention to timely, relevant and complete psychiatric evaluations on admission, treatment plans, progress notes, and discharge planning. This review group may be expanded at JCR’s discretion with the contingent that the final review must be completed within the compensation for services amount. JCR is aware of an existing issue relating to the need to have some individuals be on a deferred transfer status to

NHH and remain for longer periods of times in emergency departments at local hospitals.

2. Tracer activities will be conducted to assess the model and process for delivering care. This shall include the observation of staff at attendance of treatment team meetings.
3. The following clinical care indicators will be reviewed:
over time, pre and post contract changes in incidents with physical contact, restraints, seclusion, medication errors and patient/family complaints..
4. A review will be conducted on Medical Staff Organization bylaws and rules and regulations to determine the expectations for patient care.
5. A review will be conducted of ten (10 medical) staff credential files including those of the Chief Medical Officer, Associate Medical Director, Chief of General Medical Services and APRN Administrative lead for completeness and competencies in accordance with the Medical Staff Organization Bylaws.
This review will include the MSO Appointment/Reappointment Checklist maintained by the Medical Staff Coordinator as evidence that all required elements of the process are present.
Assurance of credentialing, as required under Medical Staff standards, has been and is being carried out for all clinical staff provided by the contract.

DELIVERABLES

The Joint Commission Resources, Inc. shall provide:

1. An agenda with the off-site and on-site consultation dates.
2. Two nurses off site for 1 day to review documents (2 days)
3. Two nurse consultants on site for 9 days conduct the retrospective medical record review and conduct tracer activity. (18 days)
4. 1 physician consultant on site for 2 days to review Medical Staff By Laws and physician credential files. (2 days)
5. An Exit Briefing to be provided to DHHS executive staff on last day of the on-site consultation.
6. An Executive Report will follow with findings from the review activities and recommendations for improvement..

Total of 22 days of consulting.

No video or audio taping of any part of the services provided under this Agreement is permitted without the express written permission of JCR. Permission must be obtained prior to the commencement of the JCR onsite consultation by request to the Client Services Manager who has oversight for the Consultation and is so named in the proposal. Further JCR retains the right to revoke permission at any time during audio or video taping if, in the JCR consultants' judgment, audio or video taping impedes the consultation in any way.

Agenda

To be developed by the consultants with Client's input.

Consultants and Dates

To be determined upon Client's acceptance and return of this Agreement.

Compensation for Services

\$77,500.00 (the "Professional Fees") for on-site meeting(s)/consultation(s), off-site documentation review, and a written consultation report as applicable under the Scope of Services and Deliverables. Actual costs for consultant's travel and lodging expenses will be in addition to the Professional Fees.

We will submit an electronic invoice for the total Professional Fees approximately one to two (1-2) days following the conclusion of the engagement. Payment of the total Professional Fees is due upon your receipt of the invoice. Travel costs will generally be billed separately within thirty (30) days following completion of the engagement and will not exceed \$7,500 without written permission from the State.

Additional Services

If additional services are requested to facilitate implementation of recommendations, professional fees will be negotiated at that time. Documents and other offsite consulting work not included in the scope of services will be priced separately.

Important Customer Satisfaction Survey

We take your input and suggestions very seriously.

As an organization committed to quality improvement, JCR relies strongly on your input to ensure we are providing the support you need to optimize patient safety and achieve sustainable quality and safety improvements in your organization.

We ask for your help as we continue to strengthen and improve our work. You will receive a customer satisfaction survey after your consultation engagement has occurred. Please take a few moments to fill this out and return it to us. Thank you in advance for your assistance.

Cancellation

JCR retains the right to cancel the consultation in the event of an emergency. JCR will provide a substitute consultant if one is available and acceptable to New Hampshire Department of Health and Human Services or will reschedule the consultation to mutually acceptable dates.

If New Hampshire Department of Health and Human Services cancels the consultation fifteen (15) or fewer business days prior to first date of the consultation, one-half of the contracted professional fees are due and payable to JCR to cover costs JCR will incur.

Disclaimer Statement

It shall be clearly understood by Client that (1) the Services to be provided by JCR under this contract will be provided independently of any considerations concerning your institution's Joint Commission accreditation or any efforts by Client to attain or retain such accreditation, and (2) no representations are made by JCR relative to the effect, if any, on Joint Commission accreditation or any efforts by Client to attain or retain such accreditation, of the Services JCR provides under this Agreement.

It shall be further understood by Client that (1) the Services provided by JCR under this agreement are not intended to serve as a substitute for any responsibilities of Client and (2) no representations are made by JCR concerning the effect(s), if any, of any Services it provides under this agreement on the quality of the care and treatment or the outcomes thereof, provided by Client.

Limitation on Services to be provided

JCR is a corporate Affiliate of The Joint Commission, JCR will not engage in any consultative technical assistance, which could lead to misunderstanding and a perception that there is any conflict of interest between JCR's activities and the Joint Commission's accreditation process. Because of this concern, JCR will not provide assistance in connection with: preparing documents or letters that challenge accreditation decisions or findings of The Joint Commission; or (2) appealing a preliminary denial of accreditation decision. Similarly, Contractor will not

assist in preparing a root cause analysis for a specific sentinel even if the root cause analysis is in response to a Joint Commission request. If Contractor has previously provided consultative technical assistance to an organization within the current accreditation cycle, at the request of such organization, Contractor may review and comment on any responses, reports or other documents that the organization has prepared for The Joint Commission. No charge may be imposed for the review and comment services.

Confidential Information

In connection with this Agreement, each Party may disclose, make available or provide access to its Confidential Information, as defined below, (“Disclosing Party”) to the other Party (“Recipient”). Recipient shall only use Confidential Information for the limited express purposes of this Agreement. Except as specifically permitted in this agreement or as required by law (with reasonable prior notice to the Disclosing Party to allow Disclosing Party a reasonable opportunity to seek a protective order or equivalent), Recipient shall not disclose any Confidential Information to any third party without the prior written consent of Disclosing Party. Recipient shall at all times keep the Confidential Information confidential and shall take all reasonable security precautions (and in any event at least as great as the precautions Recipient takes to protect its own comparable Confidential Information) to keep confidential and protect the Confidential Information from unauthorized access and use.

References to Recipient or Disclosing Party shall be deemed to include the respective Affiliates. An “Affiliate” means any person or entity that directly or indirectly controls, is controlled by, or is under common control with, a Party.

For the purposes of this Agreement, "Confidential Information" means any information, technical data, or know-how (including, but not limited to, information relating to research, products, software, services, development, processes, tools, methods, techniques, customers, pricing, internal procedures, business and marketing plans or strategies, finances, employees (and other personnel) and business opportunities) disclosed by the Disclosing Party to Recipient either directly or indirectly in any form whatsoever (including, but not limited to, in writing, in machine readable or other tangible form, orally or visually): (i) that has been marked as confidential or proprietary or by similar restrictive notation; (ii) whose confidential or proprietary nature has been made known by Disclosing Party, orally or in writing, to Recipient, and if orally, confirmed in writing as confidential or proprietary within ten (10) business days; or (iii) that due to its character and nature, a reasonable person under like circumstances would treat as confidential or proprietary.

The obligations hereunder for such Confidential Information shall not apply to information that:

1. Is or becomes publicly available through no fault of the Recipient;

2. Is disclosed to the Recipient by a third party entitled to disclose such information;
3. Is already known to the Recipient as shown by its prior written records;
4. Is independently developed by the Recipient as evidenced by written records; or
5. Is required by law or court order to be disclosed; provided, however, that in such a case the Recipient shall give the Disclosing Party notice of such required disclosure as soon as reasonably practicable so that the Disclosing Party may have an opportunity to contest such disclosure or obtain protective orders regarding such disclosure.

Notwithstanding anything to the contrary contained herein, when a serious condition that appears to imminently jeopardize public safety or the safety of a patient is found in a client facility, and when this condition has been pointed out to the chief executive officer or equivalent, the authorities having jurisdiction may need to be informed in appropriate cases.

Business Associate Agreement

Federal law and regulations require certain steps to be taken to help safeguard the privacy and security of “protected health information” under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). HIPAA obligations have been modified by subsequent laws and regulations, including provisions of the American Recovery and Reinvestment Act of 2009 and related regulations (the “HITECH Act”). These laws and regulations require a business associate agreement (“BAA”) between a covered entity and any organization whose activity involves certain uses or disclosure of the protected health information of the covered entity’s patients.

If Client is a covered entity (as defined in HIPAA) and JCR’s services to Client involve the use and/or disclosure of protected health information, a BAA will be required. In order to satisfy this requirement, the Parties hereby agree to be bound by the attached standard JCR BAA. The attached BAA is intended to apply to all current and future activities between JCR and Client that require a BAA.

Term and Termination

This Agreement shall commence upon the approval of this Agreement by the Governor & Executive Council and remain in full force and effect until the completion of the Services (as outlined above) unless earlier terminated as provided for herein.

This Agreement may be terminated in whole or in part by either Party (the “Non-Breaching Party”) upon written notice to the other Party if any of the following events occur by or with

respect to such other Party (the “Breaching Party”): (i) the Breaching Party commits a material breach of any of its obligations hereunder and fails to cure such breach within thirty (30) days after receipt of notice of such breach or fails to reach an agreement with the Non-Breaching Party regarding the cure thereof; or (ii) any insolvency of the Breaching Party, any filing of a petition in bankruptcy by or against the Breaching Party, any appointment of a receiver for the Breaching Party, or any assignment for the benefit of the Breaching Party’s creditors.

Observation of the Onsite Consultation

JCR management and personnel may accompany the JCR consultants while onsite, as part of their training process. Client will not be responsible for any costs associated with these observations.

Custom Education Program

JCR’s Custom Education Program offering is a per person fee-based education program customized to educate the health care organization’s staff about standards compliance issues found during the onsite consultation. The overall goal of the education program is to educate staff about the expectations of performance of the standards, how to comply with the expectations and provide examples of best practices so that they can correctly maintain and monitor ongoing compliance. This program works with organizations of all sizes and complements JCR Consulting solutions.

JCR Contact

In connection with the services to be performed under this agreement, New Hampshire Department of Health and Human Services will communicate primarily with Mary Kay Bowie, who will be JCR’s primary representative for this agreement. Jeffrey Meyers will be the primary representative for New Hampshire Department of Health and Human Services.

Miscellaneous

1. **Governing Law & Jurisdiction.** The parties agree that this Agreement is entered into in the State of New Hampshire, United States of America, governed and interpreted by the laws of the State of New Hampshire without application of its conflicts of law principles, and JCR submits to the personal jurisdiction of the state or federal courts located in Merrimack County, New Hampshire.
2. **Assignment.** Neither Party shall assign this Agreement (directly, indirectly, or by operation of law as the result of a merger, sale of equity interest or otherwise) without the

other Party's consent, and any attempt to do so shall be void. Notwithstanding the foregoing, however, JCR shall have the right to assign this Agreement to an Affiliate, provided that the Affiliate agrees in writing to be bound by the terms of this Agreement, and provided that such assignment shall not release JCR from its obligations hereunder.

3. **Notice.** All notices under this Agreement shall be in writing. Notices shall be given personally or sent by certified or registered U.S. mail or private express courier and shall be deemed given upon delivery, if given personally, or when deposited with the private courier or U.S. Postal Service with the proper postage affixed, if sent by mail. Facsimile notices are not effective unless the originals are sent (in the manner stated above) within one (1) business day after the facsimile transmission or they are acknowledged in writing by an authorized representative of the receiving Party. Notices shall be addressed as follows:

Notice to JCR*:

Joint Commission Resources, Inc.

1515 W. 22nd St., Suite 1300W

Oakbrook, IL 60523

Attn: Marwa Zohdy, Vice President Global Consulting Services

Fax: (630) 268-4836

*with a required copy sent to the attention of "General Counsel."

Notice to Client:

New Hampshire Department of Health and Human Services

129 Pleasant Street

Concord, NH 03301

Attn: Jeffrey Meyers, Commissioner

Fax: (603) 271 4912

4. **Independent Contractor.** In all things undertaken by the Parties under this Agreement, it is specifically understood and agreed to that JCR, and its consultants, are and shall be and remain at all times during the terms of this Agreement, independent contractors, and not agents, employees, joint ventures or partners of the Client.

5. **Compliance With Laws.** Each Party shall comply with all federal, state, and local laws, regulations and orders applicable to it. JCR represents that it will comply with the applicable Worker's Compensation laws in the State of New Hampshire.
6. **Survival.** Sections "Confidential Information" and "Miscellaneous" parts 1, 3, and 10 herein shall survive termination of this Agreement.
7. **Waiver.** Any failure by either Party to enforce any of the terms or conditions of this Agreement shall not constitute a waiver of such terms or conditions and shall not affect or impair such terms or conditions in any way or the right of either Party at any time to avail itself of such remedies as it may have for any default in this performance of such terms or conditions.
8. **Modifications.** No changes or modifications of this Agreement, including any SOW(s), are valid unless made in writing and signed by both JCR and Client.
6. **Entire Agreement.** This Agreement, in conjunction with the Business Associate Agreement, constitutes the entire understanding between Client and JCR and supersedes all prior agreements or arrangements regarding the subject matter hereof. If Client makes changes to this Agreement, please provide the name and contact information of Client's legal counsel.

Attorney Name: Anne Edwards, Associate Attorney General

Phone: (603) 271 1202

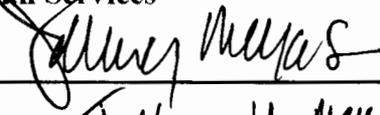
Email: anne.edwards@doj.nh.gov

10. **Severability.** If any term or provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid or otherwise unenforceable, such term or provision shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the Parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and the agreements of the Parties hereto.

Signature

Please indicate your organization's acceptance of this agreement by signing in the space below and returning this signed agreement to JCR. The terms of this agreement will remain in effect for sixty (60) calendar days from the Effective Date of the Agreement. Terms are subject to change following its expiration.

**New Hampshire Department of Health and
Human Services**

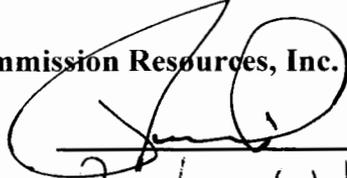
By: 

Name: Jeffrey H. Meyas

Title: Commissioner

Date: 7/28/17.

Joint Commission Resources, Inc.

By: 

Name: Paula Wilson

Title: President & CEO

Date: 07.18.2017

If a purchase order is required for processing payment, please include the purchase order number below.

Purchase Order Number: _____

Contract Number: PIC-16706 : 00003048.0

**ADDENDUM TO
JOINT COMMISSION RESOURCES
CONSULTING AGREEMENT
(Business Associate Agreement)**

THIS ADDENDUM supplements and is made a part of the Consulting Agreement (the "Consulting Agreement") submitted to Joint Commission Resources, Inc. ("Joint Commission Resources") by New Hampshire Department of Health and Human Services ("the Organization"). The Consulting Agreement, when accepted by Joint Commission Resources, establishes the terms of the relationship between Joint Commission Resources and the Organization with respect to the subject matter thereof.

Whereas, Joint Commission Resources and the Organization are parties to the Consulting Agreement pursuant to which Joint Commission Resources provides certain Consulting and related services to the Organization and, in connection with the provision of those services, the Organization discloses to Joint Commission Resources certain Protected Health Information ("PHI", as defined in 45 C.F.R. §160.103) that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA");

Whereas, Joint Commission Resources and the Organization may be parties to other agreements involving the disclosure of PHI to Joint Commission Resources (such agreements and the Consulting Agreement may be referred to collectively herein as the "Underlying Agreements");

Whereas, the Organization is a "Covered Entity" as that term is defined in the HIPAA implementing regulations, 45 C.F.R. Part 160 and Part 164, Subparts A and E, the Standards for Privacy of Individually Identifiable Health Information ("Privacy Rule"); and 45 C.F.R. Part 164, Subpart C, the Security Standards for the Protection of Electronic Protected Health Information ("Security Rule");

Whereas, as used herein, the Privacy Rule and the Security Rule are each deemed to include the amendments thereto that are included in the Modifications to the HIPAA Privacy, Security, Enforcement and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules; Final Rule (the "Omnibus Rule"), 78 Fed. Reg. 5565;

Whereas, Joint Commission Resources, as a recipient of PHI from the Organization, is a "Business Associate" as that term is defined in the Privacy Rule;

Whereas, pursuant to the Privacy Rule and the Security Rule, all Business Associates of Covered Entities must agree in writing to certain mandatory provisions regarding the use and disclosure of PHI;

Whereas, the Health Information Technology for Economic and Clinical Health Act (“HITECH”) adopted as part of the American Recovery and Reinvestment Act of 2009 imposes certain requirements on Business Associates with respect to privacy, security and breach notification and contemplates that such requirements shall be implemented by regulations, some of which are included in the Omnibus Rule (all such statutory and regulatory provisions may be referred to collectively as the “HITECH BA Provisions”);

Whereas, the purpose of this Addendum is to comply with the requirements of the Privacy Rule, the Security Rule, the Breach Notification Rule (45 C.F.R. §§ 164.400-401), the Omnibus Rule and the HITECH BA Provisions, including, but not limited to, the Business Associate contract requirements at 45 C.F.R. §164.308(b), §164.314(a), §164.502(e), §164.504(e), and as may be amended; and

Whereas, the parties also wish to address the privacy and security requirements with respect to each of the Underlying Agreements and to provide an efficient mechanism to address future changes in laws and regulations that relate to HIPAA and HITECH with respect to the Underlying Agreements.

NOW, THEREFORE in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. **Definitions.** Unless otherwise provided in this Addendum, capitalized terms have the same meanings as set forth in HIPAA, the Privacy Rule, the Security Rule, the Breach Notification Rule, the Omnibus Rule or the HITECH BA Provisions.
2. **Scope of Use and Disclosure by Joint Commission Resources of Protected Health Information**
 - a. Joint Commission Resources shall be permitted to Use and Disclose PHI consistent with the Minimum Necessary standard (45 C.F.R §164.502(b))

disclosed to it by the Organization as necessary to perform its obligations under the Underlying Agreements.

- b. Unless otherwise limited herein, in addition to any other Uses and/or Disclosures permitted or authorized by this Addendum or Required by Law, Joint Commission Resources may:
 - i. Use the PHI in its possession for its proper management and administration and to fulfill any legal responsibilities of Joint Commission Resources;
 - ii. Disclose the PHI in its possession to a third party for the purpose of Joint Commission Resources' proper management and administration or to fulfill any legal responsibilities of Joint Commission Resources; provided, however, that the Disclosures are Required by Law or Joint Commission Resources has received from the third party written assurances that (a) the information will be held confidentially and used or further Disclosed only as Required by Law or for the purposes for which it was Disclosed to the third party; and (b) the third party will notify Joint Commission Resources of any instances of which it becomes aware in which the confidentiality of the information has been breached;
 - iii. Aggregate the PHI with that of other Organizations for the purpose of providing the Organization with data analyses relating to the Health Care Operations of the Organization. Joint Commission Resources may not Disclose the PHI of one Organization to another Organization without the written authorization of the Organizations involved; and
 - iv. De-identify any and all PHI created or received by Joint Commission Resources under this Addendum; provided that the de-identification conforms to the requirements of the Privacy Rule.

3. **Obligations of Joint Commission Resources.** In connection with its Use and Disclosure of PHI, Joint Commission Resources agrees that it will:

- a. Use or further Disclose PHI only as permitted or required by this Addendum or as Required by Law;
- b. Use reasonable and appropriate safeguards and comply, where applicable, with the Security Rule with respect to electronic PHI, to prevent Use or Disclosure of PHI other than as provided for by this Addendum, including implementation of the Administrative, Physical and Technical Safeguards and the Organizational Requirements of the Security Rule (45 C.F.R. §§164.306-316) that reasonably and

- appropriately protect the confidentiality, integrity and availability of the Electronic PHI that it creates, receives, maintains or transmits on behalf of the Organization;
- c. To the extent practicable, mitigate any harmful effect that is known to Joint Commission Resources of a Use or Disclosure of PHI by Joint Commission Resources in violation of this Addendum;
 - d. Report to the Organization any Use or Disclosure of PHI not provided for by this Addendum of which Joint Commission Resources becomes aware including Breaches of Unsecured PHI as required by 45 C.F.R. §164.410;
 - e. Require that any subcontractor that creates, receives, maintains or transmits PHI on behalf of Joint Commission Resources agrees to the same restrictions and conditions that apply to Joint Commission Resources with respect to such PHI in accordance with the applicable requirements of the Privacy Rule and the Security Rule;
 - f. Make available to the Secretary of HHS Joint Commission Resources' internal practices, books and records relating to the Use and Disclosure of PHI received from or created or received by Joint Commission Resources on behalf of the Organization for purposes of determining the Organization's compliance with the Privacy Rule, the Security Rule and the Breach Notification Rule, subject to any applicable legal privileges;
 - g. Within (15) days of receiving a request from the Organization, make available the information necessary for the Organization to make an accounting of Disclosures of PHI about an individual;
 - h. Within ten (10) days of receiving a written request from the Organization, make available PHI necessary for the Organization to respond to Individuals' requests for access to PHI about them in the event that the PHI in Joint Commission Resources' possession constitutes a Designated Record Set;
 - i. Within fifteen (15) days of receiving a written request from the Organization, make PHI available for amendment and incorporate any amendment to the PHI in accordance with the Privacy Rule in the event that the PHI in Joint Commission Resources' possession constitutes a Designated Record Set;
 - j. To the extent that Joint Commission Resources is to carry out an obligation of the Organization under the Privacy Rule, Joint Commission Resources shall comply with the requirements of the Privacy Rule that apply to the Organization in the performance of such obligation; and
 - k. Promptly report to the Organization any Breach of Unsecured PHI after its Discovery and any Security Incident with respect to Electronic PHI of which it

becomes aware; provided, however, that unless specifically requested by the Organization, Joint Commission Resources shall not be obligated to report unsuccessful attempts to penetrate computer networks or servers that do not result in loss of data or degradation of computer networks or services. To the extent a determination has been made that patient notification is required in a breach involving Joint Commission Resources, both parties agree to cooperate on the notification language.

The HITECH BA Provisions shall apply commencing on the respective effective dates specified in such law or regulations (the “Applicable Effective Dates”).

Joint Commission Resources hereby acknowledges and agrees that Joint Commission Resources shall be subject to each of the HITECH BA Provisions with respect to Joint Commission Resources’ role as a Business Associate of the Organization commencing on the Applicable Effective Date of such provision. Joint Commission Resources and the Organization each further agree that the provisions of HITECH that apply to Business Associates that are required to be incorporated by reference in a business associate agreement are hereby incorporated into this Addendum as of the Applicable Effective Dates.

4. **Obligations of the Organization.** The Organization agrees that it:
- a. Has included, and will include, in the Organization’s Notice of Privacy Practices required by the Privacy Rule that the Organization may Disclose PHI for Health Care Operations purposes.
 - b. Has obtained, and will obtain, from Individuals consents, authorizations and other permissions necessary or required by law applicable to the Organization for Joint Commission Resources and the Organization to fulfill their obligations under the Underlying Agreement and this Addendum.
 - c. Will promptly notify Joint Commission Resources in writing of any restrictions on the Use and Disclosure of PHI about Individuals that the Organization has agreed to that may affect Joint Commission Resources’ ability to perform its obligations under the Underlying Agreement or this Addendum.
 - d. Will promptly notify Joint Commission Resources in writing of any changes in, or revocation of, permission by an Individual to Use or Disclose PHI, if such changes or revocation may affect Joint Commission Resources' ability to perform its obligations under the Underlying Agreement or this Addendum.

5. **Termination.**

- a. **Termination for Breach.** The Organization and Joint Commission Resources may each terminate this Addendum, in whole or in part, by giving written notice as described below if either of them (the “Terminating Party”) determines that the other party (the “Non-Terminating Party”) has breached a material term of this Addendum. Alternatively, the Terminating Party may choose to provide the Non-Terminating Party with notice of the existence of an alleged material breach and provide the Non-Terminating Party an opportunity to cure the alleged material breach within a specified period.

If no cure period was provided or if the Non-Terminating Party fails to cure the breach to the satisfaction of the Terminating Party within the cure period provided, the Terminating Party may immediately thereafter terminate this Addendum with respect to, in its discretion, all Underlying Agreements or only the Underlying Agreement with respect to which the breach occurred. Such termination shall be effective as of the date specified in a written notice given by the Terminating Party to the Non-Terminating Party (the “Termination Notice”). The Termination Notice shall be given as required in the Underlying Agreement or by nationally recognized overnight courier, receipt requested, if no means of notice is set forth in the Underlying Agreement. The Termination Notice shall specify the extent of termination of this Addendum and which related Underlying Agreement(s) are terminated.

- b. **Automatic Termination.** This Addendum will automatically terminate upon the termination or expiration of the Underlying Agreement but only with respect to the PHI that was Used or Disclosed pursuant to the Underlying Agreement that has expired or terminated.

c. **Effect of Termination.**

- i. If this Addendum is completely terminated, it will result in the termination of all Underlying Agreement(s) pursuant to which PHI was disclosed subject to this Addendum. If this Addendum is terminated only in part, then only the Underlying Agreements related to the terminated portion of this Addendum shall be terminated.
- ii. Upon termination of this Addendum or the Underlying Agreement(s), to the extent that Joint Commission Resources then retains any PHI, Joint Commission Resources will return or destroy all PHI received from the Organization or created or received by Joint Commission Resources on behalf of the Organization with respect to the portion of this Addendum and the Underlying Agreement(s) being terminated and Joint Commission Resources will retain no copies of such PHI; provided that if such return or destruction is not feasible, Joint Commission Resources will extend the protections of this Addendum to such PHI and limit further Uses and Disclosures to those purposes that make the return or destruction of the information infeasible.

6. **Amendment.**

- a. Joint Commission Resources and the Organization agree to take such action as is necessary to amend this Addendum from time to time as is necessary for the Organization and/or Joint Commission Resources to comply with the requirements of HIPAA, the Privacy Rule, the Security Rule and the HITECH

- BA Provisions as currently in effect and as they may be amended from time to time in the future, including any interpretations thereof under federal law (each a “Change in Law”).
- b. To the extent necessary to amend this Addendum to include specific language to enable the Organization and/or Joint Commission Resources to comply with any Change in Law, such language shall automatically be deemed incorporated by reference and included in this Addendum as of the date required by such Change in Law.
 - c. Notwithstanding Sections 6.a and 6.b above, if a party to this Addendum (an “Objecting Party”) deems compliance with any Change in Law to be impractical or likely to materially increase its costs, risks or obligations under this Addendum or any of the Underlying Agreements, the Objecting Party may give written notice to the other party describing its concerns. Upon receipt of such notice, the parties shall negotiate in good faith to develop an amendment to address the concerns of the Objecting Party. If such an amendment is not executed within thirty (30) days of such notice, the Objecting Party may terminate this Addendum by written notice to the other party and shall not have any obligation hereunder for early termination.
7. **Survival.** The obligations of Joint Commission Resources under Section 5.c (ii) of this Addendum shall survive any termination of this Addendum.
 8. **Reporting.** Notwithstanding anything contained herein to the contrary, the provisions provided herein are not intended to restrict or prevent Joint Commission Resources from fulfilling its obligation, if any, to make certain disclosures to public officials (including CMS), in cases of immediate jeopardy/imminent harm or a good faith belief that the Organization has engaged in conduct that is unlawful, violates professional or clinical standards or potentially endangers one or more patients, workers or the public as allowable under the Privacy Rule (45 C.F.R. §164.502 (j)).
 9. **No Third Party Beneficiaries.** Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
 10. **Independent Contractor.** Unless and to the extent otherwise expressly provided in an Underlying Agreement, Joint Commission Resources is an independent contractor and not an agent of the Organization. The parties note that this characterization of their relationship is consistent with the Omnibus Rule. (See commentary to the Omnibus Rule at 78 Fed. Reg. 5581-5582.)
 11. **Entire Agreement.** This Addendum constitutes the entire understanding and obligation of the parties with respect to the subject matter hereof and supersedes any prior

agreements, writings or understandings, whether oral or written with respect to the subject matter hereof.

12. **Effective Date.** This Addendum shall be effective as of 6/15/2017; provided, however, that the HITECH BA Provisions shall each be effective as of their respective Applicable Effective Dates if later than the general effective date specified in this Section.

IN WITNESS WHEREOF, each of the parties hereto has caused this Addendum to be executed by its authorized representative as of _____, 20__.

**New Hampshire Department of Health and
Human Services**

Signature: _____



Print Name: _____

Jeffrey A. Meyers

Title: _____

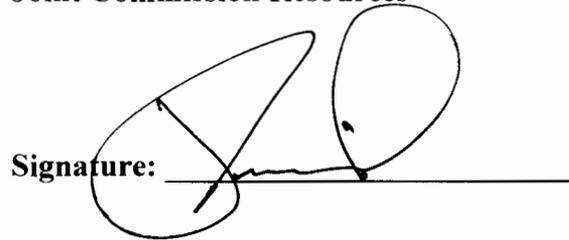
Commissioner

Date: _____

7/24/17

Joint Commission Resources

Signature: _____



Print Name: _____

Paula Wilson

Title: _____

President & CEO

Date: _____

07.18.2017

CERTIFICATE OF VOTE

(Corporation without Seal)

I, Ying Qu, do hereby certify that:

1. I am the duly elected Vice President of PER & E-Products of Joint Commission Resources.
2. The following are true copies of two resolutions duly adopted at a meeting of the Board of Directors held on July 19, 2017.

RESOLVED: That this Corporation enter into contracts with the State of New Hampshire, acting through its Department of Health and Human Services.

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

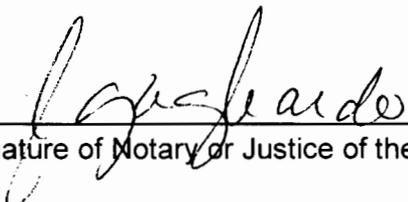
3. The forgoing resolutions have not been amended or revoked, and remain in full force and effect as of the 19 day of July, 2017.
4. Paula Wilson is the duly elected President & CEO of the Corporation.



Name: Ying Qu
Title: Vice President PER & E-Products

STATE OF Illinois
COUNTY OF DuPage

On July 19, 2017, before the undersigned officer, personally appeared the person identified directly above, or satisfactorily proven to be the person whose name is signed above, and acknowledged that s/he executed this document in the capacity indicated above.



Signature of Notary or Justice of the Peace
Jean Gagliardo, Executive Assistant
Name/Title of Notary or Justice of Peace

Notary Seal



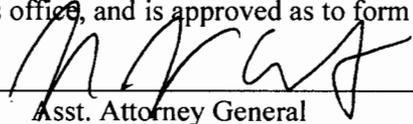
My Commission Expires: 02,22,2020

CONTRACT REVIEW AFFIDAVITS

Attorney General

Dated 7/24/ 2017

This is to certify that this contract has been reviewed by this office, and is approved as to form and execution.

by 
Asst. Attorney General

Governor and Council - Final

This is to certify that the Governor and Council on _____ approved the above-mentioned contract.

Secretary of State

Dated _____ 2017

by _____
Secretary of State