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Virginia M. Barry, Ph.D.
Commissioner of Education
Tel. 603-271-3144

Paul Leather
Deputy Commissioner of Education
Tel. 603-271-3801

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
101 Pleasant Street
Concord, N.H. 03301
FAX 603-271-1953
Citizens Services Line 1-800-339-9900

July 22, 2014

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

REQUESTED ACTION

1. Authorize the Department of Education, Division of Educational Improvement to contract with Data Retrieval Systems Group, LLC, Hancock, NH (vendor code 158782), in an amount not to exceed \$180,000.00 for the period effective August 5, 2014 or the date of Governor and Council approval, whichever is later, through June 30, 2015, to provide technical assistance to the Bureau of Accountability and Assessment in the area of adequacy and accountability.
100% Federal Funds

Funding is available in the account entitled State Assessment as follows:

	<u>FY 15</u>
06-56-56-562010-64220000-102-500731 Contracts for Program Services	\$180,000.00

2. Subject to Governor and Council approval, authorize the Department of Education to exercise a renewal option on this contract for up to one additional fiscal year, subject to the contractor's acceptable performance of the terms therein.

EXPLANATION

A Request for Proposals was posted on the department website on June 5, 2014 with a deadline for receipt of June 20, 2014. The Department was seeking an individual or organization to provide technical assistance to the Bureau of Accountability and Assessment in the area of adequacy and accountability.

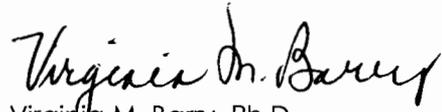
Only one proposal was received. It was reviewed and rated, using the attached scoring rubric, by an evaluation team consisting of the Director, Division of Educational Improvement and the Administrator, Bureau of Accountability and Assessment. Both recommended this organization.

Her Excellency, Governor Margaret Wood Hassan
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Over the past two years, Data Retrieval Systems Group, LLC has been providing technical assistance and support to the department's Adequacy Reporting System. This has included facilitating internal and external meetings, providing technical assistance to schools and districts, and preparing reports as requested and as required by NH State Law. Dr. Burke has done a remarkable job in all areas. We respectfully request that we be able to continue this relationship as we move forward in strengthening our adequacy reporting system and the school approval process.

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

Respectfully submitted,



Virginia M. Barry, Ph.D.
Commissioner of Education

VMB:hg:emr

Technical Assistance: New Hampshire's Assessment and Accountability Systems Contractual Services

Scoring Rubric

NAME	Significance of Proposal – Description of applicant's approach to assist the NH Department of Education in implementing the Priority Areas (2).	Quality of Services to be Provided – The applicant's ability to meet or exceed the Minimum Requirements (5).	Quality of Services to be Provided – The applicant's ability to meet or exceed the Minimum Requirements (5).	Total
Data Retrieval Systems Group, LLC (Keith Burke)	(50 pts.) 48	(25 pts.) 25	(25 pts.) 24	(100 pts.) 97

Please add comments as necessary to explain the score provided.

- No further comments.

The people responsible for the review of the proposal include the following individuals: Heather Gage, Director, Division of Educational Improvement and Scott Mantie, PhD, Administrator, Bureau of Accountability and Assessment

The role of the reviewers was advisory in nature. The reviewers scored the application and provided recommendations to the Commissioner of Education. The Commissioner of Education reviews the information provided and makes the final decision to bring forward for G&C approval.

Subject: Technical Assistance: NH Assessment & Accountability Systems FORM NUMBER P-37 (version 1/09)

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name <u>NH Department of Education, Bureau of Accountability & Ass</u>		1.2 State Agency Address <u>101 Pleasant Street, Concord, NH 03301</u>	
1.3 Contractor Name <u>Data Retrieval Systems Group, LLC</u>		1.4 Contractor Address <u>Box 305, Hancock, NH 03449</u>	
1.5 Contractor Phone Number <u>603-525-3333</u>	1.6 Account Number <u>See Exhibit B</u>	1.7 Completion Date <u>June 30, 2015</u>	1.8 Price Limitation <u>\$180,000.00</u>
1.9 Contracting Officer for State Agency <u>Scott J. Mantie, PhD, Administrator, Bureau of Accountability</u>		1.10 State Agency Telephone Number <u>603-271-3844</u>	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory <u>KEITH R. BURKE Partner/Member</u>	
1.13 Acknowledgement: State of <u>NH</u> , County of <u>Cheshire</u> On <u>7/22/14</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace 			
1.13.2 Name and Title of Notary or Justice of the Peace <u>CAROL A. ANGOWSKI</u> Notary Public My Commission Expires: <u>5/25/19</u>			
1.14 State Agency Signature <u>Virginia M. Barry</u>		1.15 Name and Title of State Agency Signatory <u>Virginia M. Barry, Ph.D., Commissioner of Education</u>	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) By: On: <u>7/23/14</u>			
1.18 Approval by the Governor and Executive Council By: On: _____			

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

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

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

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

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

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

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

Contractor Initials K213
Date 2/22/14

8. EVENT OF DEFAULT/REMEDIES.

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

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

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

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

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

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

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

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

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

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

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

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

14. INSURANCE.

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

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

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

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

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

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

15. WORKERS' COMPENSATION.

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

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

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

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

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

19. CONSTRUCTION OF AGREEMENT AND TERMS.

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

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

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

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

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

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

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

EXHIBIT A

SCOPE OF SERVICES

Data Retrieval Systems Group, LLC will provide the following services to the New Hampshire Department of Education from August 5, 2014 or the date of Governor and Council approval, whichever is later, through June 30, 2015:

NH's Input-Based Accountability System (IBAS) and Performance-Based Accountability System (PBAS)

Collect adequacy data from both IBAS and PBAS

Review IBAS and PBAS data

Work with schools/districts to verify the accuracy of submitted reports

Produce IBAS and PBAS reports as required

Develop a new reporting process for PBAS that is more interactive and shows the relationship between targets and actual scores

Develop a process and reporting mechanism for schools that, due to their grade configuration, do not have sufficient data to calculate and PBAS score under the current rules (i.e. K-2, K-3)

Convene a focus group to review the reporting mechanisms and requirements in an effort to continually improve the feedback to teachers and administrators

Other tasks that are determined to be needed as a result of new requirements and/or approved requests from the field

This work will require **forty (40) professional days**.

Adequacy and School Approval

Provide technical assistance to schools and school districts regarding the requirements of adequacy and the school approval process

Complete the new system for school review and on-site visits

Complete a comprehensive reporting system for on-site reviews

Revise the adequacy standards and language in the IBAS to reflect the new Minimum Standards for Public School Approval

Convene a focus group made up of representatives of the schools that participated in the "model reviews" to illicit reaction, suggestions and comments regarding the visits that were conducted

Finalize the system for on-site review and reporting

Develop a support system for schools that are having difficulty meeting the approval requirements

Develop a collection of "successful practices" for use throughout the state

Develop a comprehensive summary reporting format for the school approval process

Other tasks that are determined to be needed as a result of new requirements and/or approved requests from the field

This work will require **sixty (60) professional days**.

Assessment and Accountability Implementation and Reporting

Compile and analyze assessment data and publish reports as required

Provide technical assistance to schools and districts in understanding the assessment system and applying the results to help improve instruction and student learning

Develop a system of multiple measures to expand the concept of accountability

Develop more comprehensive and comprehensible reporting mechanisms for accountability that are more clearly directed to the improvement of student learning

Convene focus groups from the field to help determine the needs of schools and districts in relation to accountability and data application

Provide technical assistance and support in the implementation and administration of the Smarter Balanced Assessment Consortium (SBAC) system as may be needed or required by the Administrator of the Bureau of Accountability and Assessment

Other tasks that are determined to be needed as a result of new requirements and/or approved requests from the field

This work will require **eighty (80) professional days**.

**EXHIBIT B
BUDGET**

Priority Areas	Professional Days*	Cost
NH's Input-Based Accountability System (IBAS) and Performance-Based Accountability System (PBAS)	40	\$40,000.00
Adequacy and School Approval	60	\$60,000.00
Assessment and Accountability Implementation and Reporting	80	\$80,000.00
Total	180	\$180,000.00

Limitation on Price: Upon mutual agreement between the state contracting officer and the contractor, line items in this budget may be adjusted one to another, but in no case shall the total budget exceed the price limitation of \$180,000.00.

Funding Source: Funding for this contract is 100% Federal Funds from the account entitled State Assessment as follows:

06-56-56-562010-64220000-102-500731

FY 15: \$180,000.00

Method of Payment: Payment is to be made monthly on the basis of invoices which are supported by a summary of activities that have taken place in accordance with the terms of the contract, along with a detailed listing of expenses incurred. If otherwise correct and acceptable, payment will be made for 100% of the expenditures listed. Invoices and reports shall be submitted to:

Scott J. Mantie, PhD
Administrator
NH Department of Education
101 Pleasant Street
Concord, NH 03301

* Daily rate is as follows: Keith Burke = \$1,000/day which includes the following additional budget items: In-State Travel - \$5,500.00; Conference Expenses - \$3,800.00; Clerical Support - \$6,500.00; General Office Expenses - \$9,667.00

Contractor Initials *KBJ*
Date *22 July 14*

EXHIBIT C

Authorize the Department of Education to waive the workers' compensation section of the agreement; Section 15, 15.1, and 15.2.

Subject to Governor and Council approval, authorize the Department of Education to exercise a renewal option on this contract for up to one additional fiscal year, subject to the contractor's acceptable performance of the terms therein.

CERTIFICATE OF AUTHORITY

(Partnership)

I, Susan J Burke, as a Partner of my Business, Data Retrieval Systems Group, LLC, certify that Keith R. Burke is authorized to enter into a contract with the State of New Hampshire, Department of Education, on behalf of Data Retrieval Systems Group, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand as the Partner of the Business this 23 day of July, 2014.

Susan J Burke
Partner

STATE OF New Hampshire
COUNTY OF Hillsborough

On this the 23 day of July, 2014, before me, Ida R Crafts the undersigned Officer, personally appeared Susan J. Burke who acknowledged himself/herself to be the Partner of Data Retrieval Systems Group, LLC, a Business, and that he/she, as such Partner being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the Business by himself/herself as Partner.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Ida R Crafts
Notary Public/Justice of the Peace

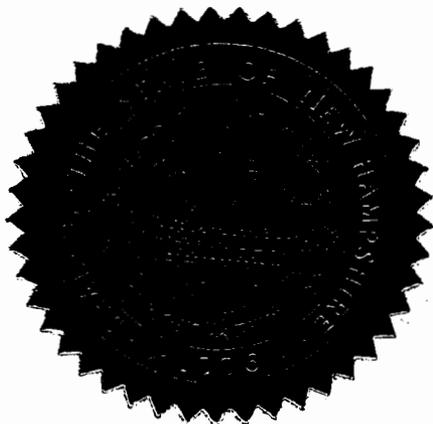
My Commission expires:

IDA R. CRAFTS, Notary Public
My Commission Expires August 24, 2016

State of New Hampshire
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that DATA RETRIEVAL SYSTEMS GROUP, LLC. is a New Hampshire limited liability company formed on June 30, 1999. I further certify that it is in good standing as far as this office is concerned, having filed the annual report(s) and paid the fees required by law; and that a certificate of cancellation has not been filed.



In TESTIMONY WHEREOF, I hereto
set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 25th day of June, A.D. 2014

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State

