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Frank Edelblut
Commissioner

Christine M. Brennan
Deputy Commissioner

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
101 Pleasant Street
Concord, N.H. 03301
TEL (603) 271-3495
FAX (603)-271-1953
Citizens Services Line 1-800-339-9900

March 22, 2021

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

REQUESTED ACTION

Authorize the Department of Education to enter into a contract with TransAct Communications, LLC Lynnwood, WA (vendor code 343020), in an amount not to exceed $312,160 to create and implement an after school data management system for the 21st Century Community Learning Centers (21st CCLC) program, effective upon Governor & Council approval, for the period of July 1, 2021 through June 30, 2026, with an option to renew for up to five years based on performance and identified ongoing need. 100% Federal Funds.

Funds to support this request are anticipated to be available in the account titled, Title IV-B 21st Cent Community Contracts in FY22 through FY26, upon the availability and continued appropriation of funds in the future operating budgets, with the ability to adjust encumbrances between state fiscal years through the Budget Office, if needed and justified.

	FY22	FY23	FY24	FY25	FY26
06-56-56-562010-25190000-072-509073 Grants Federal	$61,020	$61,020	$63,160	$63,160	$63,800

EXPLANATION

The Department of Education is charged with ensuing afterschool data is of the highest quality possible to drive effective and efficient implementation of the 21st CCLC programs. In order to best serve grantees, many of whom are local education agencies (LEAs) and community based organizations (CBOs), it is imperative that the Department of Education provide a platform for effective and efficient data collection, analysis, and subsequent program improvements. The provision of a data management system for all 21st CCLC programs is needed to 1) provide grantees a user-friendly interface that facilitates the collection of student-level data, 2) aligns to the Department of Education 21st CCLC programmatic requirements, and 3) is an effective platform from which

Department of Education may pull data that must be reported to the U.S. Department of Education (USED) via the federal 21st CCLC Annual Performance Report system (21APR).

A Request for Proposals (RFP) was posted on the Department of Education's website from January 8th, 2021 to January 22nd, 2021, and The Department received one (1) proposal from the issuance of the Request for Proposals "21st CCLC Data Management System."

A review committee consisting of Kathleen Vestal, State Director, Bureau of Instructional Support, Emily Fabian, Program Specialist, Bureau of Instructional Support and Bruce Smith, Assistant Director, NH Department of Information Technology, reviewed the proposal received by the deadline.

The proposal submitted by TransAct Communications, LLC met the criteria of the Request for Proposals (Attachment A).

The Department of Education would like to contract with TransAct Communications, LLC, their staff has over twenty years of experience working with state education agencies (SEAs), LEAs and CBOs in developing, implementing and supporting high-quality data collection and reporting functionalities, as well as maintaining a user-friendly and a secure data management system.

In the event that Federal Funds are no longer available for this program, State Funds will not be sought.

Respectfully Submitted,

Frank Edelblut
Commissioner of Education

Attachment A

SCORING FOR REVIEW
21st CCLC DATA MANAGMENT SYSTEM

Proposal Criteria in the RFP

CATEGORY	MAX POINTS
1. General Information	25
2. Financial Information and References	15
3. Project Plan, Testing and Support	40
Price Proposal Potential Maximum Points	20
TOTAL	100

The Request for Proposal (RFP) was posted on the Department of Education's website on January 8, 2021. One (1) RFP Proposal was received by the due date of January 22, 2021.

Scoring
TransAct Communications, LLC: Average Score 97

	Score
Kathleen V	98
Bruce S	97
Emily F	98
Average Score	97

A proposal review occurred on February 1, 2021. The RFP review panel consisted of the following employees from the Department of Education and (if any other groups).

Kathleen V., State Director, Bureau of Instructional Support, Nita M. Lowey 21st Century Community Learning Centers Office. Kathy has been the State Director for the last 5 years. As State Director, Kathleen implements all aspects of the 21st CCLC program and has expertise in 21st CCLC afterschool programs.

Bruce S., Assistant Director, NH Department of Information Technology. Senior Technology executive experienced in integrating applied technologies to bring value to the business services and government contracting industries.

Emily F., Program Specialist, Bureau of Instructional Support. Her primary role is to oversee all the programmatic requirements of the Nita M. Lowey 21st CCLC programs.

STATE OF NEW HAMPSHIRE
DEPARTMENT OF INFORMATION TECHNOLOGY
27 Hazen Dr., Concord, NH 03301
Fax: 603-271-1516 TDD Access: 1-800-735-2964
www.nh.gov/doit

Denis Goulet
Commissioner

March 31, 2021

Frank Edelblut, Commissioner
Department of Education
State of New Hampshire
101 Pleasant Street
Concord, NH 03301

Dear Commissioner Edelblut:

This letter represents formal notification that the Department of Information Technology (DoIT) has approved your agency's request to enter into a contract with TransAct Communications, LLC, of Lynnwood, WA and as described below and referenced as DoIT No. 2021-050.

> This is a request to enter into a contract to procure a data management system for all 21st CCLC programs. This system will provide grantees a user-friendly interface that facilitates the collection of student-level data, aligns to NHDOE 21st CCLC programmatic requirements, and is an effective platform from which NHDOE may pull data that must be reported to the U.S. Department of Education (USED) via the federal 21st CCLC Annual Performance Report system (21APR).
>
> The funding amount is not to exceed $312,160 and the contract shall become effective upon Governor and Council approval, July 1, 2021 through June 30, 2026.

A copy of this letter should accompany the Department of Education's submission to the Governor and Executive Council for approval.

Sincerely,

Denis Goulet

DG/kaf
DoIT #2021-050

cc: Bruce Smith, IT Manager, DoIT

STATE OF NEW HAMPSHIRE

Department of Education:

Nita M. Lowey 21st Community Learning Centers Program (21st CCLC) Title IV, Part B Data Management System:

NHDOE – 2021-2026

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

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 Department of Education		1.2 State Agency Address 101 Pleasant Street Concord, NH 03301	
1.3 Contractor Name TransACT Communications LLC		1.4 Contractor Address 5105 200th Street SW, suite 200 Lynnwood, WA 98036	
1.5 Contractor Phone Number 425-977-2110	1.6 Account Number 06-56-56-562010-25190000-072-509073	1.7 Completion Date June 30, 2026	1.8 Price Limitation $312,160
1.9 Contracting Officer for State Agency		1.10 State Agency Telephone Number	
1.11 Contractor Signature Date: 3/15/21		1.12 Name and Title of Contractor Signatory Alex Jarzebowicz, CEO	
1.13 State Agency Signature Date: 4-7-21		1.14 Name and Title of State Agency Signatory Frank Edelblut, Commissioner of Education	
1.15 Approval by the N.H. Department of Administration, Division of Personnel *(if applicable)* By: Lorrie A Rudis Director, On: 04/07/2021			
1.16 Approval by the Attorney General (Form, Substance and Execution) *(if applicable)* By: Christopher Bond, Attorney General's Office On: 4/7/21			
1.17 Approval by the Governor and Executive Council *(if applicable)* G&C Item number: G&C Meeting Date:			

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.

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, 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.

EXHIBIT A - SPECIAL PROVISIONS

The terms outlined in the P-37 General Provisions are modified as set forth below:

A.1 Provision 3, Effective Date/Completion of Services, is updated with the following addition:

3.3 The Term may be extended up to Five (5) years(s), ("Extended Term") at the sole option of the State, subject to the parties prior written Agreement on applicable fees for each extended Term, up to but not beyond June 30, 2031 under the same terms and conditions, subject to approval of the Governor and Executive Council.

A.2 Provision 5, Contract Price/Price Limitation/ Payment, is updated with the following addition:

5.5 The State's liability under this Agreement shall be limited to monetary damages not to exceed the contract price pursuant to Paragraph 5.2. The Contractor agrees that it has an adequate remedy at law for any breach of this Agreement by the State and hereby waives any right to specific performance or other equitable remedies against the State. Subject to applicable laws and regulations, in no event shall the State be liable for any consequential, special, indirect, incidental, punitive, or exemplary damages. 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.

A.3 Provision 8, Event of Default/Remedies, is updated with the following addition:

8.4 Procure Services that are the subject of the Contract from another source and Contractor shall be liable for reimbursing the State for the replacement Services, and all administrative costs directly related to the replacement of the Contract and procuring the Services from another source, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, and staff time costs; all of which shall be subject to the limitations of liability set forth in the Contract.

A.4 Provision 9, Termination, is deleted and replaced with the following:

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. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. The State shall be liable for cost of all Services and Deliverables for which Acceptance has been given by the State, provided through the date of termination but will not be liable for any costs for incomplete Services or winding down the Contract activities. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

9.2 Termination Procedure

9.2.1 Upon termination of the Contract, the State, in addition to any other rights provided in the Contract, may require Contractor to deliver to the State any property, including without limitation, Written Deliverables, for such part of the Contract as has been terminated.

9.2.2 After receipt of a notice of termination, and except as otherwise directed by the State, Contractor shall:

- **a.** Stop work under the Contract on the date, and to the extent specified, in the notice;
- **b.** Promptly, but in no event longer than ten (10) days after termination, terminate its orders and subcontracts related to the work which has been terminated, and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the State to the extent required, which approval or ratification shall be final for the purpose of this Section;
- **c.** Take such action as the State directs, or as necessary to preserve and protect the property related to the Contract which is in the possession of Contractor and in which the State has an interest;
- **d.** Take no action to intentionally erase any State data until directed by the State;
- **e.** Transfer title to the State and deliver in the manner, at the times, and to the extent directed by the State, any property which is required to be furnished to the State and which has been accepted or requested by the State;
- **f.** Implement an orderly return of State data in a CSV or another mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of State data;
- **g.** Securely dispose of all requested data in all of its forms, such as disk, CD / DVD, backup tape and paper, when requested by the State. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-Special Publication (SP) 800-88 approved methods. Certificates of destruction shall be provided to the State; and
- **h.** Provide written Certification to the State that Contractor has surrendered to the State all said property and after 180 days has erased all State data.

9.2.3 If the Contract has expired, or terminated prior to the Completion Date, for any reason, the Contractor shall provide, for a period up to ninety (90) days after the expiration or termination, all transition services requested by the State, at a commercially reasonable and mutually agreed upon cost, to allow for the expired or terminated portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to the State or its designees ("Transition Services").

9.2.4 This covenant in paragraph 9 shall survive the termination of this Contract.

A.5 Provision 10, Data/Access/Confidentiality/Preservation, is updated with the following addition:

10.4 In performing its obligations under this Agreement, Contractor may gain access to Confidential Information of the State. Confidential Information includes any and all information owned or managed by the State of NH - created, received from or on behalf of any Agency of the State 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), Personally Identifiable Information (PII), Personal Financial Information (PFI), Federal Tax Information (FTI), Social Security Numbers (SSN), Payment Card Industry (PCI), and or other sensitive and Confidential Information. The Contractor shall not use the Confidential Information developed or obtained during the performance of, or acquired, or developed by reason of the Agreement, except as directly connected to and necessary for the performance of the Agreement. Contractor shall maintain the confidentiality of and protect from unauthorized use, disclosure, publication, and reproduction (collectively "release"), all Confidential Information.

10.4.1 In the event of the unauthorized release of Confidential Information, Contractor shall immediately notify the State, and the State may immediately be entitled to pursue any remedy at law and in equity, including, but not limited to, injunctive relief.

10.5 Subject to applicable federal or State laws and regulations, Confidential Information shall not include information which:

a. shall have otherwise become publicly available other than as a result of disclosure by the receiving Party in breach here of;

b. was disclosed to the receiving Party on a non-confidential basis from a source other than the disclosing Party, which the receiving Party believes is not prohibited from disclosing such information as a result of an obligation in favor of the disclosing Party;

c. is developed by the receiving Party independently of, or was known by the receiving Party prior to, any disclosure of such information made by the disclosing Party; or

d. is disclosed with the written consent of the disclosing Party.

10.6 A receiving Party also may disclose Confidential Information to the extent required by an order of a court of competent jurisdiction. Any disclosure of the Confidential Information shall require the prior written approval of the State. Contractor shall immediately notify the State if any request, subpoena or other legal process is served upon Contractor regarding the Confidential Information, and Contractor shall cooperate with the State in any effort the State undertakes to contest the request, subpoena or other legal process, at no additional cost to the State.

10.7 Contractor Confidential Information. Contractor shall clearly identify in writing all information it claims to be confidential or proprietary upon providing such information to the State. For the purposes of complying with its legal obligations, the State is under no obligation to accept the Contractor's designation of material as

confidential. Contractor acknowledges that the State is subject to State and federal laws governing disclosure of information including, but not limited to, RSA Chapter 91-A. In the event the State receives a request for the information identified by Contractor as confidential, the State shall notify Contractor and specify the date the State will be releasing the requested information. At the request of the State, Contractor shall cooperate and assist the State with the collection and review of Contractor's information, at no additional expense to the State. Any effort to prohibit or enjoin the release of the information shall be Contractor's sole responsibility and at Contractor's sole expense. If Contractor fails to obtain a court order enjoining the disclosure, the State shall release the information on the date specified in the State's notice to Contractor, without any liability to the State.

10.8 This covenant in paragraph 10 shall survive the termination of this Contract.

A.6 Provision 12, Assignment/Delegation/Subcontracts, is updated with the following addition:

12.3 In the event that Contractor should change ownership for any reason whatsoever that results in a change of control of the Contractor, the State shall have the option of:

a. continuing under the Agreement with Contractor, its successors or assigns for the full remaining Term of the Agreement or for such period of time as determined necessary by the State;

b. immediately terminate the Agreement without liability to or further compensation owed to Contractor, its successors or assigns.

A.7 The following Provisions are added and made part of the P37:

25. FORCE MAJEURE

25.1 Neither Contractor nor the State shall be responsible for delays or failures in performance resulting from events beyond the control of such Party and without fault or negligence of such Party. Such events shall include, but not be limited to, acts of God, strikes, lock outs, riots, and acts of War, epidemics, acts of Government, fire, power failures, nuclear accidents, earthquakes, and unusually severe weather.

25.2 Except in the event of the foregoing, Force Majeure events shall not include the Contractor's inability to hire or provide personnel needed for the Contractor's performance under the Contract.

26. EXHIBITS/ATTACHMENTS

The Exhibits and Attachments referred to in and attached to the Contract are incorporated by reference as if fully included in the text of the Contract.

27. NON-EXCLUSIVE CONTRACT

The State reserves the right, at its discretion, to retain other vendors to provide any of the Services or Deliverables identified under this Agreement. Contractor shall make best efforts to coordinate work with all other State vendors performing Services which relate to the work or Deliverables set forth in the Agreement. The State intends to use, whenever possible, existing Software and hardware contracts to acquire supporting Software and hardware.

28. GOVERNMENT APPROVALS

Contractor shall obtain all necessary and applicable regulatory or other governmental approvals necessary to perform its obligations under the Contract.

A.8 Additional Contractor and DOE agreed upon changes:

Provision 6, COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY, paragraph 6.3 is updated as follows:

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

Provision 12, ASSIGNMENT/DELEGATION/SUBCONTRACTS paragraph 12.1 is updated as follows:

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 which shall not be unreasonably withheld. 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.

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EXHIBIT B – STATEMENT OF WORK (SOW) BUSINESS AND TECHNICAL REQUIREMENTS AND DELIVERABLES

The Statement of Work, Business and Technical Requirements, and Deliverables are set forth below:

1. STATEMENT OF WORK

The scope of work is to provide the following elements:

- Technical support in creating the federal 21APR reports.
- Extracting data from the grantee database for preparing the 21APR reports.
- Maintaining the grantee database to synchronize with changes made by the USED (21st CCLC and 21APR).
- Enter data from the grantee database generated APR into the 21APR system/Tactile Systems three times per year as required by the USED for all centers in the State.
- Providing online access for stakeholders to complete the required 21st CCLC federal surveys via direct email and importation of those responses into the grantee database to fulfill 21APR requirements.
- Preparation of data validations implemented by 21APR.
- Running of scripts to convert grantee test data to proficiency levels required by 21APR.
- Maintenance of grantee data for federal reporting.
- Providing a state level interface for NHDOE to administer grantees.
- Providing state level interface to extract reports and evaluate program data and for monitoring grantees and programs.
- Providing commercially reasonable efforts to make the services available on a twenty-four hours per day, seven days per week basis.
- Providing technical support on the state and grantee database; maintenance of evaluation reports.
- Development of user-friendly training manuals.
- Assisting with the administration of the grantee database (test & proficiency setup, edit/drop/delete grantees/sites etc.).
- Extraction of regular attendee reports' with varying criteria of attendance by site.
- Transferring of information including staff and site setup.
- Providing cross year reports for evaluating grantees prior to awarding new grants.
- Creating custom reports spanning multiple years on request.
- Setup of grantee database for new school year and program year.

2. BUSINESS / TECHNICAL REQUIREMENTS

Reference Attachment: Exhibit G- a. 04. AS21_NHDOE RFP 2021-2026_c_Appendix B-IT-Requirements- Attachment 1

2.1 Compliance Requirements

Reference Attachment: Exhibit G- e. Agency Compliance Documents – Exhibits 1-4 for DOIT contract - Attachment 5

3. ACTIVITY, DELIVERABLE, AND MILESTONE

Reference Attachment: Not Applicable.

4. DELIVERABLE REVIEW AND ACCEPTANCE

4.1 Non-Software and Written Deliverables Review and Acceptance

The Contractor shall provide a written Certification that a non-software, written deliverable (such as the Test Plan) is final, complete, and ready for Review. After receiving such Certification from the Contractor, the State will Review the Deliverable to determine whether it meets the requirements outlined in this Exhibit. The State will notify the Contractor in writing of its Acceptance or rejection of the Deliverable, or its partial or conditional Acceptance of the Deliverable, within five (5) business days of the State's receipt of the Contractor's written Certification; provided that if the State determines that the State needs more than five (5) days, then the State shall be entitled to an extension of up to an additional ten (10) business days. If the State rejects the Deliverable or any portion of the Deliverable, or if any Acceptance by the State is conditioned upon completion of any related matter, then the State shall notify the Contractor of the nature and class of the Deficiency, or the terms of the conditional Acceptance, and the Contractor shall correct the Deficiency or resolve the condition to Acceptance within the period identified in the Work Plan. If no period for the Contractor's correction of the Deliverable or resolution of condition is identified, the Contractor shall correct the Deficiency in the Deliverable or resolve the condition within five (5) business days or such longer period as the State (in its sole discretion) may agree. Upon receipt of the corrected Deliverable, the State shall have five (5) business days to review the Deliverable and notify the Contractor of its Acceptance, Acceptance in part, conditional Acceptance, or rejection thereof, with the option to extend the Review Period up to five (5) additional business days, or mutually agreed upon timeframe. If the Contractor fails to correct the Deficiency within the allotted period, the State may, at its option, continue reviewing the Deliverable and require the Contractor to continue until the Deficiency is corrected, or immediately terminate the Contract, declare the Contractor in default, and or pursue its remedies at law and in equity.

4.2 Software Deliverables Review and Acceptance

System/Software Testing and Acceptance shall be performed as set forth in the Test Plan and more particularly described in Acceptance and Testing Services described herein.

4.3 Number of Deliverables

Unless the State otherwise specifically agrees in writing, in no event shall the Contractor certify for testing and deliver to the State more than three (3) Deliverables for review or testing at one time. As the State accepts a Deliverable, an additional Deliverable may be presented for review but at no time can the Deliverables exceed three (3) at a time without the authorization of the State.

4.4 Conditional and Unconditional Acceptance

By accepting a Deliverable, the State reserves the right to reject any and all Deliverables in the event the State detects any Deficiency in the System, in whole or in part, through

completion of all Acceptance Testing, including but not limited to, Software/System Acceptance Testing, and any extensions thereof.

5. CHANGE ORDER

The State may make changes, revisions or request enhancements to the Scope of Work at any time by written Change Order. The State originated changes, revisions or enhancements shall be approved by the Department of Information Technology. Within five (5) business days of Contractor's receipt of a Change Order, Contractor shall advise the State, in detail, of any impact on cost (e.g., increase or decrease), the Schedule, and the Work Plan.

Contractor may propose a change within the scope of the Contract by written Change Order, identifying any impact on cost, the Schedule, and the Work Plan. The State shall acknowledge receipt of Contractor's requested Change Order within five (5) business days. The State Agency, as well as the Department of Information Technology, must review and approve all Change Orders in writing. The State shall be deemed to have rejected the Change Order if the Parties are unable to reach an agreement in writing within 30 days of receipt of the Change Order.

Change orders resulting in an increase of Price Limitation, an extension of time for Contract completion or a significant change to the scope of the Contract may require approval by the Governor and Council.

A Change Order which is accepted and executed by both Parties, and if applicable approved by Governor and Council, shall amend the terms of this Agreement.

6. IMPLEMENTATION SERVICES

The Contractor shall employ an industry-standard Implementation strategy with a timeline set forth in accordance with the Work Plan:

The Contractor shall manage Project execution and provide the tools needed to create and manage the Project's Work Plan and tasks, manage and schedule Project staff, track and manage issues, manage changing requirements, maintain communication within the Project Team, and Report status.

The Contractor and the State shall adopt a Change Management approach to identify and plan key strategies, communication initiatives, and training plans.

7. PROJECT MANAGEMENT

The Contractor shall provide project tracking tools and templates to record and manage Issues, Risks, Change Requests, Requirements, and other documents used in the management and tracking of the project. The State believes that effective communication and Reporting are essential to Project success. The Contractor shall employ effective communication and Reporting strategies to ensure Project success. The Contractor Key Project Staff shall

participate in meetings as requested by the State, in accordance with the requirements and terms of this Contract.

The Project requires the coordinated efforts of a Project Team consisting of both Contractor and State personnel. Contractor shall provide all necessary resources to perform its obligations under the Contract. Contractor is responsible for providing all appropriate resources and personnel to manage this Project to a successful completion.

7.1 The Contractor Key Project Staff

7.1.1. The Contractor's Contract Manager

Contractor shall assign a Contract Manager who will be responsible for all Contract authorization and administration, including but not limited to processing Contract documentation, obtaining executive approvals, tracking costs and payments, and representing the parties in all Contract administrative activities. Contractor's Contract Manager is:

Jim Chamberlin
425-977-2113
jim@transact.com

7.1.2. The Contractor's Project Manager

Contractor shall assign a Project Manager who is qualified to perform or supervise the Contractor's obligations under this Agreement. Contractor's Project Manager is:

Ben Hinkle-Wszalek
414-257-9400 x114
benw@cayen.net

Contractor's selection of the Project Manager shall be subject to the prior written approval of the State. The State's approval process may include, without limitation, at the State's discretion, review of the proposed Project Manager's resume, qualifications, references, and background checks, and an interview. The State may require removal or reassignment of Project Manager who, in the sole judgment of the State, is found unacceptable or is not performing to the State's satisfaction. Project Manager must be qualified to perform the obligations required of the position under the Contract, shall have full authority to make binding decisions under the Contract, and shall function as Contractor's representative for all administrative and management matters. Project Manager must be available to promptly respond during normal Business Hours within Four (4) hours of inquiries from the State, and be at the site as needed. Project Manager must work diligently and use his/ her best efforts on the Project.

7.1.3. Change of Project Manager

Contractor may not replace the Project Manager or change its assignment of Project Manager without providing the State written notice and obtaining the prior approval of the State of the replacement Project Manager. State approvals for replacement of Project Manager shall not be unreasonably withheld. The replacement Project Manager is subject to the same requirements and Review as set forth above. Contractor shall assign a replacement Project Manager within ten (10) business days of the departure of the prior Project Manager, and Contractor shall continue during the ten (10) business day period to provide competent project management Services through a qualified interim Project Manager.

7.1.4. The Contractors Additional Key Project Staff

The State considers the following individuals to be Key Project Staff for this Project:

Lynn Russo Senior Account Manager

The State reserves the right to require removal or reassignment of Key Project Staff who are found unacceptable to the State. Contractor shall not change Key Project Staff commitments without providing the State written notice and obtaining the prior written approval of the State. State approvals for replacement of Key Project Staff will not be unreasonably withheld. The replacement Key Project Staff shall have comparable or greater skills than Key Project Staff being replaced.

7.1.5. Background Checks

The State may require, and, at its sole expense, conduct reference and background screening of the Contractor's staff assigned to this Contract.

7.1.6. Termination for Lack of Project Management and Key Project Staff

Notwithstanding any other provision of the Contract to the contrary, the State shall have the option to terminate the Contract, declare Contractor in default and to pursue its remedies at law and in equity, if Contractor fails to assign a Project Manager and/or Key Project Staff meeting the requirements and terms of the Contract or if the State is dissatisfied with Contractor's replacement of the Project Manager and/or Key Project Staff.

7.2 The State Key Project Staff

7.2.1. The State Contract Manager

The State shall assign a Contract Manager who shall function as the State's representative with regard to Contract administration. The State Contract Manager is:

Kathleen A. Vestal
603-271-3853
Kathleen.A.Vestal@doe.nh.gov

7.2.2. The State Project Manager

The State shall assign a Project Manager. The State's Project Manager is:

Emily A. Fabian
603-271-3646
Emily.A.Fabian@doe.nh.gov

The State Project Manager's duties shall include the following:

a. Leading the Project;
b. Engaging and managing all Contractors working on the Project;
c. Managing significant issues and risks;
d. Reviewing and accepting Contract Deliverables;
e. Invoice sign-offs;
f. Review and approval of Change Orders;
g. Managing stakeholders' concerns.

8. WORK PLAN

The Contractor's Project Manager and the State Project manager shall finalize the Work Plan within Ten (10) days of the Effective Date and further refine the tasks required to implement

the Project. Continued development and management of the Work Plan is a joint effort on the part of the Contractor and State Project Managers.

The preliminary Work Plan created by the Contractor and the State is set forth in this Section.

Reference Attachment: Exhibit G- d. 06. AS21_NHDOE RFP 2021-2026 _e_Appendix 2_Implementation Timeline_NH – Attachment 4

In conjunction with the Contractor's Project Management methodology, which shall be used to manage the Project's life cycle, the Contractor's team and the State shall finalize the Work Plan at the onset of the Project. This plan shall identify the tasks, Deliverables, major milestones, task dependencies, and a payment Schedule required to implement the Project. It shall also address intra-task dependencies, resource allocations (both State and The Contractor's team members), refine the Project's scope, and establish the Project's Schedule.

9. ACCEPTANCE & TESTING SERVICES

Reference Attachment: Exhibit G - c. 03. AS21_NHDOE RFP 2021-2026_b_Section 5 - 3.Project Plan, Testing and Support (Page 24) – Attachment 3

10. MAINTENANCE, OPERATIONS AND SUPPORT

10.1 Reference Attachment: Exhibit G – c. 03. AS21_NHDOE RFP 2021-2026_b_Section 5 - 3.Project Plan, Testing and Support (Page 23) – Attachment 3

10.2 System Maintenance

The Contractor shall maintain and support the System in all material respects as described in the Contract, through the Contract Completion Date. The Contractor shall make available to the State the latest program updates, general maintenance releases, selected functionality releases, patches, and Documentation that are generally offered to its customers, at no additional cost.

10.3 System Support

The Contractor must perform on-site or remote technical support in accordance with the Contract, including without limitation the requirements, terms, and conditions contained herein.

As part of the Software maintenance agreement, ongoing Software maintenance and support levels, including all new Software releases, shall be responded to according to the following:

Class A Deficiencies – The Contractor shall have available to the State on-call telephone assistance, with issue tracking available to the State, twenty four (24) hours per day and

twenty four (24) days a week with an email / telephone response within twenty four (24) hours of request; or the Contractor shall provide support on-site or with remote diagnostic Services, within twenty four (24) business hours of a request;

Class B & C Deficiencies – The State shall notify the Contractor of such Deficiencies during regular Business Hours and the Contractor shall respond back within twenty four (24) hours of notification of planned corrective action.

10.4 Support Obligations

The Contractor shall repair or replace Software, and provide maintenance of the Software in accordance with the Specifications and terms and requirements of the Contract.

The Contractor shall maintain a record of the activities related to Warranty repair or maintenance activities performed for the State;

a. For all maintenance Services calls, the Contractor shall ensure the following information will be collected and maintained:

i. nature of the Deficiency;
ii. current status of the Deficiency;
iii. action plans, dates, and times;
iv. expected and actual completion time;
v. Deficiency resolution information;
vi. resolved by;
vii. identifying number i.e. work order number; and
viii. issue identified by; and

b. The Contractor must work with the State to identify and troubleshoot potentially large-scale System failures or Deficiencies by collecting the following information:

i. mean time between Reported Deficiencies with the Software;
ii. diagnosis of the root cause of the problem; and
iii. identification of repeat calls or repeat Software problems.

If the Contractor fails to correct a Deficiency within the allotted period of time stated above, the Contractor shall be deemed to have committed an Event of Default, and the State shall have the right, at its option, to pursue the remedies as defined in the P-37 General Provisions, Provision 8, as well as to return the Contractor's product and receive a refund for all amounts paid to the Contractor, including but not limited to, applicable License fees, within ninety (90) days of notification to the Contractor of the State's refund request.

10.5 Contract Warranties and Representations

10.4.1. System

The Contractor warrants that any Systems provided under this Agreement will operate and conform to the Specifications, terms, and requirements of this Agreement.

10.4.2. Software

The Contractor warrants that any Software provided as part of this Agreement, including but not limited to the individual modules or functions furnished under the Contract, is properly functioning within the System, compliant with the requirements of the Contract, and will operate in accordance with the Specifications and terms of the Contract.

For any breach of the above Software warranty, in addition to all its other remedies at law and in equity, at the State's option the Contractor shall: (a) provide the correction of program errors that cause breach of the warranty, or if Contractor cannot substantially correct such breach in a commercially reasonable manner, the State may end its program license if any and recover the fees paid to Contractor for the program license and any unused, prepaid technical support fees the State has paid for the program license; or (b) the re-performance of the deficient Services, or (c) if Contractor cannot substantially correct a breach in a commercially reasonable manner, the State may end the relevant Services and recover the fees paid to Contractor for the deficient Services.

10.4.3. Compatibility

Contractor warrants that all System components, including but not limited to the components provided, any replacement or upgraded System Software components provided by Contractor to correct Deficiencies or as an Enhancement, shall operate with the rest of the System without loss of any functionality.

10.4.4. Services

Contractor warrants that all Services to be provided under this Agreement will be provided expediently, in a professional manner, in accordance with industry standards and that Services will comply with performance standards, Specifications, and terms of the Contract.

11. DATA PROTECTION

Protection of personal privacy and data shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of State information and comply with the following conditions:

a. The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and non-public information. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own Personal Data and non-public data of similar kind.
b. All data obtained by the Contractor in the performance of this contract and all Personal Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the Personal Data.
c. Unless otherwise stipulated, the Contractor shall encrypt all non-public data at rest and in transit. The State shall identify data it deems as non-public data to the Contractor. The level of protection and encryption for all non-public data shall be identified and made a part of this contract.

d. At no time shall any data or processes – that either belong to or are intended for the use of the State or its officers, agents or employees – be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the State.
e. The Contractor shall not use any information collected in connection with the service issued from this Contract for any purpose other than fulfilling the service.

11.1 Data Location

The Contractor shall provide its Services to the State and its end users solely from data centers within the Continental United States. All storage, processing and transmission of State data shall be restricted to information technology systems within the Continental United States. The Contractor shall not allow its personnel or sub-contractors to store State data on portable devices, including personal computers, except as specified and allowed by the contract, and then only on devices that are used and kept at its data centers within the Continental United States. The Contractor shall permit its personnel and Contractors to access State data remotely only to provide technical support and as specified or required by the contract.

11.2 Security Incident Or Data Breach

The Contractor shall inform the State of any security incident or Data Breach in accordance with NH RSA Chapter 359-C:20: Notice of Security Breach.

a. Incident Response: the Contractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. Discussing security incidents with the State should be handled on an urgent as-needed basis, as part of the Contractor communication and mitigation processes as mutually agreed upon, defined by law or contained in the contract.
b. Security Incident Reporting Requirements: the Contractor shall report a security incident to the State identified contact immediately if it reasonably believes there has been a security incident.
c. Breach Reporting Requirements: If the Contractor has actual knowledge of a confirmed data breach that affects the security of any State content that is subject to applicable data breach notification law, the Contractor shall (1) promptly notify the appropriate State identified contact within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.

11.3 Breach Responsibilities

11.3.1. This section only applies when a Data Breach occurs with respect to State data within the possession or control of the Contractor and/or the third party designee hosting the data as agreed upon by the Contractor and the State.

11.3.2. The Contractor, unless stipulated otherwise, shall immediately notify the appropriate State identified contact by telephone in accordance with the

agreed upon security plan or security procedures if it reasonably believes there has been a security incident.

11.3.3. The Contractor, unless stipulated otherwise, shall promptly notify the appropriate State identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a Data Breach the Contractor shall:

a. cooperate with the State as reasonably requested by the State to investigate and resolve the Data Breach;
b. promptly implement necessary remedial measures, if necessary; and
c. document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

11.3.4. Unless otherwise stipulated, if a Data Breach is a direct result of the Contractor's breach of its contract obligation or the third party hosting company to encrypt Personal Data or otherwise prevent its release, the Contractor and/or the third party hosting company shall bear the costs associated with:

a. the investigation and resolution of the Data Breach;
b. notifications to individuals, regulators or others required by State law;
c. a credit monitoring service required by State (or federal) law;
d. a website or a toll-free number and call center for affected individuals required by State law — all not to exceed the average per record per person cost calculated for Data Breaches in the United States (currently $201 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the Data Breach; and
e. complete all corrective actions as reasonably determined by the Contractor based on root cause; all [(a) through (e)] subject to this Contract's limitation of liability.

12. SOFTWARE AGREEMENT

The Contractor shall provide the State with access to the Software Licenses and Documentation set forth in the Contract, and particularly described Exhibit D: Software Agreement

13. ADMINISTRATIVE SERVICES

The Contract shall provide the State with the Administrative Services set forth in the Contract, and particularly described in Exhibit E: Administrative Services

14. TRAINING

The Contractor shall provide the following Training Services:

Reference Attachment: Exhibit G- c. 03. AS21_NHDOE RFP 2021-2026_b_Section 5 - 3.Project Plan, Testing and Support (Page 6) – Attachment 3

15. MERCHANT CARD SERVICES

Not required.

16. TERMS AND DEFINTIONS

Terms and Definitions applicable to this Contract are identified in Exhibit F: Terms and Definitions.

17. CONTRACTOR'S CERTIFICATES

Required Contractor Certificates are attached in Exhibit G.

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EXHIBIT C – PRICE AND PAYMENT SCHEDULE

The terms outlined in the Payment Schedule is set forth below:

1. CONTRACT PRICE

Notwithstanding any provision in the Contract to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments made by the State exceed the amount indicated in P-37 General Provisions - Block 1.8: Price Limitation. The payment by the State of the total Contract price shall be the only, and the complete reimbursement to the Contractor for all fees and expenses, of whatever nature, incurred by the Contractor in the performance hereof.

2. TRAVEL EXPENSES

The State will not be responsible for any travel or out of pocket expenses incurred in the performance of the Services performed under this Contract. The Contractor must assume all travel and related expenses incurred by Contractor in performance of its obligations. All labor rates in this Agreement will be considered "Fully Loaded", including, but not limited to: meals, hotel/housing, airfare, car rentals, car mileage, and any additional out of pocket expenses.

3. SHIPPING FEES

The State will not pay for any shipping or delivery fees unless specifically itemized in this Agreement.

4. INVOICING

The Contractor shall submit correct invoices to the State for all amounts to be paid by the State. All invoices submitted shall be subject to the State's prior written approval, which shall not be unreasonably withheld. The Contractor shall only submit invoices for Services or Deliverables as permitted by the Contract. Invoices must be in a format as determined by the State and contain detailed information, including without limitation: itemization of each Deliverable and identification of the Deliverable for which payment is sought, and the Acceptance date triggering such payment; date of delivery and/or installation; monthly maintenance charges; any other Project costs or retention amounts if applicable.

Upon Acceptance of a Deliverable, and a properly documented and undisputed invoice, the State will pay the correct and undisputed invoice within thirty (30) days of invoice receipt. Invoices will not be backdated and shall be promptly dispatched.

5. INVOICE ADDRESS

Invoices may be sent to:

New Hampshire Department of Education
Kathleen. A. Vestal
101 Pleasant Street
Concord, NH 03301

6. PAYMENT ADDRESS

Payments shall be made via ACH. Use the following link to enroll with the State Treasury for ACH payments: https://www.nh.gov/treasury/state-vendors/index.htm

7. OVERPAYMENTS TO THE CONTRACTOR

The Contractor shall promptly, but no later than fifteen (15) business days, return to the State the full amount of any overpayment or erroneous payment upon discovery or notice from the State.

8. CREDITS

The State may apply credits due to the State arising out of this Contract, against the Contractor's invoices with appropriate information attached.

9. PROJECT HOLDBACK

Holdback is not applicable given the SaaS nature of the product delivery.

10. PAYMENT SCHEDULE

10.1. Contract Type

10.1.1. Activities / Deliverables / Milestones Pricing

This is a Fixed Firm Price Contract. The total Contract value is indicated in P-37 General Provisions - Block 1.8: Price Limitation for the period between the Effective Date through date indicated in P-37 General Provisions - Block 1.7: Completion Date. The Contractor shall be responsible for performing its obligations in accordance with the Contract. This Contract will allow the Contractor to invoice the State for the following activities, Deliverables, or milestones appearing in the price and payment tables below:
Annual Subscription invoiced at the beginning of each twelve (12) month term
Reference Attachment: Exhibit G- b. 02. AS21_NHDOE RFP 2021-2026_a_Section 5 - 2.Financial Information and References (Page 4) – Attachment 2
Budget:

Subscription Period	FY22	FY23	FY24	FY25	FY26	Total
Annual Price	$61,020	$61,020	$63,160	$63,160	$63,800	$312,160

Source of Funding: Funds to support this request are available in the account titled, Title IV-B 21st Cent Community in FY22 and are anticipated to be available in FY23 through FY26, upon the availability and continued appropriation of funds in the future operating budget, with the ability to adjust encumbrances between state fiscal years through the Budget Office, if needed and justified.

Limitation on Price: This contract will not to exceed $312,160

	FY22	FY23	FY24	FY25	FY26	Total
06-56-56-562010-25190000-072-509073 Grants Federal	$61,020	$61,020	$63,160	$63,160	$63,800	$312,160

10.1.2. Hardware Pricing

Not applicable

10.1.3. Software License Pricing

Included in the Annual Subscription

10.1.4. Software Operations, Maintenance and Support Pricing

Included in the Annual Subscription

10.1.5. Hosting Pricing

Included in the Annual Subscription

10.1.6. Other Cost Pricing

Not applicable

10.1.7. Implementation Pricing Summary

Included in the Annual Subscription

10.1.8. Contractor Staff, Resource Hours and Rates Worksheet

Contractor Staff rate is $250/hour.

10.1.9. Future Contractor Rates Worksheet

The State may request additional Services from the Contractor The State and Contractor agree to the following rates in the event the contract is extended as described in P-37 General Provisions, Section 3 Effective Date/Completion of Services.
Contractor Staff rate is $250/hour.

Remainder of this page intentionally left blank

EXHIBIT D – SOFTWARE AGREEMENT

The terms outlined in the Software Agreement are set forth below:

1. LICENSE GRANT

1.1 COTS -- Not Applicable (N/A)

The Contractor hereby grants to the State a worldwide, perpetual, irrevocable, non-exclusive, non-transferable, limited License to use the Software and its associated Documentation, subject to the terms of the Contract. The State may allow its agents and Contractors to access and use the Software, and in such event, the State shall first obtain written agreement from such agents and Contractors that each shall abide by the terms and conditions set forth herein.

1.2 SAAS – Grant of Rights

During the Subscription Term, the State will receive a nonexclusive, non-assignable, royalty free, worldwide right to access and use the Software solely for the State's internal business operations subject to the terms of this Agreement and up to the number of Licenses documented in the Agreement.

The Parties acknowledge that this Agreement is a Services agreement and Contractor will not be delivering copies of the Software to Customer as part of the Agreement.

1.3 SUBSCRIPTION – Subscription -- Subject to the payment of all applicable license fees:

The contractor hereby grants to the State a non-transferable, non -sub licensable, non-exclusive license to use Software and its associated documentation during the applicable subscription term, subject to the terms of the Contract. The State may allow its agents and Contractors to access and use the Software, and in such event, the State shall first obtain written agreement from such agents and Contractors that each shall abide by the terms and conditions set forth herein.

1.4 CUSTOM SOFTWARE – Not Applicable (N/A)

1.4.1. Software Title

The Contractor agrees that any and all work product created pursuant to this Agreement, including but not limited to all Software, are deemed to be "Work For Hire" within the meaning of the Copyright Act of 1976. To the extent Contractor is deemed to have retained any legal title, rights and interest in these works, Contractor hereby assigns any and all such title, rights, and interest (including all ownership and intellectual property rights) in the Software and related work product to the State of New Hampshire in consideration for the promises set forth within this Agreement.

1.4.2. Documentation and Copies

The State shall be entitled to copies of any work product upon request to Contractor. At the conclusion of this Agreement, the Contractor agrees to provide all copies of the Software for all versions, including related Documentation, to the State. Contractor shall not retain any work product associated with this Agreement unless authorized by the State in writing.

1.4.3. Restriction on Use

Unless specifically authorized by the State, Contractor shall not utilize work product derived as part of this Agreement in any manner other than as required by Contractor to complete its obligations under this Agreement.

1.4.4. Software Non-Infringement

Contractor warrants that the Software, including any all component parts thereof ("Contracted Works") are original works of the Contractor that do not violate or infringe any patent, trademark, copyright, trade name or other intellectual property rights or misappropriate a trade secret of any third party.

1.4.4.1. The warranty of non-infringement shall be an on-going and perpetual obligation that shall survive termination of the Contract. In the event that someone makes a claim against the State that any Contracted Works infringe their intellectual property rights, Contractor shall defend and indemnify the State against the claim provided that the State:

- **a.** Promptly notifies Contractor in writing, not later than 30 days after the State receives actual written notice of such claim;
- **b.** Gives Contractor control of the defense and any settlement negotiations; and
- **c.** Gives Contractor the information, authority, and assistance reasonably needed to defend against or settle the claim.

1.4.4.2. Notwithstanding the foregoing, the State's counsel may participate in any claim to the extent the State seeks to assert any immunities or defenses applicable to the State.

1.4.4.3. If Contractor believes or it is determined that any of the Contracted Works may have violated someone else's intellectual property rights, Contractor may choose to either modify the Contracted Works to be non-infringing or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, Contractor may end the license, and require return of the applicable Contracted Works and refund all fees the State has paid Contractor under the Contract. Contractor will not indemnify the State if the State alters the Contracted Works without Contractor's consent or uses it outside the scope of use identified in Contractor's user Documentation or if the State uses a version of the Contracted Works which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Contracted Works which was provided to the State at no additional cost. Contractor will not indemnify the State to the extent that an infringement claim is based upon any information design, Specification, instruction, Software, data, or material not furnished by Contractor. Contractor will not indemnify the State to the extent that an infringement claim is based upon the combination of any Contracted Works with any products or services not provided by Contractor without Contractor's consent.

1.4.5. Viruses

Contractor shall provide Software that is free of viruses, destructive programming, and mechanisms designed to disrupt the performance of the Software in accordance with the Specifications.

2. SOFTWARE TITLE

Title, right, and interest (including all ownership and intellectual property rights) in the Software provided under this Agreement, and its associated documentation, shall remain with the Contractor.

3. SOFTWARE AND DOCUMENTATION COPIES

The State shall be entitled to copies of any work product upon request to Contractor. Contractor shall not retain any work product associated with this Agreement unless authorized by the State in writing.

Contractor shall provide the State with a sufficient number of hard copy versions of the Software's associated Documentation and one (1) electronic version in Microsoft Word and PDF format. The State shall have the right to copy the Software and its associated Documentation within its possession for its internal business needs. To the extent that the State does not have possession of the Software, Contractor shall provide a reasonable number of copies of the Software and associated Documentation upon request. The State agrees to include copyright and proprietary notices provided to the State by the Contractor on such copies.

4. RESTRICTIONS

Except as otherwise permitted under the Contract, the State agrees not to:

a. Remove or modify any program markings or any notice of the Contractor's proprietary rights;
b. Make the programs or materials available in any manner to any third party for use in the third party's business operations, except as permitted herein; or
c. Cause or permit reverse engineering, disassembly or recompilation of the programs.

5. VIRUSES

The Contractor shall provide Software that is free of viruses, destructive programming, and mechanisms designed to disrupt the performance of the Software in accordance with the Specifications. As a part of its internal development process, Contractor will use reasonable efforts to test the Software for Viruses.

6. AUDIT

Upon forty-five (45) days written notice, the Contractor may audit the State's use of the programs at the Contractor's sole expense. The State agrees to cooperate with the Contractor's audit and provide reasonable assistance and access to information. The State agrees that the Contractor shall not be responsible for any of the State's reasonable costs incurred in cooperating with the audit. Notwithstanding the foregoing, the Contractor's audit rights are subject to applicable State and federal laws and regulations.

7. SOFTWARE NON-INFRINGEMENT

Contractor warrants that it has good title to, or the right to allow the State to use all Services, equipment, and Software, including any all component parts thereof such as third party Software or programs that may be embedded in the Software ("Contracted Resources") provided under this Contract, and that such Services, equipment, and Software do not violate or infringe any patent, trademark, copyright, trade name or other intellectual property rights or misappropriate a trade secret of any third-party.

The Warranty of non-infringement shall be an on-going and perpetual obligation that shall survive termination of the Contract. In the event that someone makes a claim against the State that any Contracted Resources infringe their intellectual property rights, the Contractor shall defend and indemnify the State against the claim provided that the State:

a. Promptly notifies the Contractor in writing, not later than 30 days after the State receives actual written notice of such claim;
b. Gives the Contractor control of the defense and any settlement negotiations; and
c. Gives the Contractor the information, authority, and assistance reasonably needed to defend against or settle the claim.

Notwithstanding the foregoing, the State's counsel may participate in any claim to the extent the State seeks to assert any immunities or defenses applicable to the State.

If the Contractor believes or it is determined that any of the Contracted Resources may have violated someone else's intellectual property rights, the Contractor may choose to either modify the Contracted Resources to be non-infringing or obtain a License to allow for continued use, or if these alternatives are not commercially reasonable, the Contractor may end the License, and require return of the applicable Contracted Resources and refund all fees the State has paid the Contractor under the Contract. The Contractor will not indemnify the State if the State alters the Contracted Resources without the Contractor's consent or uses it outside the scope of use identified in the Contractor's User Documentation or if the State uses a version of the Contracted Resources which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Contracted Resources which was provided to the State at no additional cost. The Contractor will not indemnify the State to the extent that an infringement claim is based upon any information design, Specification, instruction, Software, Data, or material not furnished by the Contractor. The Contractor will not indemnify the State to the extent that an infringement claim is based upon the combination of any Contracted Resources with any products or Services not provided by the Contractor without the Contractor's consent.

8. CONTROL OF ALL COMPONENT ELEMENTS

Contractor acknowledges and agrees that it is responsible for maintaining all Licenses or permissions to use any third-party Software, equipment, or Services that are component parts of any Deliverable provided under this Agreement for the entire Term of the Contract. Nothing within this provision shall be construed to require Contractor to maintain Licenses and

permissions for Software acquired by the State directly or through third-parties which may be integrated with the Contractor's Deliverables.

9. CUSTOM SOURCE CODE

Should any custom source code be developed, Contractor shall provide the State with a copy of the source code, which shall be subject to the License rights. The State shall receive a worldwide, perpetual, irrevocable, non-exclusive paid –up right and license to use, copy, modify and prepare derivative works of any custom developed software.

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EXHIBIT E – ADMINISTRATIVE SERVICES

1. DISPUTE RESOLUTION

Prior to the filing of any formal proceedings with respect to a dispute (other than an action seeking injunctive relief with respect to intellectual property rights or Confidential Information), the Party believing itself aggrieved (the "Invoking Party") shall call for progressive management involvement in the dispute negotiation by written notice to the other Party. Such notice shall be without prejudice to the Invoking Party's right to any other remedy permitted under the Contract.

The Parties shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, between negotiators for the Parties at the following successive management levels, each of which shall have a period of allotted time as specified below in which to attempt to resolve the dispute:

Table E-1.			
DISPUTE RESOLUTION RESPONSIBILITY AND SCHEDULE TABLE			
LEVEL	CONTRACTOR POINT OF CONTACT	STATE POINT OF CONTACT	CUMULATIVE ALLOTED TIME
Primary	Lynn Russo	Kathleen Vestal	Five (5) Business Days
First	Ben Hinkle-Wszalek	Emily Fabian	Five (5) Business Days
Second	Jim Chamberlin	Ashley Frame	Ten (10) Business Days
Third	Alex Jarzebowicz		Ten (10) Business Days

The allotted time for the first level negotiations shall begin on the date the Invoking Party's notice is received by the other Party. Subsequent allotted time is days from the date that the original Invoking Party's notice is received by the other Party.

2. ACCESS AND COOPERATION

Subject to the terms of this Agreement and applicable laws, regulations, and policies, the State will provide the Contractor with access to all program files, libraries, personal computer-based Systems, Software packages, Network Systems, security Systems, and hardware as required to complete the contracted Services.

3. RECORD RETENTION

Contractor and its Subcontractors shall maintain all Project records including but not limited to books, records, documents, and other evidence of accounting procedures and practices, which properly and sufficiently reflect all direct and indirect costs invoiced in the performance of their respective obligations under the Contract. Contractor and its Subcontractors shall

retain all such records for three (3) years following termination of the Contract, including any extensions. Records relating to any litigation matters regarding the Contract shall be kept for one (1) year following the termination of all litigation, including the termination of all appeals or the expiration of the appeal period.

Upon prior notice and subject to reasonable time frames, all such records shall be subject to inspection, examination, audit and copying by personnel so authorized by the State and federal officials so authorized by law, rule, regulation or Contract, as applicable. Access to these items shall be provided within Merrimack County of the State of New Hampshire, unless otherwise agreed by the State. Delivery of and access to such records shall be at a commercially reasonable cost to the State during the three (3) year period following termination of the Contract and one (1) year Term following litigation relating to the Contract, including all appeals or the expiration of the appeal period. Contractor shall include the record retention and Review requirements of this section in any of its subcontracts.

4. ACCOUNTING

Contractor shall maintain an accounting System in accordance with Generally Accepted Accounting Principles (GAAP). The costs applicable to the Contract shall be ascertainable from the accounting System.

5. AUDIT

The Contractor shall allow the State to audit conformance to the contract terms. The State may perform this audit or contract with a third party at its discretion and at the State's expense.

6. MISCELLANEOUS WORK REQUIREMENTS

6.1 Access to State Systems

In consideration for receiving access to and use of the computer facilities, network, licensed or developed software, software maintained or operated by any of the State entities, systems, equipment, Documentation, information, reports, or data of any kind (hereinafter "Information"), Contractor understands and agrees to the following rules:

6.1.1. Computer Use

a. Every Authorized User has the responsibility to assure the protection of information from unauthorized access, misuse, theft, damage, destruction, modification, or disclosure.
b. That information shall be used solely for conducting official State business, and all other use or access is strictly forbidden including, but not limited to, personal, or other private and non-State use and that at no time shall Contractor access or attempt to access any information without having the express authority to do so.
c. That at no time shall Contractor access or attempt to access any information in a manner inconsistent with the approved policies, procedures, and /or agreements relating to system entry/access.
d. That all software licensed, developed, or being evaluated by the State cannot be copied, shared, distributed, sub-licensed, modified, reverse engineered,

rented, or sold, and that at all times Contractor must use utmost care to protect and keep such software strictly confidential in accordance with the license or any other agreement executed by the State. Only equipment or software owned, licensed, or being evaluated by the State, can be used by Contractor Personal software (including but not limited to palmtop sync software) shall not be installed on any equipment.

e. That if Contractor is found to be in violation of any of the above-stated rules, the Contractor may face default and termination under the Agreement and the individual may face removal from the State Contract, and/or criminal or civil prosecution, if the act constitutes a violation of law.

f. That computer use shall follow the State standard policy (Statewide Computer Use Policy is available upon request)

6.1.2. Email Use

Email and other electronic communication messaging systems are State of New Hampshire property and are to be used for business purposes only. Email is defined as "internal email systems" or "State-funded email systems." Contractor understands and agrees that use of email shall follow State standard policy (Statewide Computer Use Policy is available upon request).

6.1.3. Internet/Intranet Use

The Internet/Intranet is to be used for access to and distribution of information in direct support of the business of the State of New Hampshire according to State standard policy (Statewide Computer Use Policy is available upon request).

6.2 State Website Copyright

All right, title and interest in the State WWW site, including copyright to all Data and information, shall remain with the State. The State shall also retain all right, title and interest in any user interfaces and computer instructions embedded within the WWW pages. All WWW pages and any other Data or information shall, where applicable, display the State's copyright.

6.3 Workspace Requirement

The State will work with Contractor to determine requirements for providing necessary workspace and office equipment for Contractor's staff.

6.4 Workplace Hours

Unless otherwise agreed to by the State, the Contractor's personnel shall work forty (40) hour weeks between the hours of 8 am and 5 pm (Eastern Time), excluding State of New Hampshire holidays. Changes to this Schedule may be made upon agreement with the State Project Manager.

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EXHIBIT F – TERMS AND DEFINITIONS

The following general contracting terms and definitions apply except as specifically noted elsewhere in this Contract.

TERM	DEFINITION
Acceptance	Notice from the State that a Deliverable has satisfied Acceptance Test or Review.
Agreement	A Contract duly executed and legally binding.
Data Breach	Data 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, "Data Breach" shall have the same meaning as the term "Breach" in section 164.402 of Title 45, Code of Federal Regulations.
Security Incident	"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.

Confidential Information	Information required to be kept Confidential and restricted from unauthorized disclosure under the Contract. "Confidential Information" or "Confidential Data" means all private/restricted confidential information disclosed by one party to the other such as all medical, health, financial, public assistance benefits and personal information including without limitation, 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 any state agency 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 Personal Health Information (PHI), Personally Identifiable Information (PII), Federal Tax Information (FTI), Social Security Numbers (SSN), Payment Card Industry (PCI), and or other sensitive and confidential information.
Contract	An Agreement between the State of New Hampshire and a Vendor, which creates binding obligations for each party to perform as specified in the Contract Documents.
Deficiency (-ies)/Defects	A failure, shortcoming or error in a Deliverable resulting in a Deliverable, the Software, or the System, not conforming to its Specifications.
Deliverable	A Deliverable is any Written, Software, or Non-Software Deliverable (letter, report, manual, book, code, or other), provided by the Contractor to the State or under the terms of a Contract requirement.
Documentation	All information that describes the installation, operation, and use of the Software, either in printed or electronic format.
Enhancements	Updates, additions, modifications to, and new releases for the Software or System, and all changes to the Documentation as a result of improvement in quality, value, or extent.

Hosted Services	Applications, IT infrastructure components or functions that organizations access from external service providers, typically through an internet connection.
Hosting System	The combination of hardware, software and networking components used by the Application Service Provider to deliver the Hosted Services.
Identification and Authentication	Supports obtaining information about those parties attempting to log on to a system or application for security purposes and the validation of those users.
Implementation	The process for making the System fully Operational for processing the Data.
Non-Public Information	Information, other than Personal Information, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the State because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.
Operational	Operational means that the System is ready for use and fully functional, all Data has been loaded; the System is available for use by the State in its daily operations, and the State has issued Acceptance.
Personal Information	"Personally 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.
Proposal	The submission from a Vendor in response to the Request for a Proposal.
Software	All Custom, SAAS and COTS computer programs and applications provided by the Contractor under the Contract.
Software Deliverables	All Custom, SAAS and COTS Software and Enhancements.
Software License	Licenses provided to the State under this Contract.

Software-as-a-Service (SaaS)	The capability provided to the State to use the Contractor's applications running on a cloud infrastructure. The applications are accessible from various client devices through a thin-client interface such as a Web browser (e.g., Web-based email) or a program interface. The State does not manage or control the underlying cloud infrastructure including network, servers, Operating Systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
Specifications	Written details that set forth the requirements which include, without limitation, the RFP, the Proposal, the Contract, any performance standards, Documentation, applicable State and federal policies, laws and regulations, State technical standards, subsequent State-approved Deliverables, and other specifications and requirements described in the Contract Documents. The Specifications are, by this reference, made a part of the Contract as though completely set forth herein.
State Data	All Data created or in any way originating with the State, and all Data that is the output of computer processing of or other electronic manipulation of any Data that was created by or in any way originated with the State, whether such Data or output is stored on the State's hardware, the Contractor's hardware or exists in any system owned, maintained or otherwise controlled by the State or by the Contractor.
State Fiscal Year (SFY)	The New Hampshire State Fiscal Year (SFY) runs from July 1 of the preceding calendar year through June 30 of the applicable calendar year.
Subcontractor	A person, partnership, or company not in the employment of, or owned by, the Contractor which is performing Services under this Contract under a separate Contract with or on behalf of the Contractor.
System	All Software, specified hardware, interfaces and extensions, integrated and functioning together in accordance with the Specifications.
Term	Period of the Contract from the Effective Date through the Completion Date identified in the P-37 General Provisions or termination.

Verification	Supports the confirmation of authority to enter a computer system application or network.
Warranty	The conditions under, and period during, which the Contractor will repair, replace, or other compensate for, the defective item without cost to the buyer or user. It also delineates the rights and obligations of both parties in case of a claim or dispute.
Warranty Period	A period of coverage during which the Contractor is responsible for providing a guarantee for products and Services delivered as defined in the Contract.

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EXHIBIT G – AGENCY ATTACHMENTS AND CONTRACTOR CERTIFICATES

1. **AGENCY ATTACHMENTS**

   a. 04. AS21_NHDOE RFP 2021-2026_c_IT-Requirements- Attachment 1
   b. 02. AS21_NHDOE RFP 2021-2026_a_Section 5 - 2.Financial Information and References – Attachment 2
   c. 03. AS21_NHDOE RFP 2021-2026_b_Section 5 - 3.Project Plan, Testing and Support – Attachment 3
   d. 06. AS21_NHDOE RFP 2021-2026 _e-Implementation Timeline NH-Attachment 4
   e. Agency Compliance Documents – Exhibits 1-4 for DOIT contract - Attachment 5

   Exhibit 1, Contractor Obligations
   Exhibit 2, Federal Debarment and suspension
   Exhibit 3, Anti-Lobbying
   Exhibit 4, Rights to Inventions Made Under a Contract, Copy Rights and Confidentiality

2. **CONTRACTOR CERTIFICATES**

   a. Contractor's Certificate of Good Standing
   b. Contractor's Certificate of Vote/Authority
   c. Contractor's Certificate of Insurance

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State of New Hampshire

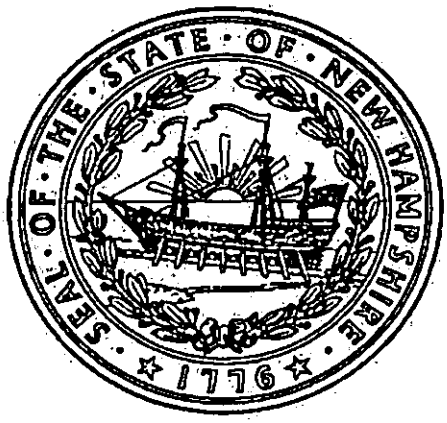
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that TRANSACT COMMUNICATIONS, LLC is a Delaware Limited Liability Company registered to transact business in New Hampshire on February 23, 2021. 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: **863877**

Certificate Number : **0005267241**



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this **23rd** day of **February** A.D. **2021.**

William M. Gardner

Secretary of State

CERTIFICATE OF VOTE
(Corporation without a Seal)

I, Jim Chamberlin, do hereby certify that:

(1) I am the duly elected clerk of TransACT Communications, LLC, dba Cayen Systems.

(2) The following are true copies of the resolutions duly adopted at a meeting of the Board of Directors of the Corporation duly held on February 18, 2021.

RESOLVED: That this Corporation enter into a contract with the State of New Hampshire, acting through its Department of Education.

RESOLVED: That Alex Jarzebowicz, CEO is hereby authorized on behalf of this Corporation to enter into the said contract with the State and to execute 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 foregoing resolution(s) have not been amended or revoked, and remain in full force and effect as of the 1st day of July 2021.

(4) Alex Jarzebowicz, is the duly elected CEO of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand as the Business Representative of the Corporation this 15th day of March 2021.

(Signature of Clerk of Corporation)

STATE OF NEW HAMPSHIRE

COUNTY OF _____

On _____, 20_____, the foregoing instrument was acknowledged before me.

In witness whereof I hereunto set my hand and official seal.

_____

My commission expires on: Notary Public/Justice of the Peace

TRANCOM-05 LGUILLORY

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 2/19/2021

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 License # 0C36861
Alliant Insurance Services, Inc.
3977 Harbour Pointe Blvd SW
Mukilteo, WA 98275

CONTACT NAME: Lindsay Guillory
PHONE (A/C, No, Ext): (425) 740-5229 FAX (A/C, No): (425) 740-5201
E-MAIL ADDRESS: lindsay.guillory@alliant.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Sentinel Insurance Company Ltd	11000
INSURER B : Houston Casualty Company	42374
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
TransACT Communications, LLC
5105 200th Street SW, Suite 200
Lynnwood, WA 98036

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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$ 2,000,000
	CLAIMS-MADE X OCCUR	X		[redacted]	12/7/2020	12/7/2021	DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 1,000,000
							MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 4,000,000
	POLICY PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 4,000,000
	OTHER:							$
A	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$ 2,000,000
	ANY AUTO			[redacted]	12/7/2020	12/7/2021	BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS ONLY / X NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
A	X UMBRELLA LIAB X OCCUR						EACH OCCURRENCE	$ 3,000,000
	EXCESS LIAB CLAIMS-MADE			[redacted]	12/7/2020	12/7/2021	AGGREGATE	$ 3,000,000
	DED X RETENTION $ 10,000							$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE X OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N	N/A		[redacted]	12/7/2020	12/7/2021	E.L. EACH ACCIDENT	$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000
B	PROF. LIABILITY			[redacted]	10/20/2020	10/20/2021	LIMIT OF INSURANCE	2,000,000
B	CYBER LIABILITY			[redacted]	10/20/2020	10/20/2021	LIMIT OF INSURANCE	2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
New Hampshire Department of Education is included as Additional Insured with respect to General Liability for ongoing operations of the Named Insured as required by written contract.

CERTIFICATE HOLDER

New Hampshire Department of Education
101 Pleasant Street
Concord, NH 03301

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

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