

fv



Frank Edelblut  
Commissioner

Christine M. Brennan  
Deputy Commissioner

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION  
101 Pleasant Street  
Concord, NH 03301  
TEL. (603) 271-3495  
FAX (603) 271-1953

April 19, 2021

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

**REQUESTED ACTION**

Authorize the Department of Education, Division of Learner Support, Bureau of Adult Education to exercise a contract renewal with Edmentum, Inc. (VC 175609) of Bloomington, Minnesota, by increasing the not to exceed amount by \$88,151.50 from \$120,000.00 to \$208,151.50 and extending the end date from June 30, 2021 to June 30, 2023 to provide digital learning software for adult education students; effective July 1, 2021. The original contract was approved by the Governor and Council on October 3, 2018, item #59.  
100% Federal Funds.

Funds to support this request are anticipated to be available in the account Titled Adult Education-Federal in FY22 and FY23 upon the availability and continued appropriation of funds in future operating budgets, with the ability to adjust encumbrances between State Fiscal years through the Budget Office, if needed and justified, Adult Education:

FY 2022	06-56-56-40370000-102-500731	Contract for Program Servs	\$44,075.75
FY 2023	06-56-56-40370000-102-500731	Contract for Program Servs	<u>\$44,075.75</u>
		TOTAL	\$88,151.50

**EXPLANATION**

This is a contract amendment to exercise the option to renew and increase the price limitation. Approval of this request will allow the Department of Education, Bureau of Adult Education to continue to provide online educational programming for students at its forty-one (41) adult education centers. Adult education centers use the suite of software from Edmentum to:

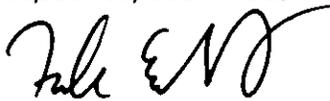
- Increase accessibility to adult education for students unable to attend classes at an adult education center.
- Extend learning opportunities outside of the classroom for adult learners.
- Improve the integration of technology in the adult education classroom without increasing preparation time for instructors through the use of blended/hybrid learning.

- Meet federal requirement under the Workforce Innovation and Opportunity Act of 2014 (WIOA) for distance learning options and the integration of technology in the classroom.

Edmentum has more than fifty (50) of experience partnering with school districts, adult education programs and colleges to provide quality courseware from foundational literacy to adult diploma and beyond. The courseware is aligned with the College & Career Readiness Standards for Adult Education, as required under WIOA, and includes features identified by the Joyce Foundation as best practices for adult learners.

The Bureau of Adult Education served approximately 6,000 students in four (4) different types of program in forty-one (41) centers across the state. Adult education students have reading, writing and/or math skills at or below the secondary level and lack a high school credential. According to the 2019 American Community Survey, there are more than 79,000 adults without a high school diploma or equivalency in New Hampshire. The distance learning options for adult education students through Edmentum will continue to increase programs' ability to serve adults who are unable to attend class due to their work schedules, the rural geography of New Hampshire or the current pandemic.

Respectfully submitted,



Frank Edelblut  
Commissioner of Education



**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](http://www.nh.gov/doit)

**Denis Goulet**  
*Commissioner*

April 6, 2021

Frank Edelblut, Commissioner  
Department of Education  
State of New Hampshire  
21 South Fruit Steet, Suite 20  
Concord, NH 03301

Dear Commissioner Edelblut:

This letter represents formal notification that the Department of Information Technology (DoIT) has approved your agency's request amend a contract with Edmentum, Inc. of Bloomington Minnesota as described below and referenced as DoIT No. 2018-165.

The purpose of this request is for The Department of Education, Bureau of Adult Education, to amend a contract with Edmentum, Inc. to continue to provide a Digital Learning Technology Software for adult education students to increase their academic skills as well as providing local adult education program the ability to expand their services through distance learning options.

The amount of the contract is \$88,151.50, increasing the current contract from \$120,000 to \$208,151.50, and by extending the completion date to June 30, 2023 from the original completion date of June 20, 2021, effective upon Governor and Executive Council approval through June 30, 2023.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Denis Goulet", with a long horizontal flourish extending to the right.

Denis Goulet

DG/kaf  
DoIT #2018-165  
RID: N/A  
cc: Bruce Smith, IT Manager, DoIT

**STATE OF NEW HAMPSHIRE**  
**Department of Education, Bureau of Adult Education**  
**Distance Learning Software - Edmentum**  
**BAE-2018-165**  
**CONTRACT AMENDMENT 1**

WHEREAS, pursuant to an Agreement approved by Governor and Council, as a result of RFP # BAE-2018-165 on October 3, 2018, Item # 59 (herein after referred to as the "Agreement"), Edmentum, Inc. of Bloomington Minnesota (hereinafter referred to as "Vendor") (Vendor Code 175609) agreed to supply certain services upon the terms and conditions specified in the Agreement and in consideration of payment by the Department of Education, Bureau of Adult Education (hereinafter referred to as the "Department"), certain sums as specified therein;

WHEREAS, pursuant to the Agreement Section 18: Amendment and the provisions of the Agreement, the Agreement may be modified or amended only by a written instrument executed by the parties thereto and approved by the Governor and Executive Council;

WHEREAS, the Vendor and the Department have agreed to amend the Agreement in certain respects;

WHEREAS, the Department wishes to exercise the option to renew the contract for an additional two years through June, 30, 2023;

WHEREAS, The Vendor agrees to provide digital learning software for adult education students;

WHEREAS, the Department and the Vendor wish to extend the completion date from June 30, 2021 to June 30, 2023;

WHEREAS, the Department and the Vendor wish to increase the Contract price by \$88,151.50 to bring the total contract price to \$208,151.50;

WHEREAS, the Department and the Vendor seek to clarify the Agreement.

NOW THEREFORE, in consideration of the foregoing, and the covenants and conditions contained in the Agreement and set forth herein, the parties agree as follows:

The Agreement is hereby amended as follows:

1. Amend Section 1.7 of the Agreement (Page 1) by extending the Completion Date from June 30, 2021 to June 30, 2023.
2. Amend Section 1.8 of the Agreement (Page 1) by increasing the Price Limitation by \$88,151.50 from \$120,000.00 to \$208,151.50.
3. Add the following exhibits:  
Exhibit P: Contractor Obligations  
Exhibit Q: Federal Debarment and Suspension  
Exhibit R: Anti-Lobbying  
Exhibit S: Rights to Inventions Made Under Contract. Copy Rights and Confidentiality
4. The Agreement is further amended as described in Table 1:

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Vendor Initials



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**Department of Education, Bureau of Adult Education**  
**Distance Learning Software - Edmentum**  
**BAE-2018-165**  
**CONTRACT AMENDMENT 1**

Table 1

<b>Contract #2018-165</b>  <b>Part 2 Information Technology Provisions</b>	<b>AMENDED TEXT</b>										
<b>Introduction</b>	Remove "ESL Reading Smarts"										
<b>Recitals</b>	Remove "ESL Reading Smarts"										
<b>Section 4.1 Contractor's Contract Manager</b>	Replace with:  Ivan Krieg National Accounts Manager 5600 West 83 <sup>rd</sup> Street, Suite 300-8200 Tower Bloomington, MN 55437 Tel: 952-832-1472 Email: ivan.krieg@edmentum.com										
<b>Section 4.3.2.1 Contract Key Project Staff</b>	Replace with:  The Contractor's Key Project Staff: <table border="0" style="width: 100%;"> <tr> <td style="width: 60%;">Key Member</td> <td style="width: 40%;">Title</td> </tr> <tr> <td>Ivan Krieg</td> <td>National Accounts Manager</td> </tr> <tr> <td>David Disko</td> <td>Implementation Consultant</td> </tr> <tr> <td>Mat Bari</td> <td>Regional Vice President</td> </tr> </table>			Key Member	Title	Ivan Krieg	National Accounts Manager	David Disko	Implementation Consultant	Mat Bari	Regional Vice President
Key Member	Title										
Ivan Krieg	National Accounts Manager										
David Disko	Implementation Consultant										
Mat Bari	Regional Vice President										
<b>Section 4.4 State Contract Manager</b>	Replace with:  Sarah Ladd Wheeler Administrator Bureau of Adult Education 21 South Fruit Street, Suite 20 Concord, NH 03301 Tel: (603) 271-6699 Fax: (603) 271-3454 Email: Sarah.L.Wheeler@doe.nh.gov										
<b>Section 4.5 State Project Manager</b>	Replace with:  Sarah Ladd Wheeler Administrator Bureau of Adult Education 21 South Fruit Street, Suite 20 Concord, NH 03301 Tel: (603) 271-6699 Fax: (603) 271-3454 Email: Sarah.L.Wheeler@doe.nh.gov										
<b>Section 15 Assignment, Delegation and Subcontracts Dispute Resolution</b>	Replace Dispute Resolution Responsibility and Schedule Table  <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;">Level</th> <th style="width: 25%;">Edmentum</th> <th style="width: 25%;">State</th> <th style="width: 25%;">Cumulative Allotted Time</th> </tr> </thead> <tbody> <tr> <td>Primary</td> <td>David Disko Implementation Consultant</td> <td>Sarah Wheeler State Project Manager</td> <td>5 Business Days</td> </tr> </tbody> </table>			Level	Edmentum	State	Cumulative Allotted Time	Primary	David Disko Implementation Consultant	Sarah Wheeler State Project Manager	5 Business Days
Level	Edmentum	State	Cumulative Allotted Time								
Primary	David Disko Implementation Consultant	Sarah Wheeler State Project Manager	5 Business Days								

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**STATE OF NEW HAMPSHIRE**  
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	First	Ivan Krieg National Accounts Manager	Christine Brennan Deputy Commissioner	10 Business Days		
	Second	Mat Bari Regional Vice President	Frank Edelblut Commissioner	15 Business Days		
<b>Section 17.7 Notices</b>	Replace with:  <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;">           To the Contractor:            Ivan Krieg            N.W. 7504 PO Box 1450            Minneapolis, MN 55485            Tel: (214) 294-9603            Email: <a href="mailto:Ivan.Krieg@Edmentum.com">Ivan.Krieg@Edmentum.com</a> </td> <td style="width: 50%; vertical-align: top;">           To State:            State of New Hampshire            Bureau of Adult Education            21 South Fruit Street, Suite 20            Tel: (603) 271-6699            Email: <a href="mailto:Sarah.L.Wheeler@doe.nh.gov">Sarah.L.Wheeler@doe.nh.gov</a> </td> </tr> </table>				To the Contractor: Ivan Krieg N.W. 7504 PO Box 1450 Minneapolis, MN 55485 Tel: (214) 294-9603 Email: <a href="mailto:Ivan.Krieg@Edmentum.com">Ivan.Krieg@Edmentum.com</a>	To State: State of New Hampshire Bureau of Adult Education 21 South Fruit Street, Suite 20 Tel: (603) 271-6699 Email: <a href="mailto:Sarah.L.Wheeler@doe.nh.gov">Sarah.L.Wheeler@doe.nh.gov</a>
To the Contractor: Ivan Krieg N.W. 7504 PO Box 1450 Minneapolis, MN 55485 Tel: (214) 294-9603 Email: <a href="mailto:Ivan.Krieg@Edmentum.com">Ivan.Krieg@Edmentum.com</a>	To State: State of New Hampshire Bureau of Adult Education 21 South Fruit Street, Suite 20 Tel: (603) 271-6699 Email: <a href="mailto:Sarah.L.Wheeler@doe.nh.gov">Sarah.L.Wheeler@doe.nh.gov</a>					
<b>Contract # 2018-165 Exhibit B Price and Payment Schedule</b>	<b>AMENDED TEXT</b>					
<b>1.1 Not to Exceed</b>	Replace with:  This is a Not to Exceed (NTE) Contract for the period between the Effective Date through June 30, 2023. 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 milestone appearing in the price and payment tables below.					
<b>3. Invoicing</b>	Replace Invoices shall be sent to with this contact information:  Sarah Wheeler Department of Education Bureau of Adult Education 21 South Fruit Street, Suite 20 Concord, NH 03301					
<b>Contract # 2018-165 Exhibit C Special Provisions</b>	<b>AMENDED TEXT</b>					
<b>5.</b>	Add this section:  5. All exhibits (P-S) attached hereto are hereby incorporated into this contract and made a part hereof. If there is any conflict between such exhibits and the State of New Hampshire Terms and Conditions, Form P-37, Contract Agreement, the terms of the State of New Hampshire Terms and Conditions, Form P-37 shall control.					
<b>Contract # 2018-165 Exhibit O</b>	Add:  G. Attachment 4 – Vendor Quote for 2021-2023					
<b>Exhibit P: Contractor Obligations</b>	Add:  <b>Contractor Obligations</b>					

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<b>Exhibit Q: Federal Debarment and Suspension</b>	Add: Federal Debarment and Suspension
<b>Exhibit R: Anti-Lobbying</b>	Add: Anti-Lobbying
<b>Exhibit S: Rights to Inventions Made Under a Contract.</b>	Add: Rights to Inventions Made Under a Contract, Copy Rights and Confidentiality

**Table 2 CONTRACT HISTORY BAE-2018-165 Distance Learning Software – Edmentum 2018-165 – Distance Learning Software - Edmentum**

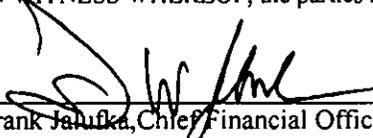
<b>CONTRACT AND AMENDMENT NUMBER</b>	<b>AMENDMENT TYPE</b>	<b>G&amp;C APPROVAL DATE</b>	<b>END DATE</b>	<b>CONTRACT AMOUNT</b>
2018-165	Original Contract	10/3/2018 Item #59	June 30, 2021	\$120,000.00
2018-165 Amendment 1	1 <sup>st</sup> Amendment	TBD>	June 30, 2023	\$88,151.50
	<b>CONTRACT TOTAL</b>			<b>\$208,151.50</b>

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Except as provided herein, all provisions of the Agreement shall remain in full force and effect. This modification shall take effect upon the approval date from the Governor and the Executive Council.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first above written.

  
\_\_\_\_\_  
Frank Janufka, Chief Financial Officer  
Edmentum, Inc.

Date: 4/27/2021

**State of New Hampshire**

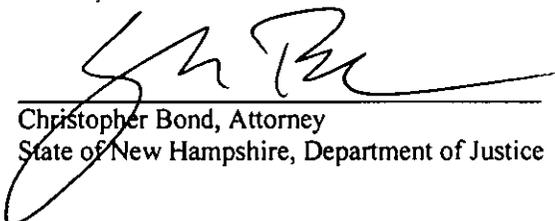
  
\_\_\_\_\_  
Frank Edelblut  
Commissioner of Education

Date: 5-3-21

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

  
\_\_\_\_\_  
Christopher Bond, Attorney  
State of New Hampshire, Department of Justice

Date: 5/5/21

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

**Office of the Secretary of State**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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**EXHIBIT P**

**Contractor Obligations**

Contracts in excess of the simplified acquisition threshold (currently set at \$250,000) must address **administrative, contractual, or legal remedies** in instances where the contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. Reference: 2 C.F.R. § 200.326 and 2 C.F.R. 200, Appendix II, required contract clauses.

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

The Contractor, certifies and affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

**Breach**

A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

**Fraud and False Statements**

The Contractor understands that, if the project which is the subject of this Contract is financed in whole or in part by federal funds, that if the undersigned, the company that the Contractor represents, or any employee or agent thereof, knowingly makes any false statement, representation, report or claim as to the character, quality, quantity, or cost of material used or to be used, or quantity or quality work performed or to be performed, or makes any false statement or representation of a material fact in any statement, certificate, or report, the Contractor and any company that the Contractor represents may be subject to prosecution under the provision of 18 USC §1001 and §1020.

**Environmental Protection**

(This clause is applicable if this Contract exceeds \$150,000. It applies to Federal-aid contracts only.)  
The Contractor is required to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15) which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the FHWA and to the U.S. EPA Assistant Administrator for Enforcement.

**Procurement of Recovered Materials**

In accordance with Section 6002 of the Solid Waste Disposal Act (42 U.S.C. § 6962), State agencies and agencies of a political subdivision of a state that are using appropriated Federal funds for procurement must procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

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**EXHIBIT Q**

**Federal Debarment and Suspension**

- a. By signature on this Contract, the Contractor certifies its compliance, and the compliance of its Sub-Contractors, present or future, by stating that any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position of authority involving federal funds:
1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal Agency;
  2. Does not have a proposed debarment pending;
  3. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal Agency within the past three (3) years; and
  4. Has not been indicted, convicted, or had a civil judgment rendered against the firm by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- b. Where the Contractor or its Sub-Contractor is unable to certify to the statement in Section a.1. above, the Contractor or its Sub-Contractor shall be declared ineligible to enter into Contract or participate in the project.
- c. Where the Contractor or Sub-Contractor is unable to certify to any of the statements as listed in Sections a.2., a.3., or a.4., above, the Contractor or its Sub-Contractor shall submit a written explanation to the DOE. The certification or explanation shall be considered in connection with the DOE's determination whether to enter into Contract.
- d. The Contractor shall provide immediate written notice to the DOE if, at any time, the Contractor or its Sub-Contractor, learn that its Debarment and Suspension certification has become erroneous by reason of changed circumstances.

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**EXHIBIT R**

**Anti-Lobbying**

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

The Contractor certifies, by signing and submitting this contract, to the best of his/her knowledge and belief, that:

- a. No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence any officer or employee of any State or Federal Agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal amendment, or modification of any Federal contract grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any Federal Agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the "Disclosure of Lobbying Activities" form in accordance with its instructions (<http://www.whitehouse.gov/omb/grants/sfllin.pdf>).
- c. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making and entering into this transaction imposed by Section 1352, Title 31 and U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- d. The Contractor also agrees, by signing this contract that it shall require that the language of this certification be included in subcontracts with all Sub-Contractor(s) and lower-tier Sub-Contractors which exceed \$100,000 and that all such Sub-Contractors and lower-tier Sub-Contractors shall certify and disclose accordingly.
- e. The DOE shall keep the firm's certification on file as part of its original contract. The Contractor shall keep individual certifications from all Sub-Contractors and lower-tier Sub-Contractors on file. Certification shall be retained for three (3) years following completion and acceptance of any given project.

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**EXHIBIT S**

**Rights to Inventions Made Under a Contract, Copy Rights and Confidentiality Rights to  
Inventions Made Under a Contract or Agreement**

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the DOE.

Any discovery or invention that arises during the course of the contract shall be reported to the DOE. The Contractor is required to disclose inventions promptly to the contracting officer (within 2 months) after the inventor discloses it in writing to contractor personnel responsible for patent matters. The awarding agency shall determine how rights in the invention/discovery shall be allocated consistent with "Government Patent Policy" and Title 37 C.F.R. § 401.

**Confidentiality**

All Written and oral information and materials disclosed or provided by the DOE under this agreement constitutes Confidential Information, regardless of whether such information was provided before or after the date on this agreement or how it was provided.

The Contractor and representatives thereof, acknowledge that by making use of, acquiring or adding to information about matters and data related to this agreement, which are confidential to the DOE and its partners, must remain the exclusive property of the DOE.

Confidential information means all data and information related to the business and operation of the DOE, including but not limited to all school and student data contained in NH Title XV, Education, Chapters 186-200.

Confidential information includes but is not limited to, student and school district data, revenue and cost information, the source code for computer software and hardware products owned in part or in whole by the DOE, financial information, partner information(including the identity of DOE partners), Contractor and supplier information, (including the identity of DOE Contractors and suppliers), and any information that has been marked "confidential" or "proprietary", or with the like designation. During the term of this contract the Contractor agrees to abide by such rules as may be adopted from time to time by the DOE to maintain the security of all confidential information. The Contractor further agrees that it will always regard and preserve as confidential information/data received during the performance of this contract. The Contractor will not use, copy, make notes, or use excerpts of any confidential information, nor will it give, disclose, provide access to, or otherwise make available any confidential information to any person not employed or contracted by the DOE or subcontracted with the Contractor.

**Ownership of Intellectual Property**

The DOE shall retain ownership of all source data and other intellectual property of the DOE provided to the Contractor in order to complete the services of this agreement. As well the DOE will retain copyright ownership for any and all materials, patents and intellectual property produced by the DOE, including, but not limited to, brochures, resource directories, protocols, guidelines, posters, or reports. The Contractor shall not reproduce any materials for purposes other than use for the terms under the contract without prior written approval from the DOE.

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**ATTACHMENT G**  
**2021-2023 Quote**



Date: 2/18/2021  
 Order Number: Q-210504  
 Revision: 1  
 Order Form Expiration Date: 6/30/2021

**ORDER FORM** Please fax all pages to 1.877.519.9555 or email to [orders@edmentum.com](mailto:orders@edmentum.com)  
 To Pay by Credit Card: Call 214.294.9001 or e-mail [creditcardprocessing@edmentum.com](mailto:creditcardprocessing@edmentum.com)

**Customer and Billing Address**

Customer No.: 478837  
 Customer Name: New Hampshire Bureau Of Adult Education  
 Billing Address: 21 S Fruit St  
 Concord, NH 03301

**Products and Services**

New Hampshire Bureau Of Adult Education

Products	Qty	License Start Date	License End Date	License Term (Months)
Courseware: Health and PE Library - Program License	1	7/1/2021	6/30/2023	24
Courseware: Core Library - Concurrent License	50	7/1/2021	6/30/2023	24
Courseware: Higher Education and Career Readiness Library - Concurrent License	50	7/1/2021	6/30/2023	24
Courseware: CTE Library - Concurrent License	20	7/1/2021	6/30/2023	24
Courseware: Electives Library - Concurrent License	3	7/1/2021	6/30/2023	24
Exact Path - Core Library - Program License	30	7/1/2021	6/30/2023	24
Courseware Elevate Package	1	7/1/2021	6/30/2022	12
Courseware Elevate Package	1	7/1/2022	6/30/2023	12
<b>New Hampshire Bureau Of Adult Education Subtotal:</b>				<b>\$88,151.50</b>

<b>Subtotal:</b>	<b>\$88,151.50</b>
<b>Estimated Tax:</b>	<b>\$0.00</b>
<b>Total US Funds:</b>	<b>\$88,151.50</b>

\*\* Unless otherwise specified in this Order Form, the Start Date for your license(s) will be one of the following: (a) the day immediately following the expiration date of the prior license term or (b) the date in which we have accepted your order and have issued log-in credentials for your software license.  
 \*\*\* Services purchased are valid for an annual term. Any service offering that is not used during the applicable term will expire and cannot be carried over or used in subsequent periods.

**Invoicing and Payment Terms**

PO Due Date	Payment Due Date	Amount
Due at Time of Order	Net 15	\$44,076.75
6/16/2022	7/1/2022	\$44,076.75
	<b>Total</b>	<b>\$88,151.50</b>

**Terms and Conditions**

Edmentum | P.O. Box 776725 | Chicago, IL 60677-6725 | [www.edmentum.com](http://www.edmentum.com)



Initial all pages  
 Vendor Initials                      Date 4/27/2021

STATE OF NEW HAMPSHIRE  
Department of Education, Bureau of Adult Education  
Distance Learning Software - Edmentum  
BAE-2018-165  
CONTRACT AMENDMENT 1



Date: 2/18/2021  
Order Number: Q-219504  
Revision: 1  
Order Form Expiration Date: 6/30/2021

ORDER FORM

Please fax all pages to 1.877.519.9555 or email to [orders@edmentum.com](mailto:orders@edmentum.com)  
To Pay by Credit Card: Call 214.294.9901 or e-mail [creditcardprocessing@edmentum.com](mailto:creditcardprocessing@edmentum.com)

For the purposes of this Order Form, "you" and "your" refer to Customer, and "we", "us" and "our" refer to edmentum Inc. and affiliates. This Order Form and any documents it incorporates (including the Standard Purchase and License Terms located at <http://www.edmentum.com/standardterms> and the documents it references) form the entire agreement between you and us ("Agreement"). You acknowledge that any terms and conditions in your purchase order or any other documents you provide that enhance our obligations or restrictions or contradict the Agreement do not have force and effect.

Notwithstanding anything in this Agreement to the contrary, in the event that this Order Form identifies a multi payment arrangement with only the initial payment covered by Your purchase order, We will enable You to cancel those years beyond the initial period to the extent that all of the following are satisfied and only with respect to the specific year in which they are all satisfied: (i) You took all necessary steps and exhausted all reasonable efforts to obtain such funding, including but not limited to including the funding in Your budget request for each year, (ii) You inform Us promptly of any situation whereby You have any reason to believe that funding might not be forthcoming, and (iii) You provide Us prompt written notice and comprehensive explanation of such funding failure and written representation from your Superintendent (or similar position) that funds have not been made available to license or purchase products or services during any portion of the license period You are requesting funding out of that are similar in any manner to those identified on your order form. Even if You satisfy subsections (i) through (iii), to the extent you have some funding available, You must purchase some licenses and/or services to the extent of such funding.

**Purchase Order**

You acknowledge that this Agreement is non-cancellable and you will submit a Purchase Order with this Order Form covering the initial portion of the amount and you will submit future Purchase Orders based on the Invoicing and Payment Terms table and timely make corresponding payment(s) for the remaining amount(s) owed.

**Customer Contact for Future Purchase Orders:**

Name: \_\_\_\_\_  
Email Address: \_\_\_\_\_

**EdOptions Academy Post Pay Option**

Included in this Agreement is your option to enroll students in our EdOptions Academy (the "EdOptions Academy Post Pay Option"). You may exercise this option at any time during the 365 day period beginning on the date that your order under the Agreement is processed (the "Option Exercise Period") by sending an email to [teacherneeded@edmentum.com](mailto:teacherneeded@edmentum.com) and identifying your desire to exercise this option. If you either (a) notify us of your decision to exercise the EdOptions Academy Post Pay Option within the Option Exercise Period or (b) actually enroll any of your students in any of the EdOptions Academy courses/programs, you agree that (i) the fees your required to pay us for each Academy enrollment shall be as identified on Appendix A during the Option Exercise Period, after which the fees shall be as agreed to by the parties, all such fees to be payable by you within fifteen (15) days of your receipt of our invoice, (ii) you will not be required to issue an additional purchase order to cover any of your Academy enrollments and (iii) the terms and conditions identified in or referenced in this Agreement, including those on Appendix A, shall exclusively control.

**Acceptance**

This offer will expire on the Order Form Expiration Date noted above unless we earlier withdraw or extend the offer in writing. I represent that I have read the terms and conditions included in this Agreement, that I am authorized to accept this offer and the Agreements terms and conditions on behalf of the customer identified above and that I do accept this offer on behalf of the customer who agrees to adhere to the Agreements terms and conditions. To the extent that either parties process does not require that I execute this Order Form, I accept, acknowledge and agree to the terms and conditions identified in and referenced in this Agreement as signified by my receipt, use or access of the products and/or services identified. Please fax all pages to 1.877.519.9555 or email to [orders@edmentum.com](mailto:orders@edmentum.com).

**Customer Signature:**

Name (Printed or Typed): \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Edmentum | P.O. Box 776725 | Chicago, IL 60677-6725 | [www.edmentum.com](http://www.edmentum.com)



Initial all pages  
Vendor Initials     Date 4/27/2021

STATE OF NEW HAMPSHIRE  
 Department of Education, Bureau of Adult Education  
 Distance Learning Software - Edmentum  
 BAE-2018-165  
 CONTRACT AMENDMENT 1



Date: 2/18/2021  
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ORDER FORM

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 To Pay by Credit Card: Call 214.294.0901 or e-mail [creditcardprocessing@edmentum.com](mailto:creditcardprocessing@edmentum.com)

**Appendix A: EdOptions Academy Products**

All courses and programs included in the table below will be available for enrollment at the indicated price.

Products	Price
EdOptions Academy College Pathways School Year	\$2,500.00
EdOptions Academy Elementary Pathways	\$3,000.00
EdOptions Academy Elementary Semester	\$1,600.00
EdOptions Academy Active Yearly per Student	\$2,500.00
EdOptions Academy Active Monthly per Course	\$80.00
EdOptions Academy Active Monthly per Student	\$250.00
EdOptions Academy 18 Week Core Courses	\$295.00
EdOptions Academy 18 Week CTE and Elective Courses	\$295.00
EdOptions Academy 18 Week Health and Fitness Courses	\$295.00
EdOptions Academy 18 Week Advanced Courses	\$325.00
EdOptions Academy 18 Week World Language Courses	\$325.00
EdOptions Academy 18 Week Advanced World Language Courses	\$325.00
EdOptions Academy 18 Week Course Extension Fee	\$50.00
EdOptions Academy 9 Week Semester Courses	\$200.00
EdOptions Academy 9 Week Course Extension Fee	\$25.00
EdOptions Academy Test Prep Courses	\$295.00
EdOptions Academy Remediation Courses	\$295.00

**Terms and Conditions for Academy Products:**

Prices identified above do not include taxes and any taxes imposed on your purchases shall be invoiced and payable by you. To the extent that you have not provided a Subsequent Purchase Order to cover your Purchases, upon our request, you will promptly issue a subsequent Purchase Order in the amount we identify to cover such Purchases. You agree to pay all invoices within 15 days of receipt. Although we will generally not invoice you until after you enroll, use, or access, we reserve the right to immediately invoice you for any services you purchase.

We provide a no charge grace period for enrollments that are dropped within the following number of days from enrollment: Standard (9 or 18 week) courses, Calvert Instructional Support = 14 days, College Pathways, Active Yearly per Student = 30 days, Active monthly = 3 days.

College Pathways School Year allows the student access to the Academy for a set 12-month school year with a start date of 8/1 and end date of 7/31. Active Yearly per Student allows the student access for a 12-month period following initial enrollment date.

Enrollment extensions are available: 2 Weeks - \$25. 4 Weeks - \$50.

**Roles and Responsibilities:**

**Our Responsibilities:**

We will administer the program with the support of your staff.

**We will be responsible for the following:**

- Provide the licensed courses to students using the program.
- Provide qualified teachers for each course (valid for Calvert Digital only if Instructional Support option for Calvert is utilized per Appendix A).
- Provide live training and/or training through webinar(s) for individuals selected by you to facilitate the program, in accordance with the services you have purchased.
- Provide an online registration and course enrollment process.
- Provide online access to student progress on an ongoing basis to appropriate personnel that you identify.

Edmentum | P.O. Box 776725 | Chicago, IL 60677-6725 | [www.edmentum.com](http://www.edmentum.com)



Initial all pages  
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Date 4/27/2021

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Amendment template revision 11/28/18

STATE OF NEW HAMPSHIRE  
Department of Education, Bureau of Adult Education  
Distance Learning Software - Edmentum  
BAE-2018-165  
CONTRACT AMENDMENT 1



Date: 2/18/2021  
Order Number: O-219504  
Revision: 1  
Order Form Expiration Date: 6/30/2021

ORDER FORM

Please fax all pages to 1.877.519.9555 or email to [orders@edmentum.com](mailto:orders@edmentum.com)  
To Pay by Credit Card: Call 214.294.9901 or e-mail [creditcardprocessing@edmentum.com](mailto:creditcardprocessing@edmentum.com)

- Provide access to the online courses that you've licensed 24 hours 7 days a week for student and organization use, subject to normal downtime for updates and maintenance.
- Provide reporting on student progress throughout each course and program.
- Access to learning management system which gives access to student info, student's official gradebook, and communications concerning student.
- Printable access to an enrolled student's transcript.

Your Responsibilities

You will work with us to design and implement a program that meets the educational needs of the students selected to participate in the program.

You will be responsible for the following:

- Designate one person who will be the program administrator. This person will be responsible for coordinating the operation of the program with our staff.
- Arrange for our training to your staff involved in the program. The training will be provided through virtual sessions.
- Submit enrollment forms and other miscellaneous required documents via our Student Information System.
- Determine what course(s) students will take and assist students or administrators in accurately inputting required information.
- Ensure that students participating in this program have regular access to the internet.
- Provide proctors for the exams associated with each course.
- Promptly notify us in the event that you become aware of a change in law or regulation that impacts the operation of the program or the policies in place governing a student's participation in the program.
- Promptly contact us if a student withdraws, is suspended, or has other status changes that will affect the student's participation or progress in class.
- Using reasonable efforts to ensure that your students understand and adhere to our policies, including but not limited to our Student Code of Conduct policy.

Edmentum | P.O. Box 776725 | Chicago, IL 60677-6725 | [www.edmentum.com](http://www.edmentum.com)



Initial all pages  
Vendor Initials

Date 4/27/2021

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Amendment template revision 11/28/18

# 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 EDMENTUM, INC. is a Delaware Profit Corporation registered to transact business in New Hampshire on July 25, 2005. 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: 541214

Certificate Number: 0005359526



IN TESTIMONY WHEREOF,  
I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 29th day of April A.D. 2021.

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

William M. Gardner  
Secretary of State

WRITTEN CONSENT OF THE BOARD OF DIRECTORS  
OF  
EDMENTUM ULTIMATE HOLDINGS, LLC

May 28, 2020

The undersigned members of the Board of Directors (the "Board") of Edmentum Ultimate Holdings, LLC, a Delaware limited liability company (the "Company"), hereby consent to and adopt the following resolutions, without a meeting in accordance with the procedure established by the Amended and Restated Limited Liability Company Agreement of the Company, dated as of June 9, 2015, as amended, supplemented or otherwise modified from time to time prior to the date hereof (the "LLC Agreement"), and hereby agree that such actions and resolutions have the same force and effect as though duly taken and adopted at a meeting of the directors of the Company duly called and legally held, such resolutions to be filed in the minute book of the Company.

Appointment of Frank Jalufka as Chief Financial Officer and Corporate Secretary

**WHEREAS**, it is proposed that Frank Jalufka will be engaged as the Chief Financial Officer and Corporate Secretary of the Company and its applicable affiliates beginning June 1, 2020 until the Company determines to end that engagement or upon his earlier resignation or disqualification from serving as an Officer of the Company.

**NOW, THEREFORE, BE IT,**

**RESOLVED**, that Frank Jalufka will be engaged as the Chief Financial Officer and Corporate Secretary of the Company and its applicable affiliates beginning on June 1, 2020 until the Company determines to end that engagement or upon his earlier resignation or disqualification from serving as an Officer of the Company.

**RESOLVED**, that Mr. Jalufka, acting in his capacities identified in the foregoing resolution, is hereby authorized to do and perform any and all such acts, including the execution of any all such documents, certificates or similar, as Mr. Jalufka shall deem necessary or advisable in the interest of the Company, to the extent in accordance with Company policy, to carry out the purposes and intents of the foregoing resolution.

**FURTHER RESOLVED**, that any actions taken by Mr. Jalufka prior to the date of the foregoing resolutions, are hereby authorized, approved, ratified and confirmed in all respects.

General Authority

**FURTHER RESOLVED**, that this Written Consent may be executed in two or more counterparts, each of which when so executed shall be an original, and all such counterparts shall together constitute one and the same instrument, and signatures to this Written Consent transmitted by facsimile or other electronic methods shall be deemed original signatures for all purposes.

[Signature Page to Follow]

**IN WITNESS WHEREOF**, the undersigned have caused this Written Consent to be executed as of the date first set forth above.

**Jamie Candee**

Jamie Candee

**Mark McEachen**

Mark McEachen

**Robert Nabholz**

Robert Nabholz

**Michael Lavelle**

Michael Lavelle

**Rajneesh Vig**

Raj Vig

**Robert Hamwee**

Robert Hamwee

**christopher D Cerf**

Chris Cerf

Signature: Jamie Candee  
Jamie Candee (Jun 5, 2020 09:34 CDT)  
Email: jamie.candee@edmentum.com

Signature: Michael Lavelle  
Michael Lavelle (Jun 5, 2020 12:33 CDT)  
Email: mikelavelle@hotmail.com

Signature: Rajmash Vig  
Rajmash Vig (Jun 5, 2020 10:41 EDT)  
Email: raj.vig@blackrock.com

Signature: RH  
Robert Hamwee (Jun 7, 2020 21:18 EDT)  
Email: rhamwee@newmountaincapital.com

Signature: Mark McEachen  
Mark McEachen (Jun 8, 2020 09:58 PDT)  
Email: markmceachen@yahoo.com

Signature: Robert Nabholz  
Robert Nabholz (Jun 5, 2020 13:44 EDT)  
Email: rnabholz@prospectcap.com

Signature: Christopher D Cerf  
Christopher D Cerf (Jun 8, 2020 21:23 EDT)  
Email: cdcerf@gmail.com





Frank Edelblut  
Commissioner

Christine M. Brennan  
Deputy Commissioner

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION  
101 Pleasant Street  
Concord, NH 03301  
TEL. (603) 271-3495  
FAX (603) 271-1953

September 17, 2018

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

**REQUESTED ACTION**

Authorize the New Hampshire Department of Education, Bureau of Adult Education to enter into a contract with Edmentum, Inc. (Vendor Code 175609) of Bloomington, Minnesota, in an amount not to exceed \$120,000.00, to provide licenses for online adult education digital technology software to expand New Hampshire adult education program capacity and meet technology requirements under the Workforce Innovation and Opportunity Act of 2014, effective upon Governor and Council approval through June 30, 2021 with an option to renew for two additional years through June 30, 2023. 100% Federal Funds.

Funding is available in the account titled Adult Education in FY19 and anticipated to be available in FY 20 and 21, upon the availability and continued appropriation of funds in the future operating budget, with the ability to adjust encumbrances between Fiscal Years through the Budget Office without further Governor and Council approval, if needed and justified:

	<u>FY19</u>	<u>FY20</u>	<u>FY21</u>
06-56-56-565010-25350000-102-500575 Federal Funds	\$40,000	\$40,000	\$40,000
	TOTAL: \$120,000		

**EXPLANATION**

Approval of this request will allow the Department of Education, Bureau of Adult Education to provide online educational programming for students at its fifty-four (54) adult education centers. Adult education centers will use the suite of software from Edmentum to:

- Increase accessibility to adult education for students unable to attend classes at an adult education center
- Extend learning opportunities outside the classroom for adult learners
- Improve the integration of technology in the adult education classroom without increasing preparation time for instructors through the use of blended/hybrid learning

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
September 17, 2018  
Page 2

- Meeting federal requirements under the Workforce Innovation and Opportunity Act of 2014 (WIOA) for distance learning options and integration of technology in the classroom.

Edmentum, Inc. has more than fifty (50) years of experience partnering with school districts, adult education programs and colleges to provide quality courseware from foundational literacy to adult diploma and beyond. The courseware is aligned with the College & Career Readiness Standards for Adult Education, as required under WIOA, and includes features identified by the Joyce Foundation as best practices for adult learners.

The Bureau of Adult Education serves approximately 6,000 adult education students in seven (7) different types of programs in fifty-four (54) centers across the state. Adult education students have reading, writing and/or math skills at or below the secondary level and lack a high school credential. According to the 2016 American Community Survey, there are more than 81,000 adults in New Hampshire without a high school credential. The distance learning options for adult education students through Edmentum will increase our programs' ability to serve adults who are unable to attend class due to their work schedules or the rural geography of New Hampshire.

A Request for Proposals was released on March 15, 2018, posted on the NH Department of Administrative Services website, distributed through the newsletter of the National Association of State Adult Education Directors and sent to vendors who have provided services to local adult education centers in the past. Three proposals were received and were evaluated in accordance with the requirements detailed in the Request for Proposals (see Attachment A). In addition to scoring, the evaluation team participated in online demonstrations with each vendor. This is one of two contracts that will be awarded.

Respectfully submitted,



Frank Edelblut  
Commissioner of Education

### BAE-RFP-2018-123 Evaluation

Three proposals were received in response to this RFP.

		Edmentum	Aztec	Cell-Ed
<b>Proposed Software Solution</b> Maximum 500				
	CP	500	500	250
	GC	400	400	150
	AH	475	450	300
	CC	475	450	300
	BB	428.5	447	300
	TB	450	450	200
	VC	475	450	375
	<b>Average</b>	<b>457.6</b>	<b>449.6</b>	<b>267.9</b>
<b>Vendor's Technical, Service &amp; Project Management Experience</b> Maximum 75				
	CP	75	75	45
	GC	75	45	40
	AH	65	65	50
	CC	70	60	50
	BB	75	72	59
	TB	75	65	50
	VC	65	60	50
	<b>Average</b>	<b>71.4</b>	<b>63.1</b>	<b>49.1</b>
<b>Vendor Company</b> Maximum 75				
	CP	75	75	60
	GC	75	60	35
	AH	70	50	60
	CC	70	60	50
	BB	65	75	60
	TB	75	70	50
	VC	70	70	45
	<b>Average</b>	<b>71.4</b>	<b>65.7</b>	<b>51.4</b>
<b>Staffing Qualifications</b> Maximum 50				
	CP	50	50	25
	GC	50	20	25
	AH	50	25	40
	CC	50	25	25
	BB	50	50	50
	TB	50	30	30
	VC	45	40	35
	<b>Average</b>	<b>49.3</b>	<b>34.3</b>	<b>32.9</b>
<b>Solution Cost</b> Vendor Cost/Lowest Cost * 300 points				

300	39	124
-----	----	-----

TOTAL SCORE	Maximum 1000			
	Average	949.8	651.7	525.3

**Reviewers:**

- Amy Hood has been the Program Director at Claremont Adult Education for four years, with experience in adult education for eleven years. She runs an Adult Diploma Program with extensive online instruction as well as an Adult Basic Education.
- Chris Powers is the former Program Director for the Manchester Adult Learning Center and is now the English as a Second Language Mentor responsible for assisting teachers with classroom strategies and teaching techniques. She has been piloting a digital ESL program this year.
- Tiffany Brand is the Technology Coordinator at Dover Adult Learning Center as well as the Technology Mentor for the Statewide Professional Development contract. She has eight years of experience in adult education and sixteen years of technology education. She assists programs with integrating technology in the classroom as well as developing distance learning strategies.
- Bridget Barker is an Adult Basic Education and High School Equivalency Preparation instructor at the Exeter Adult Education Program with sixteen years of experience in adult education. She is the Distance Learning Coordinator for the program and has provided assistance and training for instructors across the state.
- Connie Cullen is the Adult Learner Services coordinator for Nashua Adult Learning Center, managing over hundred volunteer tutors working with adult literacy, English language acquisition and high school equivalency preparation. She has four years of adult education experience and she has successfully integrated technology for use with tutors and provides training and support for tutors and instructors.
- Vaughn Coburn is a Software Development Specialist for the NH Department of Information Technology and provide support for the Department of Education, Bureau of Adult Education. He has more than 40 years of experience in the technology field and has worked on adult education data system and technology for six years.



**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](http://www.nh.gov/doit)

**Denis Goulet**  
*Commissioner*

September 13, 2018

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 Edmentum, Inc., of Bloomington, MN, as described below and referenced as DoIT No. 2018-165.

The Department of Education, Bureau of Adult Education, seeks to provide Digital Learning Technology Software for adult education students to increase their academic skills as well as providing local adult education programs the ability to expand their services through distance learning options.

This solution includes 250 licenses for assessments and 50 concurrent licenses for multiple online courseware libraries. The contract price is \$120,000 and shall become effective upon Governor and Executive Council approval through June 30, 2023.

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/ik  
DoIT #2018-165

cc: Chris Hensel, IT Manager, DoIT

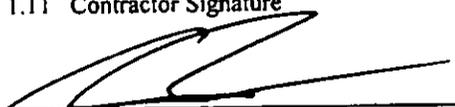
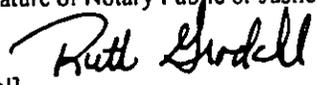
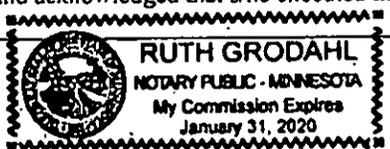
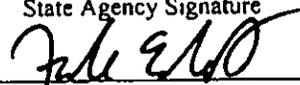
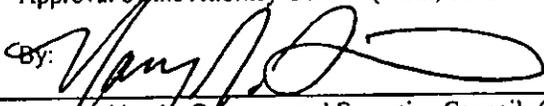
**Notice:** This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

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

**GENERAL PROVISIONS**

**I. IDENTIFICATION.**

<b>1.1 State Agency Name</b> Department of Education, Bureau of Adult Education		<b>1.2 State Agency Address</b> 21 South Fruit Street, Suite 20 Concord, NH 03301	
<b>1.3 Contractor Name</b> Edmentum Inc.		<b>1.4 Contractor Address</b> 5600 West 83 <sup>rd</sup> Street, Suite 300 - 8200 Tower Bloomington, MN 55437	
<b>1.5 Contractor Phone Number</b> 214-294-9603	<b>1.6 Account Number</b> 25350000-102-500575	<b>1.7 Completion Date</b> June 30, 2021	<b>1.8 Price Limitation</b> \$120,000.00
<b>1.9 Contracting Officer for State Agency</b> Sarah Bennett		<b>1.10 State Agency Telephone Number</b> 603-271-6699	
<b>1.11 Contractor Signature</b> 		<b>1.12 Name and Title of Contractor Signatory</b> Eric Doan, Chief Financial Officer	
<b>1.13 Acknowledgement:</b> State of <u>Minnesota</u> , County of <u>Hennepin</u>  On <u>September 11, 2018</u> before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
<b>1.13.1 Signature of Notary Public or Justice of the Peace</b>  [Seal]			
<b>1.13.2 Name and Title of Notary or Justice of the Peace</b> <u>Ruth Grodahl, Contract Administrator</u>			
<b>1.14 State Agency Signature</b> 		<b>1.15 Name and Title of State Agency Signatory</b> <u>Frank Edelblut, Commissioner</u>	
<b>1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable)</b>  By: _____ Director, On: _____			
<b>1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable)</b>  By:  On: <u>9/17/2018</u>			
<b>1.18 Approval by the Governor and Executive Council (if applicable)</b>  By: _____ On: _____			

60 9/11/18

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

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**  
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, 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 1.18, 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 1.14 ("Effective Date").  
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

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

**5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.**  
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.  
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.  
5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

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

**7. PERSONNEL.**  
7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.  
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this

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Agreement. This provision shall survive termination of this Agreement.

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

## 8. EVENT OF DEFAULT/REMEDIES.

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

8.1.1 failure to perform the Services satisfactorily or on schedule;

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

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

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

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

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

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

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

## 9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

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

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

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

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

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

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

## 14. INSURANCE.

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

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

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

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

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

**15. WORKERS' COMPENSATION.**

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

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

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

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

**18. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no

such approval is required under the circumstances pursuant to State law, rule or policy.

**19. CONSTRUCTION OF AGREEMENT AND TERMS.**

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

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

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

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

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

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

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**New Hampshire Department of Information Technology**  
**Contract Cover Sheet**

<b>Name of Agency/Division:</b> NH Department of Education, Bureau of Adult Education	
<b>Contract Number/Name:</b> 2018-123 Adult Education Digital Technology Software	
<b>Contract Purpose:</b> To provide educational software for adult education students.	
<b>Name of Vendor:</b> Edmentum Inc.	<b>Who Negotiated the Contract:</b> Sarah Bennett
<b>Amount of Contract:</b> \$120,000	<b>Funding Source:</b> Federal Funds
<b>Term of Contract:</b> July 25, 2018 – June 30, 2021	<b>Is this an amendment?</b> No
<b>Competitive Bid Process: (Explain if "No")</b> RFP Issued March 15, 2018. Proposals due April 20, 2018. Evaluations completed May 15, 2018.	
<b>Background Information:</b> Under the Workforce Innovation and Opportunity Act of 2014, all adult education programs are required to integrate technology into the classroom, teach digital literacy skills and provide the opportunity for distance learning. This software will allow programs to expand their capabilities in meeting these requirements.	
<b>Special Concerns:</b> N/A	
<b>Amendment History (if applicable):</b> N/A	
<b>Submitted By:</b> Sarah Bennett	<b>Current Date:</b> June 20, 2018
<b>Phone:</b> 603-271-6699	<b>Email:</b> Sarah.Bennett@doe.nh.gov

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**TERMS AND DEFINITIONS**

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

<b>Acceptance</b>	Notice from the State that a Deliverable has satisfied Acceptance Test or Review.
<b>Acceptance Letter</b>	An Acceptance Letter provides notice from the State that a Deliverable has satisfied Acceptance Tests or Review.
<b>Acceptance Period</b>	The timeframe during which the Acceptance Test is performed
<b>Acceptance Test Plan</b>	The Acceptance Test Plan provided by the Vendor and agreed to by the State that describes at a minimum, the specific Acceptance process, criteria, and Schedule for Deliverables.
<b>Acceptance Test and Review</b>	Tests performed to determine that no Defects exist in the application Software or the System
<b>Access Control</b>	Supports the management of permissions for logging onto a computer or network
<b>Agreement</b>	A contract duly executed and legally binding.
<b>Appendix</b>	Supplementary material that is collected and appended at the back of a document
<b>Audit Trail Capture and Analysis</b>	Supports the identification and monitoring of activities within an application or system
<b>Authorized Persons</b>	The Contractor's employees, contractors, subcontractors or other agents who need to access the State's personal data to enable the Contractor to perform the services required.
<b>Certification</b>	The Vendor's written declaration with full supporting and written Documentation (including without limitation test results as applicable) that the Vendor has completed development of the Deliverable and certified its readiness for applicable Acceptance Testing or Review.
<b>Change Order</b>	Formal documentation prepared for a proposed change in the Specifications.
<b>Completion Date</b>	End date for the Contract
<b>Confidential Information</b>	Information required to be kept Confidential from unauthorized disclosure <i>under the Contract</i>
<b>Contract</b>	This 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.
<b>Contract Agreement</b>	Part 1, 2, and 3.. The documentation consisting of both the General

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	Provisions and the Exhibits which represents the understanding and acceptance of the reciprocal legal rights and duties of the parties with respect to the Scope of Work
<b>Contract Conclusion</b>	Refers to the conclusion of the Contract, for any reason, including but not limited to, the successful Contract completion, termination for convenience, or termination for default.
<b>Contract Documents</b>	Documents that comprise this Contract (See Contract Agreement, Section 1.1)
<b>Contract Managers</b>	The persons identified by the State and the Vendor who shall be responsible for all contractual authorization and administration of the Contract. These responsibilities shall include but not be limited to processing Contract Documentation, obtaining executive approvals, tracking costs and payments, and representing the parties in all Contract administrative activities. (See Section 4: <i>Contract Management</i> )
<b>Contract Price</b>	The total, not to exceed amount to be paid by the State to the Contractor for product and services described in the Contract Agreement. This amount is listed in the General Provisions Section 1.8 (P-37).
<b>Contractor</b>	The Vendor and its employees, subcontractors, agents and affiliates who are providing the services agreed to under the contract.
<b>Contracted Vendor/Vendor</b>	The Vendor whose proposal or quote was awarded the Contract with the State and who is responsible for the Services and Deliverables of the Contract.
<b>Conversion Test</b>	A test to ensure that a Data conversion process correctly takes Data from a legacy system and successfully converts it to a form that can be used by the new System.
<b>Cure Period</b>	The thirty (30) day period following written notification of a default within which a contracted vendor must cure the default identified.
<b>Custom Code</b>	Code developed by the Vendor specifically for this project for the State of New Hampshire
<b>Custom Software</b>	Software developed by the Vendor specifically for this Project for the State of New Hampshire
<b>Data</b>	State's records, files, forms, Data and other documents or information, in either electronic or paper form, that will be used /converted by the Vendor during the Contract Term
<b>Data Breach</b>	The unauthorized access by a non-authorized person/s that results in the use, disclosure or theft of a the State's unencrypted non-public data.
<b>DBA</b>	Database Administrator

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<b>Deficiencies/Defects</b>	<p>A failure, deficiency or defect in a Deliverable resulting in a Deliverable, the Software, or the System, not conforming to its Specifications.</p> <p><b>Class A Deficiency – Software</b> - Critical, does not allow System to operate, no work around, demands immediate action; <i>Written Documentation</i> - missing significant portions of information or unintelligible to State; <i>Non Software</i> - Services were inadequate and require re-performance of the Service.</p> <p><b>Class B Deficiency – Software</b> - important, does not stop operation and/or there is a work around and user can perform tasks; <i>Written Documentation</i> - portions of information are missing but not enough to make the document unintelligible; <i>Non Software</i> - Services were deficient, require reworking, but do not require re-performance of the Service.</p> <p><b>Class C Deficiency – Software</b> - minimal, cosmetic in nature, minimal effect on System, low priority and/or user can use System; <i>Written Documentation</i> - minimal changes required and of minor editing nature; <i>Non Software</i> - Services require only minor reworking and do not require re-performance of the Service.</p>
<b>Deliverable</b>	A Deliverable is any Written, Software, or Non-Software Deliverable (letter, report, manual, book, other), provided by the Vendor to the State or under the terms of a Contract requirement.
<b>Department of Information Technology (DoIT)</b>	The Department of Information Technology established under RSA 21-R by the Legislature effective September 5, 2008.
<b>Documentation</b>	All information that describes the installation, operation, and use of the Software, either in printed or electronic format.
<b>Digital Signature</b>	Certification that guarantees the unaltered state of a file, also known as "code signing."
<b>Effective Date</b>	The Contract and all obligations of the parties hereunder shall become effective on the date the Governor and the Executive Council of the State of New Hampshire approves the Contract
<b>Encryption</b>	Supports the transformation of data for security purposes
<b>Enhancements</b>	Updates, additions, modifications to, and new releases for the Software, and all changes to the Documentation as a result of Enhancements, including, but not limited to, Enhancements produced by Change Orders
<b>Firm Fixed Price Contract</b>	A Firm-Fixed-Price Contract provides a price that is not subject to

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	increase, i.e., adjustment on the basis of the Vendor's cost experience in performing the Contract
<b>Fully Loaded</b>	Rates are inclusive of all allowable expenses, including, but not limited to: meals, hotel/housing, airfare, car rentals, car mileage, and out of pocket expenses
<b>Governor and Executive Council</b>	The New Hampshire Governor and Executive Council.
<b>Identification and Authentication</b>	Supports obtaining information about those parties attempting to log on to a system or application for security purposes and the validation of those users
<b>Implementation</b>	The process for making the System fully operational for processing the Data.
<b>Implementation Plan</b>	Sets forth the transition from development of the System to full operation, and includes without limitation, training, business and technical procedures.
<b>Information Technology (IT)</b>	Refers to the tools and processes used for the gathering, storing, manipulating, transmitting, sharing, and sensing of information including, but not limited to, Data processing, computing, information systems, telecommunications, and various audio and video technologies.
<b>Input Validation</b>	Ensure that the values entered by users or provided by other applications meets the size, type and format expected. Protecting the application from cross site scripting, SQL injection, buffer overflow, etc.
<b>Intrusion Detection</b>	Supports the detection of illegal entrance into a computer system
<b>Invoking Party</b>	In a dispute, the party believing itself aggrieved.
<b>Key Project Staff</b>	Personnel identified by the State and by the Contractor as essential to work on the Project.
<b>Licensee</b>	The State of New Hampshire
<b>Non Exclusive Contract</b>	A contract executed by the State that does not restrict the State from seeking alternative sources for the Deliverables or Services provided under the Contract.
<b>Non-Public Information</b>	Data, other than personal data, 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.
<b>Non-Software Deliverables</b>	Deliverables that are not Software Deliverables or Written Deliverables, e.g., meetings, help support, services, other
<b>Normal Business Hours</b>	Normal Business Hours – 8:00 a.m. to 5:00 p.m. EST, Monday through Friday excluding State of New Hampshire holidays. State holidays are: New Year's Day, Martin Luther King Day,

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	President's Day, Memorial Day, July 4 <sup>th</sup> , Labor Day, Veterans Day, Thanksgiving Day, the day after Thanksgiving Day, and Christmas Day. Specific dates will be provided
<b>Notice to Proceed (NTP)</b>	The State Contract Manager's written direction to the Vendor to begin work on the Contract on a given date and time
<b>Open Data Formats</b>	A data format based on an underlying Open Standard.
<b>Open Source Software</b>	Software that guarantees the user unrestricted use of the Software as defined in RSA 21-R:10 and RSA 21-R:11.
<b>Open Standards</b>	Specifications for the encoding and transfer of computer data that is defined in RSA 21-R:10 and RSA 21-R:13.
<b>Operating System</b>	System is fully functional, all Data has been loaded into the System, is available for use by the State in its daily operations.
<b>Operational</b>	The System is operating 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 an Acceptance Letter.
<b>Order of Precedence</b>	The order in which Contract/Documents control in the event of a conflict or ambiguity. A term or condition in a document controls over a conflicting or ambiguous term or condition in a document that is lower in the Order of Precedence
<b>Personal Data</b>	Data that includes information relating to a person that identifies the person by name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information, including account number, credit or debit card numbers; or protected health information (PHI) relating to a person.
<b>Project</b>	The planned undertaking regarding the entire subject matter of an RFP and Contract and the activities of the parties related hereto.
<b>Project Team</b>	The group of State employees and contracted Vendor's personnel responsible for managing the processes and mechanisms required such that the Services are procured in accordance with the Work Plan on time, on budget and to the required specifications and quality
<b>Project Management Plan</b>	A document that describes the processes and methodology to be employed by the Vendor to ensure a successful Project.
<b>Project Managers</b>	The persons identified who shall function as the State's and the Vendor's representative with regard to Review and Acceptance of Contract Deliverables, invoice sign off, and review and approval of Change Requests (CR) utilizing the Change Control Procedures (CCP)
<b>Project Staff</b>	State personnel assigned to work with the Vendor on the Project
<b>Proposal</b>	The submission from a Vendor in response to the Request for a

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	<b>Proposal or Statement of Work</b>	
<b>Protected Health Information (PHI)</b>	Individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer.	
<b>Regression Test Plan</b>	A plan integrated into the Work Plan used to ascertain whether fixes to Defects have caused errors elsewhere in the application/process.	
<b>Review</b>	The process of reviewing Deliverables for Acceptance	
<b>Review Period</b>	The period set for review of a Deliverable. If none is specified then the Review Period is five (5) business days.	
<b>RFP (Request for Proposal)</b>	A Request For Proposal solicits Proposals to satisfy State functional requirements by supplying data processing product and/or Service resources according to specific terms and conditions	
<b>Role/Privilege Management</b>	Supports the granting of abilities to users or groups of users of a computer, application or network	
<b>Schedule</b>	The dates described in the Work Plan for deadlines for performance of Services and other Project events and activities under the Contract	
<b>Security Incident</b>	The potentially unauthorized access by non-authorized persons to personal data or non-public data the Contractor believes could reasonably result in the use, disclosure or theft of a State's unencrypted personal data or non-public data within the possession or control of the Contractor. A security incident may or may not turn into a data breach.	
<b>Security Review &amp; Testing Terms</b>	Identification and Authentication	Supports obtaining information about those parties attempting to log onto a system or application for security purposes and the validation of users
	Access Control	Supports the management of permissions for logging onto a computer or network
	Encryption	Supports the encoding of data for security purposes
	Intrusion Detection	Supports the detection of illegal

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		entrance into a computer system
	Verification	Supports the confirmation of authority to enter a computer system, application or network
	Digital Signature	Guarantees the unaltered state of a file
	User Management	Supports the administration of computer, application and network accounts within an organization.
	Role/Privilege Management	Supports the granting of abilities to users or groups of users of a computer, application or network
	Audit Trail Capture and Analysis	Supports the identification and monitoring of activities within an application or system
	Input Validation	Ensures the application is protected from buffer overflow, cross-site scripting, SQL injection, and unauthorized access of files and/or directories on the server
<b>Service Level Agreement (SLA)</b>	A signed agreement between both the State and the Contractor that is subject to the terms and conditions in this document that unless otherwise agreed to includes (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) security responsibilities and notice requirements, (5) how disputes are discovered and addressed, and (6) any remedies for performance failures.	
<b>Service</b>	The work or labor to be performed by the Vendor on the Project as described in the Contract.	
<b>the Contractor</b>	The vendor and its employees, subcontractors, agents and affiliates who are providing the services agreed to under the contract.	
<b>Software</b>	All custom Software and COTS Software provided by the Vendor under the Contract	
<b>Software-as-a-Service (SaaS)</b>	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	

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	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.
<b>Software Deliverables</b>	Software and Enhancements
<b>Software License</b>	Licenses provided to the State under this Contract
<b>Solution</b>	The Solution consists of the total Solution, which includes, without limitation, Software and Services, addressing the requirements and terms of the Contract Specifications. The off-the-shelf Software and configured Software customized for the State provided by the Vendor in response to this RFP.
<b>Specifications</b>	The written provisions that set forth the requirements which include, without limitation, this 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.
<b>State</b>	STATE is defined as: State of New Hampshire Department of Education, Bureau of Adult Education 21 South Fruit Street, Suite 20 Concord, NH 03301 Reference to the term "State" shall include applicable agencies
<b>Statement of Work (SOW)</b>	A Statement of Work clearly defines the basic requirements and objectives of a Project. The Statement of Work also defines a high level view of the architecture, performance and design requirements, the roles and responsibilities of the State and the Vendor. The Contract Agreement SOW defines the results that the Vendor remains responsible and accountable for achieving.
<b>State's Confidential Records</b>	State's information regardless of its form that is not subject to public disclosure under applicable state and federal laws and regulations, including but not limited to <u>RSA Chapter 91-A</u> .
<b>State Data</b>	For SaaS applications means 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.

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<b>State Fiscal Year (SFY)</b>	The New Hampshire State Fiscal Year extends from July 1 <sup>st</sup> through June 30 <sup>th</sup> of the following calendar year
<b>State Identified Contact</b>	The person or persons designated in writing by the State to receive security incident or breach notification.
<b>State's Project Manager (PM)</b>	State's representative with regard to Project management and technical matters. Agency Project Managers are responsible for review and Acceptance of specific Contract Deliverables, invoice sign off, and Review and approval of a Change Proposal (CP).
<b>Subcontractor</b>	A person, partnership, or company not in the employment of, or owned by, the Vendor, which is performing Services under this Contract under a separate Contract with or on behalf of the Vendor
<b>System</b>	All Software, specified hardware, and interfaces and extensions, integrated and functioning together in accordance with the Specifications.
<b>TBD</b>	To Be Determined
<b>Technical Authorization</b>	Direction to a Vendor, which fills in details, clarifies, interprets, or specifies technical requirements. It must be: (1) consistent with Statement of Work within statement of Services; (2) not constitute a new assignment; and (3) not change the terms, documents of specifications of the Contract Agreement
<b>Test Plan</b>	A plan, integrated in the Work Plan, to verify the code (new or changed) works to fulfill the requirements of the Project. It may consist of a timeline, a series of tests and test data, test scripts and reports for the test results as well as a tracking mechanism.
<b>Term</b>	Period of the Contract from the Effective Date through termination.
<b>Transition Services</b>	Services and support provided when Contractor is supporting System changes.
<b>UAT</b>	User Acceptance Test
<b>Unit Test</b>	Developers create their own test data and test scenarios to verify the code they have created or changed functions properly as defined.
<b>User Acceptance Testing</b>	Tests done by knowledgeable business users who are familiar with the scope of the Project. They create/develop test cases to confirm the System was developed according to specific user requirements. The test cases and scripts/scenarios should be mapped to business requirements outlined in the user requirements documents.
<b>User Management</b>	Supports the administration of computer, application and network accounts within an organization
<b>Vendor/ Contracted Vendor</b>	The Vendor whose proposal or quote was awarded the Contract with the State and who is responsible for the Services and

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	<b>Deliverables of the Contract.</b>
<b>Verification</b>	Supports the confirmation of authority to enter a computer system, application or network
<b>Walk Through</b>	A step-by-step review of a Specification, usability features or design before it is handed off to the technical team for development
<b>Work Hours</b>	Vendor personnel shall work normal business hours between 8:00 am and 5:00 pm, eight (8) hour days, forty (40) hour weeks, excluding State of New Hampshire holidays. Changes to this schedule may be made upon agreement with the State Project Manager.
<b>Work Plan</b>	The overall plan of activities for the Project created in accordance with the Contract. The plan and delineation of tasks, activities and events to be performed and Deliverables to be produced under the Project as specified in Appendix C. The Work Plan shall include a detailed description of the Schedule, tasks/activities, Deliverables, critical events, task dependencies, and the resources that would lead and/or participate on each task.
<b>Written Deliverables</b>	Non-Software written deliverable Documentation (letter, report, manual, book, other) provided by the Vendor either in paper or electronic format.

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**INTRODUCTION**

This Contract is by and between the State of New Hampshire, acting through New Hampshire Department of Education, Bureau of Adult Education, and Edmentum Inc., a Minnesota Corporation, ("Contractor"), having its principal place of business at 5600 West 83<sup>rd</sup> Street, Suite 300 – 8200 Tower, Bloomington, MN 55437.

Edmentum will provide a suite of software through site licensing including Courseware, Assessments and ESL Reading Smarts.

**RECITALS**

Whereas the State desires to have the Contractor provide a a suite of software licenses to meet the content requirements of the seven type of adult education programming available in New Hampshire, and associated Services for the State;

Whereas the Contractor wishes to provide site licensing for Courseware, Assessments and ESL Reading Smarts.

The parties therefore agree as follows:

**1. CONTRACT DOCUMENTS**

**1.1 CONTRACT DOCUMENTS**

This Contract Agreement (2018-123) is comprised of the following documents:

- A. Part 1 - Form P-37 General Provision
- B. Part 2 - Information Technology Provisions
- C. Part 3 - Exhibits
  - Exhibit A- Contract Deliverables
  - Exhibit B- Price and Payment Schedule
  - Exhibit C- Special Provisions
  - Exhibit D- Administrative Services
  - Exhibit E- Implementation Services
  - Exhibit F- Testing Services
  - Exhibit G- Maintenance and Support Services
  - Exhibit H- Requirements
  - Exhibit I- Work Plan
  - Exhibit J- Software Agreement
  - Exhibit K- Warranty and Warranty Services

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Exhibit L- Training Services  
Exhibit M- Agency RFP with Addenda, by reference  
Exhibit N- Vendor Proposal, by reference  
Exhibit O- Certificates and Attachments

**1.2 ORDER OF PRECEDENCE**

In the event of conflict or ambiguity among any of the text of the Contract Documents, the following Order of Precedence shall govern:

- a. State of New Hampshire Terms and Conditions, Form P-37, Contract Agreement, Part 1 excepting paragraph 12: Assignment/Delegation/Subcontract
- b. State of New Hampshire, Department of Education, Bureau of Adult Education Contract Agreement 2018-165, including Parts 2, and 3.
- c. State of New Hampshire, Department of Education, Bureau of Adult Education RFP 2018-123.
- d. Vendor Proposal Response to RFP 2018-123 dated April 20, 2018

**2. CONTRACT TERM**

The Contract and all obligations of the parties hereunder shall become effective after full execution by the parties, and the receipt of required governmental approvals, including, but not limited to, Governor and Executive Council of the State of New Hampshire approval ("Effective Date").

The Contract shall begin on the Effective Date and extend through June 30, 2021. The Term may be extended up to two years, through June 30, 2023, , ("Extended Term") at the sole option of the State, subject to the parties prior written agreement on applicable fees for each extended term.

The Contractor shall commence work upon issuance of a Notice to Proceed by the State.

**3. COMPENSATION**

**3.1 CONTRACT PRICE**

The Contract Price, Part 1, P37, block 1.8 price limitation, method of payment, and terms of payment are identified and more particularly described in section 5 of P-37 Agreement and Part 3 Contract Exhibit B: *Price and Payment Schedule*.

**3.2 NON-EXCLUSIVE CONTRACT**

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The State reserves the right, at its discretion, to retain other vendors to provide any of the Services or Deliverables identified under this procurement or make an award by item, part or portion of an item, group of items, or total Proposal. The Contractor shall not be responsible for any delay, act, or omission of such other vendors, except that the Contractor shall be responsible for any delay, act, or omission of the other vendors if such delay, act, or omission is caused by or due to the fault of the Contractor.

**4. CONTRACT MANAGEMENT**

The Project will require the coordinated efforts of a Project Team consisting of both the Contractor and State personnel. The Contractor shall provide all necessary resources to perform its obligations under the Contract. The Contractor shall be responsible for managing the Project to its successful completion.

**4.1 THE CONTRACTOR'S CONTRACT MANAGER**

The Contractor shall assign a Contract Manager who shall be responsible for all Contract authorization and administration. The Contractor's Contract Manager is:

Melissa Lerner  
Territory Manager  
5600 West 83<sup>rd</sup> Street, Suite 300 – 8200 Tower  
Bloomington, MN 55437  
Tel: 214-294-9603  
Email: Melissa.lerner@edmentum.com

**4.2 THE CONTRACTOR'S PROJECT MANAGER**

**4.2.1 Contract Project Manager**

The Contractor shall assign a Project Manager who meets the requirements of the Contract. The Contractor's selection of the Contracted Vendor 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 Contractor's Project Manager's resume, qualifications, references, and background checks, and an interview. The State may require removal or reassignment of the Contractor's Project Manager who, in the sole judgment of the State, is found unacceptable or is not performing to the State's satisfaction.

**4.2.2** The Contractor's 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 the Contractor's representative for all administrative and management matters. The Contractor's Project Manager shall perform the duties required under the Contract, including,

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but not limited to, those set forth in Exhibit I, Section 2. The Contractor's Project Manager must be available to promptly respond during Normal Business Hours within two (2) hours to inquiries from the State, and be at the site as needed. The Contractor's Project Manager must work diligently and use his/ her best efforts on the Project.

4.2.3 Notwithstanding any other provision of the Contract, the State shall have the option, at its discretion, to terminate the Contract, declare the Contractor in default and pursue its remedies at law and in equity, if the Contractor fails to assign a the Contractor Project Manager meeting the requirements and terms of the Contract.

4.2.4 CONTRACTOR Project Manager is:  
David Disko  
Implementation Consultant  
5600 West 83<sup>rd</sup> Street, Suite 300 – 8200 Tower  
Bloomington, MN 55437Tel: 214-294-9603  
Email: [david.disko@edmentum.com](mailto:david.disko@edmentum.com)

**4.3 CONTRACTOR KEY PROJECT STAFF**

4.3.1 The Contractor shall assign Key Project Staff who meet the requirements of the Contract, and can implement the Software Solution meeting the requirements set forth in RFP Appendix C: *System Requirements and Deliverables*, Table C.2: *System Requirements and Deliverables-Vendor Response Checklist*. The State may conduct reference and background checks on the Contractor's Key Project Staff. The State reserves the right to require removal or reassignment of the Contractor's Key Project Staff who are found unacceptable to the State. Any background checks shall be performed in accordance with General Provisions Section 4.6: *Background Checks*.

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

4.3.2.1 The Contractor Key Project Staff shall consist of the following individuals in the roles identified below:

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The Contractor's Key Project Staff:

Key Member(s)	Title
Melissa Lerner	Territory Manager
David Disko	Implementation Consultant
Mat Bari	Regional Vice President

#### 4.4 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:

Sarah Bennett  
Administrator  
Bureau of Adult Education  
21 South Fruit Street  
Concord, NH 03301  
Tel: 603-271-6699  
Fax: 603-271-3454  
Email: Sarah.Bennett@doe.nh.gov

#### 4.5 STATE PROJECT MANAGER

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

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

The State Project Manager is:

Sarah Bennett  
Administrator  
Bureau of Adult Education  
21 South Fruit Street, Suite 20  
Concord, NH 03301  
Tel: 603-271-6699  
Fax: 603-271-3454  
Email: Sarah.Bennett@doe.nh.gov

#### 4.6 REFERENCE AND BACKGROUND CHECKS

The Contractor shall conduct criminal background checks and not utilize any staff, including subcontractors, to fulfill the obligations of the contract who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Contractor shall promote and maintain an awareness of the importance of securing the State's information among the Contractor's employees and agents.

The State may, at its sole expense, conduct reference and background screening of the Contracted Vendor Project Manager and the Contractor Key Project Staff. The State shall

maintain the confidentiality of background screening results in accordance with the Contract Agreement – General Provisions-Section 11: Use of State’s Information, Confidentiality.

## 5. DELIVERABLES

### 5.1 CONTRACTOR RESPONSIBILITIES

The Contractor shall be solely responsible for meeting all requirements, and terms and conditions specified in this Contract, regardless of whether or not a subcontractor is used.

The Contractor may subcontract Services subject to the provisions of the Contract, including but not limited to, the terms and conditions in the Contract Agreement. The Contractor must submit all information and documentation relating to the Subcontractor, including terms and conditions consistent with this Contract. The State will consider the Contractor to be wholly responsible for the performance of the Contract and the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the Contract.

### 5.2 DELIVERABLES AND SERVICES

The Contractor shall provide the State with the Deliverables and Services in accordance with the time frames in the Work Plan for this Contract, and as more particularly described in Contract Exhibit A: *Contract Deliverables*.

### 5.3 NON-SOFTWARE AND WRITTEN DELIVERABLES REVIEW AND ACCEPTANCE

After receiving written Certification from the Contractor that a Non-Software or Written Deliverable is final, complete, and ready for Review, the State will Review the Deliverable to determine whether it meets the Requirements outlined in Contract Exhibit A: *Contract Deliverables*. The State will notify the Contractor in writing of its Acceptance or rejection of the Deliverable within five (5) business days of the State’s receipt of the Contractor’s written Certification. If the State rejects the Deliverable, the State shall notify the Contractor of the nature and class of the Deficiency and the Contractor shall correct the Deficiency within the period identified in the Work Plan. If no period for the Contractor’s correction of the Deliverable is identified, the Contractor shall correct the Deficiency in the Deliverable within five (5) business days. 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 or rejection thereof, with the option to extend the Review Period up to five (5) additional business days. If the Contractor fails to correct the Deficiency within the allotted period of time, 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 pursue its remedies at law and in equity.

### 5.4 SOFTWARE REVIEW AND ACCEPTANCE

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

**6. SOFTWARE**

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

**7. SERVICES**

The Contractor shall provide the Services required under the Contract Documents. All Services shall meet, and be performed, in accordance with the Specifications.

**7.1 ADMINISTRATIVE SERVICES**

The Contractor shall provide the State with the administrative Services set forth in the Contract, and particularly described in Exhibit D: Administrative Services.

**7.2 IMPLEMENTATION SERVICES**

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

**7.3 TESTING SERVICES**

The Contractor shall perform testing Services for the State set forth in the Contract, and particularly described in Exhibit F: Testing Services.

**7.4 TRAINING SERVICES**

The Contractor shall provide the State with training Services set forth in the Contract, and particularly described in Exhibit L: Training Services.

**7.5 MAINTENANCE AND SUPPORT SERVICES**

The Contractor shall provide the State with Maintenance and support Services for the Software set forth in the Contract, and particularly described in Exhibit G: System Maintenance and Support.

**7.6 WARRANTY SERVICES**

The Contractor shall provide the State with warranty Services set forth in the Contract, and particularly described in Exhibit K: Warranty & Warranty Services.

**8. WORK PLAN DELIVERABLE**

The Contractor shall provide the State with a Work Plan that shall include, without limitation, a detailed description of the Schedule, tasks, Deliverables, major milestones, task dependencies, and payment Schedule.

The initial Work Plan shall be a separate Deliverable and is set forth in Contract Exhibit I: *Work Plan*. The Contractor shall update the Work Plan as necessary to accurately reflect the status of the Project, including without limitation, the Schedule, tasks, Deliverables, major milestones, task dependencies, and payment Schedule. Any such updates to the Work Plan must be approved by the

State, in writing, prior to final incorporation into Contract Exhibit I: *Work Plan*. The updated Contract Exhibit I: *Work Plan*, as approved by the State, is incorporated herein by reference.

Unless otherwise agreed in writing by the State, changes to the Contract Exhibit I: *Work Plan* shall not relieve the Contractor from liability to the State for damages resulting from the Contractor's failure to perform its obligations under the Contract, including, without limitation, performance in accordance with the Schedule.

In the event of any delay in the Schedule, the Contractor must immediately notify the State in writing, identifying the nature of the delay, i.e., specific actions or inactions of the Contractor or the State causing the problem; its estimated duration period to reconciliation; specific actions that need to be taken to correct the problem; and the expected Schedule impact on the Project.

In the event additional time is required by the Contractor to correct Deficiencies, the Schedule shall not change unless previously agreed in writing by the State, except that the Schedule shall automatically extend on a day-to-day basis to the extent that the delay does not result from the Contractor's failure to fulfill its obligations under the Contract. To the extent that the State's execution of its major tasks takes longer than described in the Work Plan, the Schedule shall automatically extend on a day-to-day basis.

Notwithstanding anything to the contrary, the State shall have the option to terminate the Contract for default, at its discretion, if it is dissatisfied with the Vendor's Work Plan or elements within the Work Plan.

## 9. CHANGE ORDERS

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

The Contractor may request a change within the scope of the Contract by written Change Order, identifying any impact on cost, the Schedule, or the Work Plan. The State shall attempt to respond to the Contractor's requested Change Order within five (5) business days. The State Agency, as well as the Department of Information Technology, must 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.

All Change Order requests from the Contractor to the State, and the State acceptance of the Contractor's estimate for a State requested change, will be acknowledged and responded to, either acceptance or rejection, in writing. If accepted, the Change Order(s) shall be subject to the Contract amendment process, as determined to apply by the State.

## 10. INTELLECTUAL PROPERTY

### 10.1 SOFTWARE TITLE

Title, right, and interest (including all ownership and intellectual property rights) in the Software, and its associated Documentation, shall remain with the Contractor.

Upon successful completion and/or termination of the Implementation of the Project, the Contracted Vendor shall own and hold all, title, and rights in any Software modifications developed in connection with performance of obligations under the Contract, or modifications to the Contracted Vendor provided Software, and their associated Documentation including any and all performance enhancing operational plans and the Vendors' special utilities. the Contracted Vendor shall license back to the State the right to produce, publish, or otherwise use such software, source code, object code, modifications, reports, and Documentation developed under the Contract.

In no event shall the Vendor be precluded from developing for itself, or for others, materials that are competitive with, or similar to Custom Software, modifications developed in connection with performance of obligations under the Contract. In addition, the Vendor shall be free to use its general knowledge, skills, experience, and any other ideas, concepts, know-how, and techniques that are acquired or used in the course of its performance under this agreement.

### 10.2 STATE'S DATA AND PROPERTY

All rights, title and interest in State Data shall remain with the State. 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. the Contractor shall not access State user accounts or State data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this contract or (4) at the State's written request.

### 10.3 CONTRACTOR'S MATERIALS

Subject to the provisions of this Contract, the Contractor may develop for itself, or for others, materials that are competitive with, or similar to, the Deliverables. In accordance with the provision of this Contract, the Contractor shall not distribute any products containing or disclose any State Confidential Information. The Contractor shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques that are acquired or used in the course of its performance under this Contract, provided that such is not obtained as the result of the deliberate memorization of the State Confidential Information by the Contractor employees or third party consultants engaged by the Contractor.

Without limiting the foregoing, the parties agree that the general knowledge referred to herein cannot include information or records not subject to public disclosure under New Hampshire RSA Chapter 91-A, which includes but is not limited to the following: records of grand juries and petit juries; records of parole and pardon boards; personal school records of pupils; records

pertaining to internal personnel practices, financial information, test questions, scoring keys and other examination data use to administer a licensing examination, examination for employment, or academic examination and personnel, medical, welfare, library use, video tape sale or rental, and other files containing personally identifiable information that is private in nature.

#### 10.4 SURVIVAL

This Contract Agreement Section 10: *Intellectual Property* shall survive the termination of the Contract.

### 11 USE OF STATE'S INFORMATION, CONFIDENTIALITY

#### 11.1 USE OF STATE'S INFORMATION

In performing its obligations under the Contract, the Contractor may gain access to information of the State, including State Confidential Information. "State Confidential Information" shall include, but not be limited to, information exempted from public disclosure under New Hampshire RSA Chapter 91-A: *Access to Public Records and Meetings* (see e.g. RSA Chapter 91-A: 5 *Exemptions*). The Contractor shall not use the State Confidential Information developed or obtained during the performance of, or acquired, or developed by reason of the Contract, except as directly connected to and necessary for the Contractor's performance under the Contract.

#### 11.2 STATE CONFIDENTIAL INFORMATION

The Contractor shall maintain the confidentiality of and protect from unauthorized use, disclosure, publication, and reproduction (collectively "release"), all State Confidential Information that becomes available to the Contractor in connection with its performance under the Contract, regardless of its form.

Subject to applicable federal or State laws and regulations, Confidential Information shall not include information which: (i) shall have otherwise become publicly available other than as a result of disclosure by the receiving party in breach hereof; (ii) 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; (iii) 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 (iv) is disclosed with the written consent of the disclosing party. 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 State Confidential Information shall require the prior written approval of the State. The Contractor shall immediately notify the State if any request, subpoena or other legal process is served upon the Contractor regarding the State Confidential Information, and the 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.

In the event of the unauthorized release of State Confidential Information, the 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.

### 11.3 CONTRACTOR CONFIDENTIAL INFORMATION

Insofar as the Contractor seeks to maintain the confidentiality of its confidential or proprietary information, the Contractor must clearly identify in writing all information it claims to be confidential or proprietary. Notwithstanding the foregoing, the State acknowledges that the Contractor considers the Software and Documentation to be Confidential Information. The 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. The State shall maintain the confidentiality of the identified Confidential Information insofar as it is consistent with applicable State and federal laws or regulations, including but not limited to, RSA Chapter 91-A. In the event the State receives a request for the information identified by the Contractor as confidential, the State shall notify the Contractor and specify the date the State will be releasing the requested information. At the request of the State, the Contractor shall cooperate and assist the State with the collection and review of the Contractor's information, at no additional expense to the State. Any effort to prohibit or enjoin the release of the information shall be the Contractor's sole responsibility and at the Contractor's sole expense. If the 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 the Contractor, without any liability to the Contractor.

### 11.4 SURVIVAL

This Contract Agreement Section 11, *Use of State's Information, Confidentiality*, shall survive termination or conclusion of the Contract.

## 12 LIMITATION OF LIABILITY

### 12.1 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. Subject to applicable laws and regulations, the State's liability to the Contractor shall not exceed the total Contract price set forth in Contract Agreement – General Provisions, Block 1.8.

### 12.2 CONTRACTOR

Subject to applicable laws and regulations, in no event shall the Contractor be liable for any consequential, special, indirect, incidental, punitive or exemplary damages and the Contractor's liability to the State shall not exceed two times (2X) the amount paid in the preceding twelve months, set forth in Contract Agreement – P-37, General Provisions, Block 1.8.

Notwithstanding the foregoing, this limitation of liability shall not apply to the Contractor's indemnification obligations set forth in the Contract Agreement-General Provisions

Section 13: *Indemnification* and confidentiality obligations in Contract Agreement-General Provisions Section 11: *Use of State's Information, Confidentiality*, which shall be unlimited.

### 12.3 STATE'S IMMUNITY

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 shall survive termination or Contract conclusion.

### 12.4 SURVIVAL

This Section 12: *Limitation of Liability* shall survive termination or Contract conclusion.

## 13 TERMINATION

This Section 13 shall survive the termination or Contract Conclusion.

### 13.1 TERMINATION FOR DEFAULT

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

- a. Failure to perform the Services satisfactorily or on schedule;
- b. Failure to submit any report required; and/or
- c. Failure to perform any other covenant, term or condition of the Contract

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

- a. Unless otherwise provided in the Contract, the State shall provide the Contractor written notice of default and require it to be remedied within, in the absence of a greater or lesser specification of time, within fifteen (15) days from the date of written notice, unless otherwise indicated within by the State ("Cure Period"). If the Contractor fails to cure the default within the Cure Period, the State may terminate the Contract effective two (2) days after giving the Contractor notice of termination, at its sole discretion, treat the Contract as breached and pursue its remedies at law or in equity or both.
- b. Give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under the Contract 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.
- c. Set off against any other obligations the State may owe to the Vendor any damages the State suffers by reason of any Event of Default;

- d. Treat the Contract as breached and pursue any of its remedies at law or in equity, or both.
- e. Procure Services that are the subject of the Contract from another source and the 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.

13.1.2 The Vendor shall provide the State with written notice of default, and the State shall cure the default within thirty (30) days.

### 13.2 TERMINATION FOR LACK OF FUNDING

13.2.1 In the event that federal or state adult education funding is not available or the service is no longer considered an allowable expense under the law, the State may terminate the Contract. The State will:

- a. The State will provide prompt written notification, with an explanation, to the Contractor.
- b. The State will exhaust all efforts to procure other funding or partial funding of the Contract.

### 13.3 TERMINATION FOR CONFLICT OF INTEREST

13.3.1 The State may terminate the Contract by written notice if it determines that a conflict of interest exists, including but not limited to, a violation by any of the parties hereto of applicable laws regarding ethics in public acquisitions and procurement and performance of Contracts.

In such case, the State shall be entitled to a pro-rated refund of the annual subscription costs. The State shall pay all other contracted payments that would have become due and payable if the Contractor did not know, or reasonably did not know, of the conflict of interest.

13.3.2 In the event the Contract is terminated as provided above pursuant to a violation by the Contractor, the State shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a default of the Contract by the Contractor.

### 13.4 TERMINATION PROCEDURE

- 13.4.1 Upon termination of the Contract, the State, in addition to any other rights provided in the Contract, may require the Contractor to deliver to the State any property, including without limitation, Software and Written Deliverables, for such part of the Contract as has been terminated.
- 13.4.2 After receipt of a notice of termination, and except as otherwise directed by the State, the Contractor shall:
- a. The State shall be entitled to any post-termination assistance generally made available with respect to the services, unless a unique data retrieval arrangement has been established as part of the SLA.
  - b. Stop work under the Contract on the date, and to the extent specified, in the notice;
  - c. Promptly, but in no event longer than thirty (30) 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;
  - d. 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 the Contractor and in which the State has an interest;
  - e. During any period of service suspension, the Contractor shall not take any action to intentionally erase any State data.
    1. In the event of termination of any services or agreement in entirety, the Contractor shall not take any action to intentionally erase any State data for a period of:
      - 10 days after the effective date of termination, if the termination is in accordance with the contract period
      - 60 days after the effective date of termination, if the termination is for cause
    2. After such period, the Contractor shall have no obligation to maintain or provide any State data and shall thereafter, unless legally prohibited, delete all State data in its systems or otherwise in its possession or under its control.
  - f. 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; and
  - g. The Contractor shall 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;

- h. The Contractor shall 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)-approved methods. Certificates of destruction shall be provided to the State.
- i. Provide written Certification to the State that the Contractor has surrendered to the State all said property.

#### 14 CHANGE OF OWNERSHIP

In the event that the Contractor should change ownership for any reason whatsoever, the State shall continue under the Contract with the Contractor, its successors or assigns for the full remaining term of the Contract.

#### 15 ASSIGNMENT, DELEGATION AND SUBCONTRACTS

15.1 The Contractor shall not assign, delegate, subcontract, or otherwise transfer any of its interest, rights, or duties under the Contract without notifying the State.

15.2 The Contractor shall remain wholly responsible for performance of the entire Contract even if assignees, delegates, Subcontractors, or other transferees ("Assigns") are used, unless otherwise agreed to in writing by the State, and the Assigns fully assumes in writing any and all obligations and liabilities under the Contract from the Effective Date. In the absence of a written assumption of full obligations and liabilities of the Contract, any permitted assignment, delegation, subcontract, or other transfer shall neither relieve the Contractor of any of its obligations under the Contract nor affect any remedies available to the State against the Contractor that may arise from any event of default of the provisions of the contract. The State shall consider the Contractor to be the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the Contract.

15.3 Notwithstanding the foregoing, nothing herein shall prohibit the Contractor from assigning the Contract to the successor of all or substantially all of the assets or business of the Contractor provided that the successor fully assumes in writing all obligations and responsibilities under the Contract. In the event that the Contractor should change ownership, as permitted under Section 15: *Change of Ownership*, the State shall continue under the Contract with the Contractor, its successors or assigns for the full remaining term of the Contract.

#### 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:

**Dispute Resolution Responsibility and Schedule Table**

<b>LEVEL</b>	<b>Edmentum</b>	<b>STATE</b>	<b>CUMULATIVE ALLOTTED TIME</b>
<b>Primary</b>	David Disko Implementation Consultant	Sarah Bennett State Project Manager (PM)	5 Business Days
<b>First</b>	Melissa Lerner Territory Manager	Heather Gage Division Director	10 Business Days
<b>Second</b>	Mat Bari Regional Vice President	Frank Edelblut Commissioner	15 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.

**17 SAAS GENERAL TERMS AND CONDITIONS**

**17.1 REGULATORY GOVERNMENT APPROVALS**

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

**17.2 INSURANCE CERTIFICATE**

The Insurance Certificate should note the Certificate Holder in the lower left hand block including State of New Hampshire, Department of Education, Frank Edelblut, Commissioner of Education, 101 Pleasant Street, Concord, NH 03301.

**17.3 EXHIBITS**

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

**17.4 VENUE AND JURISDICTION**

Any action on the Contract may only be brought in the State of New Hampshire, Merrimack County Superior Court.

**17.5 SURVIVAL**

The terms, conditions and warranties contained in the Contract that by their context are intended to survive the completion of the performance, cancellation or termination of the Contract shall so survive, including, but not limited to, the terms of the Exhibit E Section 3: Records Retention and Access Requirements, Exhibit E Section 4: Accounting Requirements, and General Provisions-Section 11: Use of State's Information, Confidentiality and General Provisions- Section 14: Termination which shall all survive the termination of the Contract.

#### **17.6 FORCE MAJEURE**

Neither the 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.

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.

#### **17.7 NOTICES**

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 following addresses.

TO THE CONTRACTOR  
MELISSA LERNER  
N.W. 7504 PO BOX 1450  
MINNEAPOLIS, MN 55485  
TEL: (214) 294-9603  
E.MAIL:  
MELISSA.LERNER@EDEMENTUM.COM

TO STATE:  
STATE OF NEW HAMPSHIRE  
BUREAU OF ADULT EDUCATION  
21 SOUTH FRUIT STREET, SUITE 20  
CONCORD, NH 03301  
TEL: (603) 271-6699

#### **17.8 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 data. 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 shall become 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 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 proposal for any purpose other than fulfilling the service.

#### **17.9 DATA LOCATION**

The Contractor shall provide its services to the State and its end users solely from data centers in the U.S. Storage of State data at rest shall be located solely in data centers in the U.S. the Contractor shall not allow its personnel or contractors to store State data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. the Contractor shall permit its personnel and contractors to access State data remotely only as required to provide technical support. the Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited in this contract.

#### **17.10 SECURITY INCIDENT OR DATA BREACH NOTIFICATION**

The Contractor shall inform the State of any security incident or data breach in accordance with NH RSA359-C:20..

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 appropriate State identified contact immediately as defined in the SLA.

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.

#### **17.11 BREACH RESPONSIBILITIES**

This section only applies when a data breach occurs with respect to personal data within the possession or control of the Contractor.

a. 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.

b. 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 (1) cooperate with the State as reasonably requested by the State to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and (3) 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.

c. Indemnities granted by the Contractor

(1) The State shall provide prompt notice of any third party claims and allow the Contractor the right to control and settle any claim subject to the consent of the indemnified party and provide reasonable cooperation with the Contractor's defense.

(2) Are limited to reasonable expenses caused by the Contractor's uncured break, capped in the aggregate at twice the amount paid by the State during the past twelve months under the contract. This does not apply to indemnification liabilities related to the Contractor's breach of their IP infringement warranty.

(3) Exclude liabilities caused by any third party negligence or willful misconduct.

#### **17.12 NOTIFICATION OF LEGAL REQUESTS**

The Contractor shall contact the State upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the State's data under this contract, or which in any way might reasonably require access to the data of the State. the Contractor shall not respond to subpoenas, service of process and other legal requests related to the State without first notifying the State, unless prohibited by law from providing such notice.

#### **17.13 ACCESS TO SECURITY LOGS AND REPORTS**

The Contractor shall provide reports to the State in a format as agreed to by both the Contractor and the State. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all State files related to this contract.

**17.14 CONTRACT 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.

**17.15 DATA CENTER AUDIT**

The Contractor shall perform an independent audit of its data centers at least annually at its expense, and provide a redacted version of the audit report upon request. The Contractor may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.

**17.16 ADVANCE NOTICE**

The Contractor shall give advance notice (to be determined at the contract time and included in the SLA) to the State of any upgrades (e.g., major upgrades, minor upgrades, system changes) that may impact service availability and performance. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics. It usually includes a new version number.

**17.17 SECURITY**

The Contractor shall disclose its non-proprietary security processes and technical limitations to the State such that adequate protection and flexibility can be attained between the State and the Contractor. For example: virus checking and port sniffing — the State and the Contractor shall understand each other's roles and responsibilities.

**17.18 NON-DISCLOSURE AND SEPARATION OF DUTIES**

The Contractor shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of State data to that which is absolutely necessary to perform job duties.

**17.19 IMPORT AND EXPORT OF DATA**

The State shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the Contractor. This includes the ability for the State to import or export data to/from other service providers.

**17.20 RESPONSIBILITIES AND UPTIME GUARANTEE**

The Contractor shall be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing and maintaining the environments are the responsibilities of the Contractor. The system shall be available 24/7/365 (with agreed-upon maintenance downtime), and provide service to customers as defined in the SLA.

**17.21 RIGHT TO REMOVE INDIVIDUALS**

The State shall have the right at any time to require that the Contractor remove from interaction with State any the Contractor representative who the State believes is detrimental to its working relationship with the Contractor. The State shall provide the Contractor with notice of its determination, and the reasons it requests the removal. If the State signifies that a potential security violation exists with respect to the request, the Contractor shall immediately remove such individual. the Contractor shall not assign the person to any aspect of the contract or future work orders without the State's consent.

**STATE OF NEW HAMPSHIRE**  
**Department of Education, Bureau of Adult Education**  
**NH Adult Education Digital Technology Software**  
**SAAS CONTRACT 2018-165**  
**EXHIBIT A**  
**CONTRACT DELIVERABLES**

**a. Problem Statement** The NH Department of Education, Bureau of Adult Education needs to improve basic performance outcomes for adult education students as well as increasing the capacity of its programs to serve a greater number of students.

**b. Goals** – To provide opportunities for distance learning, blended/hybrid learning and supplemental activities for all seven types of programming funded by the Bureau of Adult Education.

**c. Project Overview**

The general scope of the project is to provide online learning opportunities in a cost-effective manner.

**d. Statement of Work**

Edmentum will provide a suite of online learning software to meet the educational needs of adult education students in all seven types of programs. The software will allow programs to extend learning, integrate technology in the classroom and provide distance learning opportunities.

**e. General Project Assumptions**

1. The Contractor will provide project tracking tools and templates to record and manage Issues, Risks, Change Requests, Requirements, Decision Sheets, and other documents used in the management and tracking of the project. The State of New Hampshire and the Contractor's Project Managers will review these tools and templates and determine which ones will be used for the project. Training on these tools and templates will be conducted at the start of each phase in which they will be used.
2. Prior to the commencement of work on Non-Software and Written Deliverables, the Contractor shall provide to the State a template, table of contents, or agenda for Review and prior approval by the State.
3. The Contractor shall ensure that appropriate levels of security are implemented and maintained in order to protect the integrity and reliability of the State's Information Technology resources, information, and services. Security requirements are defined in Appendix C-2 of the Request for Proposal. The Contractor shall provide the State resources, information, and Services on an ongoing basis, with the appropriate infrastructure and security controls to ensure business continuity and to safeguard the confidentiality and integrity of State networks, Systems and Data.
4. The Deliverables are set forth in the Schedule described below in Section 2. By unconditionally 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.

**STATE OF NEW HAMPSHIRE**  
**Department of Education, Bureau of Adult Education**  
**NH Adult Education Digital Technology Software**  
**SAAS CONTRACT 2018-165**  
**EXHIBIT A**  
**CONTRACT DELIVERABLES**

Pricing for Deliverables set forth in Exhibit B: *Price and Payment Schedule*. Pricing will be effective for the Term of this Contract, and any extensions thereof.

**DELIVERABLES, MILESTONES, AND ACTIVITIES SCHEDULE**

	Activity, Deliverable, or Milestone	Deliverable Type	Projected Delivery Date
<b>PLANNING AND PROJECT MANAGEMENT</b>			
1	Conduct Project Kickoff Meeting	Non-Software	8/8/2018
2	Project Status Reports	Written	8/8/2018
3	Work Plan	Written	8/8/2018
4	Security Plan	Written	8/8/2018
5	Communications and Change Management Plan	Written	8/8/2018
6	Deployment Plan	Written	8/8/2018
7	Comprehensive Training Plan and Curriculum	Written	9/1/2018
8	End User Support Plan	Written	8/8/2018
9	Business Continuity Plan	Written	8/8/2018
<b>INSTALLATION</b>			
10	Provide Software Licenses if needed	Written	8/8/2018
<b>TESTING</b>			
11	Conduct Integration Testing	Non-Software	8/8/2018
12	Conduct User Acceptance Testing	Non-Software	8/8/2018
13	Perform Production Tests	Non-Software	8/8/2018
14	Conduct System Performance (Load/Stress) Testing	Non-Software	8/8/2018
15	Certification of 3 <sup>rd</sup> Party Pen Testing and Application Vulnerability Scanning.	Non-Software	8/8/2018
<b>SYSTEM DEPLOYMENT</b>			
16	Conduct Training	Non-Software	9/1/2018
17	Provide Documentation	Written	8/8/2018
18	Execute Security Plan	Non-Software	8/8/2018
<b>OPERATIONS</b>			

State of NH Contract 2018-165  
 Exhibit A – Contract Deliverables – Part 3  
 Date: 9/11/18  
 Contractor's Initials SO

**STATE OF NEW HAMPSHIRE**  
**Department of Education, Bureau of Adult Education**  
**NH Adult Education Digital Technology Software**  
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**CONTRACT DELIVERABLES**

19	Ongoing Hosting Support	Non-Software	8/8/2018
20	Ongoing Support & Maintenance	Software	8/8/2018
21	Conduct Project Exit Meeting	Non-Software	If applicable

**STATE OF NEW HAMPSHIRE**  
**Department of Education, Bureau of Adult Education**  
**NH Adult Education Digital Technology Software**  
**SAAS CONTRACT 2018-165**  
**EXHIBIT B**  
**PRICE and PAYMENT SCHEDULE**

**1. PAYMENT SCHEDULE**

**1.1 Not to Exceed**

This is a Not to Exceed (NTE) Contract for the period between the Effective Date through June 30, 2021. 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.

**1.2**

	Activity, Deliverable, or Milestone	Projected Delivery Date	Price
<b>PLANNING AND PROJECT MANAGEMENT</b>			
1	Conduct Project Kickoff Meeting	8/8/2018	Included
2	Project Status Reports	8/8/2018	Included
3	Work Plan	8/8/2018	Included
4	Security Plan	8/8/2018	Included
5	Communications and Change Management Plan	8/8/2018	Included
6	Deployment Plan	8/8/2018	Included
7	Comprehensive Training Plan and Curriculum	9/1/2018	Included
8	End User Support Plan	8/8/2018	Included
9	Business Continuity Plan	8/8/2018	Included
<b>INSTALLATION</b>			
10	Provide Software Licenses if needed	8/8/2018	Included
<b>TESTING</b>			
11	Conduct Integration Testing	8/8/2018	Included
12	Conduct User Acceptance Testing	8/8/2018	Included
13	Perform Production Tests	8/8/2018	Included
14	Conduct System Performance (Load/Stress) Testing	8/8/2018	Included
15	Certification of 3 <sup>rd</sup> Party Pen Testing and Application Vulnerability Scanning.	8/8/2018	Included
<b>SYSTEM DEPLOYMENT</b>			
16	Conduct Training	9/30/2018	Included

State of NH Contract 2018-165  
 Exhibit B – Price and Payment Schedule – Part 3  
 Date: 9/1/18  
 Contractor's Initials SP

**STATE OF NEW HAMPSHIRE**  
**Department of Education, Bureau of Adult Education**  
**NH Adult Education Digital Technology Software**  
**SAAS CONTRACT 2018-165**  
**EXHIBIT B**  
**PRICE and PAYMENT SCHEDULE**

17	Provide Documentation	8/8/2018	Included
18	Execute Security Plan	8/8/2018	Included
<b>OPERATIONS</b>			
19	Ongoing Hosting Support	8/8/2018	Included
20	Ongoing Support & Maintenance	8/8/2018	Included
21	Conduct Project Exit Meeting	As applicable	Included

**1.4 SAAS Services Pricing Worksheet**

Pricing must reflect the payment of maintenance through the Contract end date. Price estimate should reflect the most optimistic implementation date. Actual payments may differ from the estimate if project start date slips or if implementation takes longer as this will cause a shorter maintenance period. Table should be customized to reflect the project and the cost composing the Contractor's proposal.

**Table 1.4: SAAS Services Pricing Worksheet**

SAAS SERVICES	Year 1	Year 2	Year 3	TOTAL
Web Site Hosting Fee	Included	Included	Included	Included
Technical Support and updates	Included	Included	Included	Included
Maintenance and Updates	Included	Included	Included	Included
Licensing	\$40,000.00	\$40,000.00	\$40,000.00	\$120,000.00
<b>GRAND TOTAL</b>	<b>\$40,000.00</b>	<b>\$40,000.00</b>	<b>\$40,000.00</b>	<b>\$120,000.00</b>

**2. 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 the 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.

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.

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**EXHIBIT B**  
**PRICE and PAYMENT SCHEDULE**

**3. 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.

Invoices shall be sent to:

Sarah Bennett  
Department of Education  
Bureau of Adult Education  
21 South Fruit Street, Suite 20  
Concord, NH 03301

**4. PAYMENT ADDRESS**

All payments shall be sent to the following address:

Edmentum  
N.W. 7504  
PO Box 1450  
Minneapolis, MN 55485-7504

**5. 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.

**6. CREDITS**

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

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**SPECIAL PROVISIONS**

Use the special provision section to show appropriate changes to the terms outlined in the General Provisions.

1. The Contractor shall comply with the following requirement in accordance with Section 502 of the Workforce Innovation and Opportunities Act of 2014.

**PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—** In the case of any equipment or product that may be authorized to be purchased with financial assistance provided using funds made available under title I or II or under the Wagner-Peyser Act (29 U.S.C. 49 et seq.), it is the sense of Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products.

2. The Contractor attests to compliance with the General Education Provision Act section 427 as attached to this Exhibit.
3. The software and other deliverables are subject to the express warranties stated in the standard sales terms found in Exhibit J Software Agreement and Attachment 2: Edmentum NH Adult Order Form with Payment Terms. As is typical in the software industry:
  - a. The software is not warranted to be error-free or to perform without interruption.
  - b. The web-based software will not be available during scheduled maintenance periods. Edmentum retains the right to update, replace, or modify the products periodically and will:
    - i. provide reasonable advance notice
    - ii. limit the interruptions or complications related to such alterations.
4. There shall be no personal data entered into the system with the exception of the users name, email address and program name.

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**SPECIAL PROVISIONS**

**GENERAL EDUCATION PROVISIONS ACT (GEPA) Sec. 427 Attestation –**  
**WORKFORCE INVESTMENT ACT, TITLE II – ADULT EDUCATION AND FAMILY**  
**LITERACY**

This attestation outlines the steps that \_\_\_\_\_ will ensure be taken  
(Applicant)  
should the Adult Education application be funded.

The purpose of this requirement is to assist the United States Department of Education in implementing its mission to ensure equal access to education and to promote educational excellence.  
If funded, the following steps will be taken to ensure equitable access to and equitable participation in the project or activity to be conducted with federal adult education assistance by addressing the access needs of students, teachers, and other program beneficiaries in order to overcome barriers to equitable participation, including barriers based on gender, race, color, national origin, disability and age.  
The Act highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, determine whether these or other barriers may prevent students, teachers, etc., from such access or participation in the federally-funded project or activity. Please describe the steps to be taken to comply with the GEPA requirements.

Project Director: (Name and Title) \_\_\_\_\_

Signature of Project Director: \_\_\_\_\_ Date: \_\_\_\_\_

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**EXHIBIT D**  
**ADMINISTRATIVE SERVICES**

**1. TRAVEL EXPENSES**

The Contractor must assume all reasonable travel and related expenses. All labor rates will be "fully loaded", including, but not limited to: meals, hotel/housing, airfare, car rentals, car mileage, and out of pocket expenses.

**2. SHIPPING AND DELIVERY FEE EXEMPTION**

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

**3. ACCESS/COOPERATION**

As applicable, and subject to the applicable laws and regulations, 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.

The State will use reasonable efforts to provide approvals, authorizations, and decisions reasonably necessary to allow the Contractor to perform its obligations under the Contract.

**4. STATE-OWNED DOCUMENTS AND COPYRIGHT PRIVILEGES**

The Contractor shall provide the State access to all State-owned documents, materials, reports, and other work in progress relating to this Contract. Upon expiration or termination of the Contract with the State, the Contractor shall turn over all State-owned documents, material, reports, and work in progress relating to this Contract to the State at no additional cost to the State. Documents must be provided in both printed and electronic format.

**5. RECORDS RETENTION AND ACCESS REQUIREMENTS**

The Contractor shall agree to the conditions of all applicable State and federal laws and regulations, which are incorporated herein by reference, regarding retention and access requirements, including without limitation, retention policies consistent with the Federal Acquisition Regulations (FAR) Subpart 4.7 *Contractor Records Retention*.

The Contractor and its Subcontractors shall maintain 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. The 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

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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 no 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. The Contractor shall include the record retention and review requirements of this section in any of its subcontracts.

The State agrees that books, records, documents, and other evidence of accounting procedures and practices related to the Contractor's cost structure and profit factors shall be excluded from the State's review unless the cost of any other Services or Deliverables provided under the Contract is calculated or derived from the cost structure or profit factors.

**6. ACCOUNTING REQUIREMENTS**

The Contractor shall maintain an accounting system in accordance with Generally Accepted Accounting Principles. The costs applicable to the Contract shall be ascertainable from the accounting system and the Contractor shall maintain records pertaining to the Services and all other costs and expenditures.

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**EXHIBIT E**  
**IMPLEMENTATION SERVICES**

**1. PROJECT MANAGEMENT**

The State believes that effective communication and reporting are essential to 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.

- a. **Introductory Meeting:** Participants will include the Contractor's Key Project Staff and State Project leaders from both Department of Education and the Department of Information Technology. This meeting will enable leaders to become acquainted and establish any preliminary Project procedures.
- b. **Kickoff Meeting:** Participants will include the State and the Contractor's Project Team and major stakeholders. This meeting is to establish a sound foundation for activities that will follow.
- c. **Status Meetings:** Participants will include, at the minimum, the Contractor's Project Manager and the State Project Manager. These meetings will be conducted at least quarterly and address overall Project status and any additional topics needed to remain on schedule and within budget. A status and error report from the Contractor shall serve as the basis for discussion.
- d. **The Work Plan:** must be reviewed at each Status Meeting and updated, at minimum, on a quarterly basis, in accordance with the Contract.
- e. **Special Meetings:** Need may arise for a special meeting with State leaders or Project stakeholders to address specific issues.
- f. **Exit Meeting:** Participants will include Project leaders from the Contractor and the State. Discussion will focus on lessons learned from the Project and on follow up options that the State may wish to consider.

The State expects the Contractor to prepare agendas and background for and minutes of meetings. Background for each status meeting must include an updated Work Plan. Drafting of formal presentations, such as a presentation for the kickoff meeting, will also be the Contractor's responsibility.

The Contractor's Project Manager or the Contractor's Key Project Staff shall submit quarterly status reports in accordance with the Schedule and terms of this Contract. All status reports shall be prepared in formats approved by the State. The Contractor's Project Manager shall assist the State's Project Manager, or itself produce reports related to Project Management as reasonably requested by the State, all at no additional cost to the State. The Contractor shall produce Project status reports, which shall contain, at a minimum, the following:

1. Project status related to the Work Plan;
2. Deliverable status;
3. Accomplishments during weeks being reported;
4. Planned activities for the upcoming quarter;
5. Future activities; and

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6. Issues and concerns requiring resolution.
7. Report and remedies in case of falling behind Schedule

As reasonably requested by the State, the Contractor shall provide the State with information or reports regarding the Project. The Contractor shall prepare special reports and presentations relating to Project Management, and shall assist the State in preparing reports and presentations, as reasonably requested by the State, all at no additional cost to the State.

## **2. IMPLEMENTATION STRATEGY**

### **2.1 Key Components**

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

The Contractor and the State shall adopt a change management approach to identify and plan key strategies and communication initiatives.

The Contractor's team will provide training templates as defined in the Training Plan, which will be customized to address the State's specific requirements. Decisions regarding format, content, style, and presentation shall be made early on in the process, by the State, providing sufficient time for development of material as functionality is defined and configured.

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.

### **2.2 Timeline**

The timeline is set forth in the Work Plan. During the initial planning period Project task and resource plans will be established for: the preliminary training plan, the change management plan, communication approaches, Project standards and procedures finalized, and team training initiated. Timing will be structured to recognize interdependencies between applications and structure a cost effective and timely execution. Processes will be documented, training established, and the application will be ready for Implementation in accordance with the Work Plan.

### **2.3 Change Management and Training**

The Contractor's change management and training services shall be focused on developing change management and training strategies and plans. Its approach relies on State resources for the execution of the change management and end user training.

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**EXHIBIT F**  
**TESTING SERVICES**

The Contractor shall provide the following Products and Services described in this Exhibit F, including but not limited to:

1. The Contractor shall bear all responsibilities for following the testing requirements related to application system development and maintenance as defined in Table C-2, Testing.
2. The Contractor is responsible for appropriate performance, tuning, load tests and penetration tests for new application releases. In addition, the Contractor must provide a report of the results of such tests to the State Technical Lead.
3. The Contractor shall bear all responsibilities for implementing a methodology for penetration testing that includes the following:
  - a. Is based on industry-accepted penetration testing approaches (for example, NIST SP800-115)
  - b. Includes coverage for the entire CDE perimeter and critical systems
  - c. Includes testing from both inside and outside the network
  - d. Includes testing to validate any segmentation and scope-reduction controls
  - e. Defines application-layer penetration tests to include, at a minimum, the vulnerabilities listed in Requirement 6.5
  - f. Defines network-layer penetration tests to include components that support network functions as well as operating systems
  - g. Includes review and consideration of threats and vulnerabilities experienced in the last 12 months
  - h. Specifies retention of penetration testing results and remediation activities results.
4. Perform external penetration testing at least annually and after any significant infrastructure or application upgrade or modification (such as an operating system upgrade, a sub-network added to the environment, or a web server added to the environment)
5. Exploitable vulnerabilities found during penetration testing are corrected and testing is repeated to verify the corrections.
6. Verification of User Acceptance Testing through a local adult education center designated by the State Project Manager,

UAT begins upon completion of the Software configuration as required and user training according to the Work Plan. Testing ends upon issuance of a letter of UAT Acceptance by the State.

The User Acceptance Test (UAT) is a verification process performed in a copy of the production environment. The User Acceptance Test verifies System functionality against predefined Acceptance criteria that support the successful execution of approved business processes.

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**TESTING SERVICES**

UAT will also serve as a performance and stress test of the System. It may cover any aspect of the new System, including administrative procedures such as backup and recovery. The results of the UAT provide evidence that the new System meets the User Acceptance criteria as defined in the Work Plan.

The results of the User Acceptance Test provide evidence that the new System meets the User Acceptance criteria as defined in the Work Plan.

Upon successful conclusion of UAT and successful System deployment, the State will issue a letter of UAT Acceptance and the respective Warranty Period shall commence

<b>Activity Description</b>	The System User Acceptance Tests verify System functionality against predefined Acceptance criteria that support the successful execution of approved processes.
<b>Contractor Team Responsibilities</b>	<ul style="list-style-type: none"> <li>• Provide the State an Acceptance Test Plan and selection of test scripts for the Acceptance Test.</li> <li>• Monitor the execution of the test scripts and assist as needed during the User Acceptance Test activities.</li> <li>• Work jointly with the State in determining the required actions for problem resolution.</li> </ul>
<b>State Responsibilities</b>	<ul style="list-style-type: none"> <li>• Approve the development of the User Acceptance Test Plan and the set of data for use during the User Acceptance Test.</li> <li>• Validate the Acceptance Test environment.</li> <li>• Execute the test scripts and conduct User Acceptance Test activities.</li> <li>• Document and summarize Acceptance Test results.</li> <li>• Work jointly with the Contractor in determining the required actions for problem resolution.</li> <li>• Provide Acceptance of the validated Systems.</li> </ul>
<b>Work Product Description</b>	The Deliverable for User Acceptance Tests is the User Acceptance Test Results. These results provide evidence that the new System meets the User Acceptance criteria defined in the Work Plan.

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**EXHIBIT G**  
**MAINTENANCE AND SUPPORT SERVICES**

**1. SYSTEM MAINTENANCE**

The Contractor shall maintain and support the System in all material respects as described in the applicable program Documentation through the contract end date.

**1.1 CONTRACTOR'S RESPONSIBILITY**

The Contractor shall maintain the System in accordance with the Contract.

**1.1.1 Maintenance Releases**

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.

**1.1.2 Standard Agreement**

The State will adopt the Contractor's standard maintenance agreement modified to address terms and conditions inconsistent with State Statutes and general State information technology practices.

**1.2 SYSTEM SUPPORT**

**1.2.1** The Contractor will be responsible for performing on-site or remote technical support in accordance with the Contract Documents, including without limitation the requirements, terms, and conditions contained herein.

**1.2.2** 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:

**1.2.2.1 Class A Deficiencies** – The Contractor shall have available to the Department on-call telephone assistance, with issue tracking available to the Department, during Department business hours (M – F, 8:00 am – 4:30 pm) with an email/telephone response within two (2) hours of request, or the Contractor shall provide support with remote diagnostic Services within four (4) business hours of a request;

**1.2.2.2 Class B & C Deficiencies** – The Department shall notify the Contractor of such Deficiencies during regular business hours and the Contractor shall respond back within two (2) hours of notification of planned corrective action.

**2. SUPPORT OBLIGATIONS AND TERM**

**2.1** 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, including but not limited to S1.1 through S1.20 of the Support and Maintenance Requirements in Exhibit H *Requirements*, Attachment 1.

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- 2.1.1 The Contractor shall maintain a record of the activities related to warranty repair or maintenance activities performed for the Department.
- 2.1.2 For all maintenance Service calls, the Contractor shall ensure the following information will be collected and maintained: nature of Deficiency; current status of the Deficiency; action plans, dates and times; expected and actual completion time; Deficiency resolution information; Resolved by; Identifying number i.e. work order number; and Issue identified by.
- 2.1.3 The Contractor must work with the Department to identify and troubleshoot potentially large scale System failures or Deficiencies by collecting the following information: mean time between reported Deficiencies with the Software; diagnosis of the root cause of the problem; and identification of repeat calls or repeat Software problems.
- 2.2 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 in Part 2 Section 13.1.1.2, 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
- 2.3 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 in Part 1 Section 14.

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**EXHIBIT H**  
**REQUIREMENTS**

Attachment 1: Project Requirements, Table C-2, is hereby incorporated.

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**WORK PLAN**

The Contractor's Project Manager and the State Project manager shall finalize the Work Plan for Implementation within one (1) day of the Effective Date and further refine the tasks required to implement the Project. The elements of the preliminary Work Plan are documented in accordance with the Contractor's plan to implement the System. 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 for Implementation created by the Contractor and the State is set forth at the end of this Exhibit.

In conjunction with the Contractor's Project Management methodology, which shall be used to manage the Project's life cycle, the Contractor 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 Contractor's team members), refine the Project's scope, and establish the Project's Schedule. The Plan is documented in accordance with the Contractor's Work Plan and shall utilize Edmentum suite of software as indicated in Attachment 2 - Vendor Quote to support the ongoing management of the Project.

## 1. ASSUMPTIONS

### A. General

- The State shall provide team members with decision-making authority to support the Implementation efforts, at the level outlined in the Request for Proposal Document State Staffing Matrix.
- All State tasks must be performed in accordance with the revised Work Plan.
- All key decisions will be resolved within five (5) business days. Issues not resolved within this initial period will be escalated to the State Project Manager for resolution.
- Any activities, decisions or issues taken on by the State that affect the mutually agreed upon Work Plan timeline, scope, resources, and costs shall be subject to the identified Change Control process.
- The Contractor shall maintain an accounting system in accordance with Generally Accepted Accounting Principles (GAAP).

### B. Project Management

- The State shall approve the Project Management Methodology used for the Project.
- The State shall provide the Project Team with reasonable access to the State personnel as needed to complete Project tasks.
- The Contractor assumes that an Alternate Project Manager may be appointed from time to time to handle reasonable and ordinary absences of the Project Manager.

### C. Project Schedule

- Deployment is planned to begin on 8/8/2018 with a planned go-live date of 8/8/2018.

### D. Reporting

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State of NH Contract 2018-165  
Exhibit I – Work Plan – Part 3  
Date: 9/11/18  
Contractor's Initials

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**WORK PLAN**

- The Contractor shall conduct quarterly status meetings, and provide reports that include, but are not limited to, minutes, action items, test results, and Documentation.

**E. User Training**

- The Contractor's Team shall lead the development of the end-user training plan.
- A train the trainer approach shall be used for the delivery of end-user training.
- The State is responsible for the delivery of end-user training.
- The State shall schedule and track attendance on all end-user training classes.

**F. Performance and Security Testing**

- The Contractor's Team shall provide a performance test workshop to identify the key scenarios to be tested, the approach and tools required, and best practices information on performance testing.
- The State shall work with the Contractor on all testing as set forth in Contract Exhibit F – *Testing Services*.

**2. ROLES AND RESPONSIBILITIES**

**A. Contractor Team Roles and Responsibilities**

**1) Contractor Team Project Executive**

The Contractor Team's Project Executives (Contractor and Subcontractor Project Executives) shall be responsible for advising on and monitoring the quality of the Services throughout the Project life cycle. The Project Executive shall advise the Contractor Team Project Manager and the State's Project leadership on the best practices for implementing the Contractor Software Solution within the State. The Project Executive shall participate in the definition of the Project Plan and provide guidance to the State's Team.

**2) Contractor Team Project Manager**

The Contractor Team Project Manager shall have overall responsibility for the day-to-day management of the Project and shall plan, track, and manage the activities of the Contractor Implementation Team. The Contractor Team Project Manager will have the following responsibilities:

- Maintain communications with the State's Project Manager;
- Work with the State in planning and conducting a kick-off meeting;
- Create and maintain the Work Plan;
- Assign the Contractor Team consultants to tasks in the Implementation Project according to the scheduled staffing requirements;
- Define roles and responsibilities of all the Contractor Team members;
- Provide quarterly and month update progress reports to the State Project Manager;
- Review task progress for time, quality, and accuracy in order to achieve progress;
- Review requirements and scheduling changes and identify the impact on the Project in order to identify whether the changes may require a change of scope;

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- Implement scope and Schedule changes as authorized by the State Project Manager and with appropriate Change Control approvals as identified in the Implementation Plan;
- Inform the State Project Manager and staff of any urgent issues if and when they arise;
- Provide the State completed Project Deliverables and obtain sign-off from the State's Project Manager.
- Manage handoff to the Contractor operational staff;
- Manage Transition Services as needed.

**3) Contractor Team Analysis**

The Contractor Team shall conduct analysis of requirements, validate the Contractor Team's understanding of the State business requirements by application, and perform business requirements mapping:

- Construct and confirm application test case scenarios;
- Produce application configuration definitions and configure the applications;
- Conduct testing of the configured application;
- Produce functional Specifications for extensions, conversions, and interfaces;
- Assist the State in the testing of extensions, conversions, and interfaces;
- Assist the State in execution of the State's Acceptance Test;
- Conduct follow-up meetings to obtain feedback, results, and concurrence/approval from the State;
- Assist with the correction of configuration problems identified during system, integration and Acceptance Testing; and
- Assist with the transition to production.

**4) Contractor Team Tasks**

The Contractor team shall assume the following tasks:

- Development and review of functional and technical Specification to determine that they are at an appropriate level of detail and quality;
- Development and Documentation of conversion and interface programs in accordance with functional and technical Specifications;
- Development and Documentation of installation procedures; and
- Unit testing of conversions and interfaces developed; and
- System Integration Testing.

**B. State Roles and Responsibilities**

The following State resources have been identified for the Project. The time demands on the individual State team members will vary depending on the phase and specific tasks of the Implementation. The demands on the Subject Matter Experts' time will vary based on the need determined by the State Leads and the phase of the Implementation.

**1) State Project Manager**

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The State Project Manager shall work side-by-side with the Contractor Project Manager. The role of the State Project Manager is to facilitate completion of all tasks assigned to State staff, and communicate Project status on a regular basis. The State Project Manager represents the State in all decisions on Implementation Project matters, provides all necessary support in the conduct of the Implementation Project, and provides necessary State resources, as defined by the Work Plan and as otherwise identified throughout the course of the Project. The State Project Manager has the following responsibilities:

- Plan and conduct a kick-off meeting with assistance from the Contractor team;
- Assist the Contractor Project Manager in the development of a detailed Work Plan;
- Identify and secure the State Project Team members in accordance with the Work Plan;
- Define roles and responsibilities of all State Project Team members assigned to the Project;
- Identify and secure access to additional State end-user staff as needed to support specific areas of knowledge if and when required to perform certain Implementation tasks;
- Communicate issues to State management as necessary to secure resolution of any matter that cannot be addressed at the Project level;
- Inform the Contractor Project Manager of any urgent issues if and when they arise; and
- Assist the Contractor team staff to obtain requested information if and when required to perform certain Project tasks.
- Manage handoff to State operational staff;
- Manage State staff during Transition Services as needed.

**2) State Subject Matter Expert(s) (SME)**

The role of the State SME is to assist application teams with an understanding of the State's current business practices and processes, provide agency knowledge, and participate in the Implementation. Responsibilities of the SME include the following:

- Be the key user and contact for their Agency or Department;
- Attend Project Team training and acquire in-depth functional knowledge of the relevant applications;
- Assist in validating and documenting user requirements, as needed;
- Attend Project meetings when requested; and
- Assist in training end users in the use of the Contractor Software Solution and the business processes the application supports.

**3) State Technical Lead and Architect**

The State's Technical Lead and Architect reports to the State's Project Manager and is responsible for leading and managing the State's technical tasks. Responsibilities include:

- Attend technical training as necessary to support the Project;
- Assist the State and the Contractor Team Project Managers to establish the detailed Work Plan;
- Manage the day-to-day activities of the State's technical resources assigned to the Project;
- Work with State IT management to obtain State technical resources in accordance with the Work Plan;

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**WORK PLAN**

- Work in partnership with the Contractor and lead the State technical staff's efforts in documenting the technical operational procedures and processes for the Project. This is a Contractor Deliverable and it will be expected that the Contractor will lead the overall effort with support and assistance from the State; and
- Represent the technical efforts of the State

**3. SOFTWARE APPLICATION**

See Attachment 3: System Requirements

**4. PRELIMINARY WORK PLAN**

The following Table 7.1 provides the preliminary agreed upon Work Plan for the Contract.

Table 7.1: High Level Preliminary NH Project Plan

Task Name	Duration	Start	Finish
Purchase licenses	1 day	8/8/2018	
Train the Trainer	Ongoing	9/1/2018	

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1. LICENSE GRANT

In the event of conflict with the State terms and conditions as indicated in Part 1, General Provisions, of this contract, the State terms and conditions will take precedence.



STANDARD SERVICE PURCHASE AND SOFTWARE LICENSE TERMS

The Terms and Conditions contained in this document (the "Standard Terms") apply to any transaction whereby we (sometimes referred to in this document as "we" "us" or "our") provide to you our customer (referred to as "you" or "your" as identified in more detail on the applicable Order Form ("Order Form")) (1) license rights to use our Software for a fixed term, (2) Materials for use with the Software, or (3) Professional Services. These Standard Terms are an integral part of an agreement (the "Agreement") that consists of (in order of precedence) an Order Form, these Standard Terms, and any documents incorporated by reference into either the Order Form or Standard Terms (including those incorporated by hyperlink reference). You acknowledge that the Order Form and the Standard Terms constitute the entire agreement between the parties and will supersede and replace any provisions in your purchase order or other contracting or purchasing documents that do not exactly mirror these terms. The Agreement will be effective as of the Order Date specified on the Order Form and will be binding when the Order Form has been executed by you. We reserve the right to require your submission of one or more purchase orders in accordance with the terms outlined in your Order Form. Capitalized terms used throughout the Agreement are defined in the Order Form, in section 5.0 (below), and elsewhere in these Standard Terms. These Standard Terms may only be superseded or amended by other terms and conditions you and we have specifically documented in a signed Order Form.

1.0 SOFTWARE: The following terms and conditions will apply to your transaction with us as described in more detail on the Order Form:

1.1 General License Terms. All Software license rights that we grant you are specifically subject to the following general terms and conditions:

1.1.1 All licenses are non-exclusive, non-transferable and non-assignable.

1.1.2 We either own or have licensed from third parties all rights necessary to grant the licenses being granted you in the Software. We or our licensors own and retain all rights, title and interest in and to the Software and all ideas, concepts, methodologies, formats, specifications, and other know-how furnished by us or our licensors in connection with this Agreement, as well as all related intellectual property rights.

1.1.3 All access and use of Software under this Agreement will be subject to our Privacy Policy, which can be found at <http://www.edmentum.com/Privacy> which is expressly made a part of this Agreement.

1.1.4 Licenses granted under this Agreement will be automatically revoked if this Agreement is terminated and automatically terminate on the license expiration date as identified on the Order Form. We reserve the right to suspend or revoke any license granted under this Agreement if you breach this Agreement.

1.1.5 We reserve the right to terminate access to any Software to the extent we end of life or similar the Software. If we exercise this right we will transition you to an appropriate alternative Software product that we own or license.

1.2 Restrictions. You and your Users will use the Software solely for the purposes stated in the applicable license grants and will not: (i) modify, copy or create derivative works based on the Software; (ii) frame or mirror any content forming part of the Software, other than for your own internal educational or training purposes during the license term and not in violation of any use or User restrictions; (iii) reverse engineer, decompile or disassemble the Software; (iv) access or allow others to access the Software in order to build, market or offer a competitive product or service, or copy any ideas, features, functions, answers, questions, contents or graphics of the Software; (v) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Software available to any third party, other than to Users as contemplated by this Agreement; (vi) send spam or otherwise unsolicited messages in violation of applicable laws; (vii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (viii) intentionally send or store any viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs; (ix) interfere with or disrupt the integrity or performance of the Software or the data contained therein; (x) attempt to gain unauthorized access to the Software or its related systems or networks; or (xi) publicly display or publicly perform the Software without our prior written permission.

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**1.3 Software Operability:**

**1.3.1 Maintenance and Access.** During the Subscription Period, we will use commercially reasonable efforts to make the Software available (subject to routine maintenance windows and unavailability not caused by us) to you and your Users via the Internet 24 hours a day, 7 days a week. All access rights for you and your Users will be via the worldwide web using a browser and Internet connection compliant with the System Requirements (described in section 1.4).

**1.3.2 Outage Periods.** The term "Outage Period" means a period of more than 48 consecutive hours in which your Users are prevented from accessing the Software due to factors completely within our control during a period that you are not in breach of this Agreement. Outage Periods exclude (a) planned downtime and (b) any Force Majeure event. If you experience an Outage Period, then upon your written request we will issue you a credit for the pro-rated share of fees you have paid for usage during the month during which the Outage Period occurs. Your request for this credit must be made within 30 days after the end of the Outage Period. Your sole and exclusive remedy for an Outage Period will be the above credit.

**1.4 System Requirements.** Our System Requirements document (found at <http://www.edmentum.com/support>) ("System Requirements") details the necessary hardware, software, system configuration, network infrastructure, bandwidth and other operational requirements necessary for you to successfully operate and use the Software. The System Requirements are subject to periodic change. You acknowledge that you are responsible for the cost, operation and availability of, and you and your Users compliance with, all elements of the System Requirements.

**1.5 Responsibility for User Activity.** You are responsible for all activities that occur in User accounts and for compliance by your Users with these Standard Terms. You will: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (ii) use commercially reasonable efforts to prevent unauthorized access to, disclosure of or use of the Software, and notify us promptly of any such unauthorized access or use; and (iii) in connection with this Agreement, comply (and ensure compliance by your Users) with all applicable local, state and federal laws, rules and regulations.

**1.6 Intellectual Property**

**1.6.1 Reservation of Rights.** The Software we are providing is licensed to you, not sold. Subject to the limited rights expressly granted to you and your Users herein, we reserve all rights, title and interest in and to the Software and any Materials we provide, including all related intellectual property rights (except for those owned by our third-party vendors and licensors, which are reserved to them). No other rights are granted to you or your Users.

**1.6.2 Rights to Customer Data.** As between you and us, you own all rights, title and interest in and to all Customer Data. You hereby grant us a non-exclusive, royalty free license to perpetually use, modify, distribute and work with the Customer Data to the extent that we do so in compliance with applicable law and our Online Learning Programs Privacy Policy.

**1.6.3 Suggestions.** We will have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Software any suggestions, enhancement requests, recommendations or other feedback provided by you or your Users relating to the Software.

**1.6.4 Custom Learning Paths**

a. **Rights to Custom Learning Paths.** Certain Software allows you to customize the instructional content of the Software to suit your instructional needs. "Your Learning Paths" refers to the custom learning paths you create using this feature of the Software. We make no warranties or commitments related to your ability to access or use Your Learning Paths during the term of your licenses or at the expiration or termination of your licenses.

b. **Our Use of Your Learning Paths.** We may use or modify Your Learning Paths and may provide them to our other customers.

c. **Customer Created, Modified or Stored Content.** Certain Software enables you to create, customize or store content, documentation or otherwise. If you do, you accept, agree and acknowledge that (i) we can use and disseminate such items,

(ii) at the expiration or termination of your licenses, we will not be returning these items to you and you have no rights in such items and (iii) you are responsible for ensuring that all laws, regulations and judicial precedence is followed in such creation, customization, disclosure or storage, including but not limited to intellectual property laws and you will indemnify us and our affiliates, successors and assigns in the event you fail to do so.

**1.7 Limited Warranty for Software.** Subject to the terms of Section 4.6, we warrant that the Software will perform in substantial

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accordance with the applicable Documentation during the Subscription Period. This warranty is contingent on your use of the Software in accordance with this Agreement and the applicable Documentation. If we breach this express warranty, and you promptly inform us of such in writing, we will at our option and expense: (a) modify the affected Software to generally conform with the applicable Documentation, or (b) provide a replacement for the affected Software which generally conforms with that Documentation, or (c) refund you the portion of your license price related to the applicable Software that is attributable to the remaining Subscription Period. This will be our sole obligation, and your sole remedy, with respect to any breach of this warranty. EXCEPT FOR THE EXPRESS WARRANTY PROVIDED IN THIS SECTION, THE SOFTWARE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY ADDITIONAL WARRANTIES OF ANY KIND. WE DO NOT WARRANT THAT THE SOFTWARE WILL PERFORM UNINTERRUPTED OR BE ERROR-FREE OR THAT THE SOFTWARE WILL MEET YOUR PARTICULAR REQUIREMENTS.

- 2.0 THIRD PARTY SOFTWARE AND SERVICES.** The following terms and conditions will apply to all Third-Party Software and Third Party Services.
- 2.1 Subject to Third Party's Warranties and Terms.** Third Party Software and Third Party Services are distributed by us as a licensor, distributor or reseller. These products and services are provided subject to the separate license and sale terms, conditions and restrictions required by the third party. WE DO NOT PROVIDE, AND WE EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, ON ANY THIRD-PARTY SOFTWARE AND SERVICES WE SUPPLY OR MAKE AVAILABLE TO YOU. IN ADDITION, WE DO NOT GUARANTEE THE AVAILABILITY OF SUCH THIRD-PARTY SOFTWARE OR SERVICES AND SUCH SOFTWARE OR SERVICES MAY BE MODIFIED OR REMOVED AT ANY TIME.
- 2.2 Warranty Claims.** We will use reasonable commercial endeavors to facilitate warranty claims you may make against the third party supplying such products or services. This is our sole obligation relative to these products or services.
- 3.0 PROFESSIONAL SERVICES.** Professional Services listed on the Order Form will be provided subject to the following terms and conditions:
- 3.1 Mutual Cooperation.** You and we mutually agree to cooperate with each other in a professional and courteous manner in the performance of our respective duties in the delivery of Professional Services.
- 3.2 Scheduling Changes Caused by You.** You agree to notify us at least 5 business days in advance of your intention to reschedule previously confirmed on-site Professional Services sessions. If you do not provide such notice, and we are unable to re-assign the resources scheduled to provide your Professional Services, we reserve the right to charge you a cancellation fee of up to \$750 for each day cancelled without such notice.
- 3.3 Scheduling Changes Caused by Us.** If we are required to reschedule (except for reasons caused in whole or in part by you or that are outside our reasonable control) a previously confirmed on-site Professional Services delivery session, we will use all reasonable efforts to provide you at least 5 business days' notice. If we do not provide such notice, and you incur reasonable direct, non-refundable expenses which you have made good faith efforts to avoid, we will upon your written request (which must include documentation of these expenses) provide you a credit for such expenses. In no case, however, will the amount of credit exceed \$750.
- 3.4 Acceptance of Services and Warranty.**
- 3.4.1 Warranty and Acceptance.** We warrant that the Professional Services we provide will be performed in a workmanlike manner. If you reasonably determine that the Professional Services have not met this standard, you must provide us written notice specifying any deficiencies in detail within 10 business days after the service delivery. We will then use reasonable commercial efforts to cure any such deficiencies promptly which may include our providing additional Professional Services at our expense. If you do not provide notice of any deficiencies to us within the 10-day period, your acceptance of the Professional Services will be considered final.
- 3.4.2 Failure to Cure.** If you give us notice under subsection 3.4.1 and we are unable to cure the deficiency within 60 days after your notice, you may terminate the directly affected portions of service and obtain a refund of amounts you have paid for the terminated Professional Services.
- 3.4.3 Sole remedies.** The remedies specified in this section 3.4 are your only Professional Services related remedies.
- 3.5 Compliance with Workplace Rules.** We will have the person or persons we assign to perform the Professional Services comply with those of your lawful workplace rules you have provided to us and them in writing in advance.

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Contractor's initials: SO

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3.6 **Subcontractors.** We may, in our reasonable discretion, use third parties, including, but not limited to agents, to perform any of our obligations regarding delivery of the Professional Services.

**4.0 GENERAL TERMS**

**4.1 Fees and Payment**

- 4.1.1 **Fees.** You agree to timely pay all amounts due to us as shown on the Order Form and acknowledge that by submitting a signed Order Form, you are representing to us that the employee or agent signing on your behalf has the requisite authority to bind you to the terms and conditions of the Agreement, including the payment obligations identified on the Order Form. Except if specified in the Order Form or in section 1.3.2 (re Outages) all such amounts are non-cancellable and non-refundable. To the extent that you fail to timely pay all amounts due as identified on the applicable Order Form, you accept that we can institute any and all collection efforts and legal claims that we deem appropriate and that you shall pay us for all costs and expenses (including attorney's fees) we incur in connection with such collection efforts and claims.
- 4.1.2 **Taxes.** Except to the extent you provide us with a valid tax exemption certificate authorized by the appropriate taxing authority covering all applicable taxes otherwise due and payable, we will invoice you for and you will pay any applicable direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including, but not limited to, value-added, gross receipts, sales, use or withholding taxes associated with your license or purchases under this Agreement, except for taxes based on our net income or real property.
- 4.1.3 **Acceptance.** All Software will be deemed accepted upon our making it available to you online and will thereafter be subject to the limited warranty provision of this Agreement.

**4.2 Confidentiality**

- 4.2.1 **Definition of Confidential Information.** "Confidential Information" means all confidential and proprietary information disclosed by one party (the "Discloser") to the other (the "Receiver") and that is either designated as confidential or of a type that should be reasonably expected to be confidential. Confidential Information includes the Customer Data, our Software, business and marketing plans, technology and technical information, product designs, and business processes, but does not include any information that, without breach of obligation owed to Discloser: (a) is or becomes generally known to the public; (b) was known to the Receiver prior to its disclosure by the Discloser; (c) was independently developed by the Receiver; or (d) is received from a third party.
- 4.2.2 **Protection.** The Receiver will not disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this Agreement, except with the Discloser's prior written permission. The Receiver will protect the Confidential Information of the Discloser as if it were the Receiver's own Confidential Information, and at a minimum, with reasonable care. This obligation will survive termination of this Agreement for a period of 3 years. You accept and acknowledge that you input the information and data into our Software, including any Student personal information that you deem necessary and that we have no control over such input, that certain third parties may have access to such information and data to assist in enhancing the Software and in facilitating your Users use and access of the Software and that we may retain the data and information that you provide in accordance with our normal retention and destruction practices on certain of our servers, SAN and/or cloud backups.
- 4.2.3 **Compelled Disclosure.** If by court order, legal requirement or regulatory authority the Receiver is forced to disclose Confidential Information of the Discloser, the Receiver will (to the extent legally permitted) give the Discloser prompt notice of the order and will provide, at the Discloser's request and cost, reasonable assistance to contest the disclosure.
- 4.2.4 **Remedies.** If the Receiver discloses or uses (or threatens to disclose or use) any Confidential Information of the Discloser in breach of this section, the Discloser will have the right, in addition to any other available remedies, to seek injunctive relief to prevent further (or the threatened) disclosure.

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**4.3 Indemnities**

**4.3.1 Our Indemnification of You.** Subject to the conditions described below and the provisions of section 4.6, we will defend, indemnify and hold you harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings (collectively called "Claims") made or brought against you by a third party, as follows:

- a. **For Personal Injury or Property Damage.** Our indemnity covers Claims alleging personal injury or property damage to the extent caused by the willful misconduct or gross negligence of our personnel while on your premises.
- b. **For Infringement.** Our indemnity covers Claims alleging that your Users use of the Software in accordance with the terms of this Agreement, or any Materials furnished by us in connection with this Agreement infringes the Intellectual property rights of a third party. We will have no indemnification obligations or other liability for any claim of infringement or misappropriation to the extent (a) based on specifications or directions you provided, (b) your use of a superseded or altered version of some or all of the Software or Materials if infringement would have been avoided by the use of a subsequent or unaltered release of the Software or Materials provided to you or (iii) your use occurs in a jurisdiction other than the United States. If the Software becomes, or in our opinion is likely to become, the subject of an infringement claim, we may, at our option and expense, either procure for you the right to continue using the Software; replace or modify the Software so that it becomes non-infringing and remains functionally equivalent; or require the return of the affected Software and refund you the portion of your purchase price attributable to the returned product for the remaining Subscription Period.

**4.3.2 Your Indemnification of Us.** Subject to the conditions described below and section 4.6, and to the extent not prohibited by applicable law, you will defend, indemnify and hold us harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with Claims made or brought against us by (i) a third party alleging that the Customer Data, your use of the Software in violation of this Agreement, or any materials, data or information provided by you or your representatives either: (a) infringes the Intellectual property rights of a third party, or (b) has otherwise harmed a third party, or (ii) anyone who has suffered personal injury or property damage based upon you or your employees, agents or Students or Users negligence or intentional misconduct.

**4.3.3 Conditions.** These indemnities will be conditioned on the party seeking indemnity: (a) promptly providing the other with a written notice of the Claim; (b) giving the other party sole control of the defense and settlement of the Claim, provided that the other party may not settle any Claim unless the party seeking indemnity is unconditionally released from liability; and (c) at no charge, providing the other party with all reasonable assistance relative to the defense of the Claim.

**4.3.4 Exclusive Remedies.** Our and your exclusive indemnification responsibilities are stated in this section 4.3.

**4.4 Care of Customer Data.** We will make periodic backups of Customer Data you enter into our Software and will otherwise use reasonable commercial care, consistent with general industry practice, to protect such Customer Data against loss. We are not responsible for lost Customer Data. You will be responsible for the maintenance of Customer Data held in our Software or learning management systems and for replacing it if it is lost or destroyed for any reason.

**4.5 Force Majeure.** The term "Force Majeure" means circumstances beyond the reasonable control of a party (such as acts of God, government restrictions, wars, insurrections, labor strife, or failure of suppliers, communication or data systems, subcontractors, or carriers) which delay or prevent the party from performing under the terms of this Agreement. Affected performance obligations will be suspended during the duration of the Force Majeure. In the event the Force Majeure persists for more than 90 days, the other party may terminate the affected portions of this Agreement upon written notice.

**4.6 Disclaimers, Limitations and Exclusions.**

**4.6.1 Warranty Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 1.7 OR 3.4 OF THIS AGREEMENT, WE MAKE NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND WE SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

**4.6.2 Limitation of Liability.** EXCEPT FOR BREACHES OF CONFIDENTIALITY OBLIGATIONS (WHICH ARE LIMITED TO \$50,000 IN THE AGGREGATE FOR ALL CLAIMS AGAINST EITHER PARTY IN ANY CALENDAR YEAR), IN NO EVENT WILL EITHER PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, INDEMNIFICATION OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY YOU TO US UNDER THE APPLICABLE ORDER FORM DURING THE PRIOR TWELVE MONTHS. THE ABOVE LIMITATION WILL NOT APPLY TO

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EITHER PARTY IN THE EVENT YOUR STATE STATUTES ARE FOUND TO GOVERN THIS AGREEMENT AND THEY SPECIFICALLY PROHIBIT A LIMITATION OF LIABILITY PROVISION.

- 4.6.3 Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, LIQUIDATED, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 4.7 U.S. Governmental Users.** The Software and Documentation are "Commercial Items," as defined at 48 C.F.R. §2.101, and are licensed subject to Restricted Rights applicable to Commercial Items and only with those rights expressly granted under this Agreement. The U.S. Government will not be entitled to technical information that is not customarily provided to the public or to use, modify, reproduce, release, perform, display, or disclose the Software or Documentation except as allowed under this Agreement.
- 4.8 Term and Termination**
- 4.8.1 Term of this Agreement.** This Agreement will begin on the Order Form Date and will, unless earlier terminated in accordance with this section, continue in effect until the end of the last Subscription Period Identified in the applicable Order Form.
- 4.8.2 Termination for Cause.** A party may terminate this Agreement for cause: (i) 30 days after written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (ii) if the other party ceases to conduct business in the ordinary course, files a petition for liquidation bankruptcy, fails to have an involuntary petition for bankruptcy dismissed or converted to a non-liquidation bankruptcy within 60 days after filing, or makes an assignment of essentially all assets for the benefit of creditors.
- 4.8.3 Outstanding Fees.** Termination will not relieve you of the obligation to pay any fees payable to us prior to the effective date of termination.
- 4.9 Surviving Provisions.** The following provisions will survive any termination or expiration of this Agreement: 1.6, 1.7, 2.1, 4.2, 4.3.1, 4.3.2, 4.3.4, 4.6, 4.9 and 5.0.
- 4.10 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, we may assign this Agreement in its entirety without your consent, in connection with a transaction involving a sale of all or substantially all of our assets or equity through merger or otherwise. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section will be void and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 4.11 Student/Parent Consents and Communication.** You are responsible for obtaining any necessary or legally required consents from students, parents and/or guardians related to your Users access and use of the Software. To the extent that your license includes our providing a virtual instructor associated with the licensed content, you accept and acknowledge that such virtual instructor may periodically be communicating with students and their parents and/or guardians.
- 4.12 Entire Agreement.** This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by both parties. To the extent of any conflict or inconsistency between the provisions in these Standard Terms and an Order Form, the terms of the Order Form will prevail.
- 4.13 Governing Law.** This Agreement will be governed by the internal laws of the State of Minnesota, without regard to its conflicts of laws rules unless the statutes or applicable rules governing your activities where your situated require that the laws of the State where your situated apply, in which case they will, without regard to the conflict of laws rules.
- 4.14 Third Parties.** There are no third-party beneficiaries to this Agreement.
- 4.15 Notices.** All notices under this Agreement will be in writing and will be deemed given upon: (a) personal delivery; (b) the second business day after mailing; (c) the second business day after sending by confirmed facsimile; or (d) the second business day after sending by confirmed email. Notices to us will be addressed to the attention of Director of Customer Finance. Notices to you will be addressed to the attention of the person signing the Order Form for you.
- 4.16 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- 4.17 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision

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will be subject to modification by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in effect.

4.18 Waiver. No failure or delay by either party to exercise a right under this Agreement will be a waiver of that right.

**5.0 DEFINITIONS**

- o "Concurrent License" means a Software license that may be accessed during the Subscription Period by any User, but may only be accessed by one Individual User at a time.
- o "Course Enrollment" shall mean a Consumable License plus the non-exclusive services of a virtual Instructor qualified to provide online teaching services associated with the Consumable License.
- o "Consumable License" means a Software license to a single course assigned to a single, Named User. Within thirty days of the date in which a Consumable License is made available to a Named User, you may remove that Named User and reassign the Consumable License to a different Named User for future use although such reassignment shall not extend the original Subscription Period. The Subscription Period for a Consumable License begins upon the earlier of (I) when the course content is first accessed by any Named User or (II) sixty days following the date that access is first made available to a Named User, and ends one year later.
- o "Customer Data" means all electronic data, materials and other information you and/or your Users have entered or stored in the Software, including, but not limited to data and records relating to student information, performance or use, your teacher data and supplemental instructional materials.
- o "Documentation" means the technical specifications and/or functionality particulars regarding the Software that we provide you with the Order Form, if any.
- o "Materials" means those materials that we provide you, if any, in connection with your Software license and/or Professional Services purchases that your Users can use solely for their internal educational purposes during the applicable Subscription Period.
- o "Named User" means a specific Student User identified by name and designated as the sole Student User of the specific license.
- o "Order Form" means the Order Form prepared and offered by us and returned to us by you indicating your acceptance of the terms and conditions of this Agreement. To the extent that you fail to execute and return the applicable Order Form to us, you accept and acknowledge that by using the Software (or any of your Users using the Software), you agree to the terms and conditions of this Agreement.
- o "Reusable License" means a Software license whereby only one Named User is designated to use the license at a time, but may be reassigned to another Named User during the Subscription Period. While a Reusable License is assigned to a specific Named User, it may not be used by any other Student User at any time until reassigned to another Named User.
- o "Software" means the online educational software that is identified on the Order Form that we make available to your Users via our Internet-based learning management system. The term "Software" includes both our Software and Third Party Software.
- o "Professional Services" means the services identified on the Order Form that we agree to provide to you to assist in your implementation and/or on-going use of the Software.
- o "Students" means those of your students that are provided access to the Software.
- o "Site License" means a Software License that may be accessed during the Subscription Term by all authorized Users located in the specific physical site identified on the Order Form.
- o "Program License" means a Software License that may be accessed during the Subscription Term by the authorized number of Users identified on the Order Form.
- o "Subscription Period" means the period of time during which you will have access to the Software you license under the Agreement. This period will begin with the start date identified in the applicable Order Form or upon processing of your PO in the event that dates are not identified upon the Order Form, and (unless earlier terminated, suspended or revoked in accordance with the Agreement) will last for the duration of your Software license access identified on the Order Form.
- o "Third Party Software" means software or content that we license from a third party for license to our customers under licensing terms and conditions specified by the producer.
- o "Third Party Services" means the services that you purchase from us that are identified on the Order Form and that are performed by an entity or individual other than our employees and independent contractors.
- o "Users" means those Students that you supply (or authorize us to supply) user identifications and passwords to and for which you've purchased an adequate quantity of the applicable Software licenses for. Users may include one or more Students.
- o "We", "Us" or "Our", whether or not capitalized, refer to the entity or entities identified on the first page of the Order Form (Edmentum, Inc., or Education City, Inc.).

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State of NH Contract 2018-165  
Exhibit J – Software Agreement – Part 3  
Date: 9/11/18  
Contractor's initials:   v

**STATE OF NEW HAMPSHIRE**  
**Department of Education, Bureau of Adult Education**  
**NH Adult Education Digital Technology Software**  
**SAAS CONTRACT 2018-165 – PART 3**  
**EXHIBIT K**  
**WARRANTY & WARRANTY SERVICE**

**1. WARRANTIES**

**1.1 System**

The Contractor warrants that the System will operate to conform to the Specifications, terms, and requirements of the Contract.

**1.2 Software**

The Contractor warrants that the Software, 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, the State's remedy, and the Contractor's entire liability, shall be:

- (a) the correction of program errors that cause breach of the warranty, or if the 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 the 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 the Contractor cannot substantially correct a breach in a commercially reasonable manner, the State may end the relevant Services and recover the fees paid to the Contractor for the deficient Services. (c) In no case will the maximum aggregate liability or responsibility exceed twice the amount paid for the affected products or services during the prior twelve months.
- (d) Neither party shall be responsible for penalties, liquidated or consequential damages or similar.

**1.3 Non-Infringement**

The Contractor warrants that it has good title to, or the right to allow the State to use, all Services, equipment, and Software ("Material") 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.

**1.4 Viruses; Destructive Programming**

The Contractor warrants that the Software shall not contain any viruses, destructive programming, or mechanisms designed to disrupt the performance of the Software in accordance with the Specifications.

**STATE OF NEW HAMPSHIRE**  
**Department of Education, Bureau of Adult Education**  
**NH Adult Education Digital Technology Software**  
**SAAS CONTRACT 2018-165 – PART 3**  
**EXHIBIT K**  
**WARRANTY & WARRANTY SERVICE**

**1.5 Compatibility**

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

**1.6 Services**

The Contractor warrants that all Services to be provided under the Contract 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.

**2. WARRANTY PERIOD**

The Warranty Period shall remain in effect until the conclusion or termination of this Contract and any extensions, except for the warranty for non-infringement, which shall remain in effect indefinitely.

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**STATE OF NEW HAMPSHIRE**  
**Department of Education, Bureau of Adult Education**  
**NH Adult Education Digital Technology Software**  
**SAAS CONTRACT 2018-165 – PART 3**  
**EXHIBIT L**  
**TRAINING SERVICES**

The Contractor shall provide the following Training Services.

**Phase 1: Implementation**

The contract project manager will partner with state project manager to customize an implementation plan to fit the State's needs.

Phase 1 objectives are to:

- Create a customized implementation plan
- Establish roles and responsibilities
- Enroll students and instructors into the programs
- Set key dates and milestones

**Phase 2: Onboarding**

During this phase, the programs will be introduced to administrators and instructors. Objectives are to:

- Ensure participants understand state goals and outcomes
- Familiarize state personnel with products and roles
- Train site-based staff on effective implementation practices
- Review additional included resources, such as customer support, in-product resources, and web-based live and on-demand sessions

During this phase, the contract project manager will:

- Regularly meet with personnel to gauge progress
- Present usage and progress data to the State of New Hampshire Project Manager
- Work with State of New Hampshire to identify "Instructor Leaders"
- Make coaching visits to provide additional assistance to campuses as identified by the State of New Hampshire Project Manager

**Phase 3: Program Adoption**

During the program adoption stage, best practices are established and needed resources are identified.

Objectives are as follows:

- Review, discuss, and adjust initial implementation plan as needed
- Analyze data relative to initial implementation goals
- Have instructors review student progress and comparative growth
- Identify and schedule additional consulting sessions as needed
- Conduct mid-year review to discuss and establish goals for remainder of the year

**Phase 4: End-of-Year Review**

In this final phase, the contract project manager and state contract manager review and reflect. The goals are to:

- Evaluate the implementation plan and outcomes
- Review learner progress and look at comparative growth
- Recommend program improvements and plan for next steps

**STATE OF NEW HAMPSHIRE**  
**Department of Education, Bureau of Adult Education**  
**NH Adult Education Digital Technology Software**  
**SAAS CONTRACT 2018-165 – PART 3**  
**EXHIBIT M**  
**AGENCY RFP WITH ADDENDA, BY REFERENCE**

2018-123 Adult Education Digital Technology RFP and all Addenda hereby incorporated by reference as fully set forth herein.

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State of NH Contract 2018-165

Exhibit M – Agency RFP with Addenda, by reference – Part 3

Date: 9/14/18

Contractor's Initials SO

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**STATE OF NEW HAMPSHIRE**  
**Department of Education, Bureau of Adult Education**  
**NH Adult Education Digital Technology Software**  
**SAAS CONTRACT 2018-165 – PART 3**  
**EXHIBIT N**  
**VENDOR PROPOSAL, BY REFERENCE**

Edmentum Proposal to BAE RFP 2018-123 Adult Education Digital Technology Software dated March 15, 2018 is hereby incorporated by reference as fully set forth herein.

**STATE OF NEW HAMPSHIRE**  
**Department of Education, Bureau of Adult Education**  
**NH Adult Education Digital Technology Software**  
**SAAS CONTRACT 2018-165 – PART 3**  
**EXHIBIT O**  
**CERTIFICATES AND ATTACHMENTS**

Attached are:

- A. Attachment 1 - Exhibit H Requirements
- B. Attachment 2 – Vendor Quote
- C. Attachment 3 – Edmentum System Requirements
- D. Contractor's Certificate of Good Standing
- E. Contractor's Certificate of Vote/Authority
- F. Contractor's Certificate of Insurance

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State of NH Contract 2018-165  
Exhibit O – Certificate and Attachments – Part 3  
Date: 9/11/13  
Contractor's Initials CS

Attachment 1: Project Requirements

Appendix A-3

Vendor Instructions
<p><b>Vendor Response Column:</b> Place a "Yes" if the current release of the software can fully support ALL the functionality described in the row, without special customization. A "Yes" can only be used if the delivery method is Standard (see delivery method instructions below). Otherwise, enter an "No"; A "No" can only be used with delivery method Future, Custom, or Not Available/Not Proposing (see delivery method instructions below).</p>
<p><b>Criticality Column:</b> (M) Indicates a requirement that is "Mandatory". The State considers it to be of such great importance that it must be met in order for the proposal to be accepted. If the proposer believes that there is something about their proposal that either obviates the need for this requirement or makes it of less importance this must be explained within the comments. The State retains the right to accept a proposal if the need of the requirement is reduced or eliminated by another feature of the proposal. (P) Indicates a requirement which is "Preferred". This requirement is considered by the State to be of great usefulness but the lack of this feature is not considered serious enough to disqualify the proposal. (O) Indicates a requirement which is "Optional". This requirement is considered by the State to be one which useful or potentially useful but not a central feature of the Project.</p>
<p><b>Delivery Method Column:</b> Complete the delivery method using a Standard, Future, Custom, or Not Available/Not Proposing (as defined below) that indicates how the requirement will be delivered.</p> <p>Standard - Feature/Function is included in the proposed system and available in the current software release. Future - Feature/Function will be available in a future release. (Provide anticipated delivery date, version, and service release in the comment area.) Custom - Feature/Function can be provided with custom modifications. (Respondent must provide estimated hours and average billing rate or flat cost for the software modification in the comment area. These cost estimates should add up to the total cost for software modifications found in the cost summary table in Section X of the RFP). Not Available/Not Proposing - Feature/Function has not been proposed by the Vendor. (Provide brief description of why this functionality was not proposed.)</p>
<p><b>Comments Column:</b> For all Delivery Method responses vendors must provide a brief explanation of how the requirement will be met. Free form text can be entered into this column.</p>

INSTRUCTIONS

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9/11/08

Attachment 1: Project Requirements

BUSINESS REQUIREMENTS					
State Requirements			Vendor		
Req #	Requirement Description	Criticality	Vendor Response	Delivery Method	Comments
<b>General Requirements</b>					
B1.1	Content is aligned to the College & Career Readiness Standards for Adult Education, the English Language Proficiency Standards and/or other standards, competencies or curriculum frameworks as found on OCTAE or NH DOE websites.	M	Yes	Standard	Edmentum Courseware courses include a scope and sequence that comprehensively addresses national and state standards. NH Department of Education will have access to documentation of all Correlations to State Standards, Common Core Standards, and OCTAE College and Career Readiness Standards provided on the support site for all Edmentum courses.
B1.2	The Solution has demonstrated effectiveness in increasing student performance as verified through 3rd party evaluation or research.	M	Yes	Standard	See the Appendix in our proposal for the following studies: Evidence of Effectiveness of Courseware, Marzano Study, and School Effectiveness Study.
B1.3	The Solution is available through a web-based application.	M	Yes	Standard	Edmentum products are entirely web based. This allows access from any location, whether inside or outside the adult ed program network(s).

Appendix A-4

1. BUSINESS REQUIREMENTS

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Attachment 1: Project Requirements

B1.4	The Solution is accessible on student hand-held devices such as Android or Apple phones or tablets.	M	Yes	Standard	Edmentum content is 100% web based and accessible via most Internet-connected devices. All Edmentum Courseware is authored in HTML5 and is mobile compatible with a few exceptions to our legacy courses. Please see our System Requirements in the Appendix for additional details.
B1.5	The Solution offers at least three levels of users with permissions as outlined in Section D.2.1 Topic 7.	M	Yes	Standard	Edmentum has four user roles that support a structured environment within the management system: Account Administrator, Administrator, Instructor, and Learner.
B1.6	The Solution offers options that can be used in a correctional facility.	P	Yes	Standard	Edmentum Courseware is in use in correctional facilities throughout the United States, including our current pilot with NH Bureau of Adult Education. It is being used for all-inclusive programming from ABE, HSE, College and Workforce Transition, and ESL. We work with Correctional IT to ensure security requirements are met.

Appendix A-5

**Instructional Requirements**

1. BUSINESS REQUIREMENTS

2/11/13

Attachment 1: Project Requirements

Appendix A-6

B2.1	The Solution is designed for adult learners and reflects adult learning theory.	M	Yes	Standard	Edmentum incorporates an engaging, age-appropriate educational experience for adult learners. Our lessons incorporate real-world scenarios as the context of learning, using examples of adults engaging in everyday activities and reinforcing that expanding their skills or content knowledge can benefit them. In addition to the academic concepts presented, our library is flexible to allow integration of job skills, soft skills, and other content from across the Courseware collections, from academic to career and technical education and beyond.
B2.2	Instructional content provides scaffolding text with audio and video presentation.	M	Yes	Standard	Scaffolding is provided using effective graphics, audio supports, and tutorials to build background knowledge. Self-pacing options provide another great support. Edmentum Courseware used in sync with an Accucess placement test allows students to start at an appropriate level and build academic knowledge and vocabulary while learning.

1. BUSINESS REQUIREMENTS

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2/14/10

Attachment 1: Project Requirements

B2.3	The Solution provides multiple modalities.	M	Yes	Standard	Students work interactively with the content and use multiple learning modalities, such as video, simulation, formative checks, writing, and speaking constructs.
B2.4	The Solution provides immediate and meaningful feedback, hints, access to solution steps, recommendations for when to seek instructors' help and encouragement for persistence?	M	Yes	Standard	The self-paced learner solutions within Edmentum Courseware and Assessments offer multiple opportunities for learning checks, explanations, as well as guidance to learners about when to connect with instructors. In tutorials and practice stages of modules, learners who miss questions more than once are offered assistance or guidance to complete the task. Instructors can also set limits on mastery test attempts to encourage learners to reach out and connect if they are struggling.

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9/11/08

Attachment 1: Project Requirements

B2.5	The content is modular and provides flexibility for personalized learning.	M	Yes	Standard	Edmentum Courseware and Assessments are based on a modularized content design, offering significant flexibility in how it can be implemented and integrated into your implementation. Examples include blended, distance, whole group, or flipped classroom style learning modes. Our courses are highly customizable, allowing you to determine your own approach to meeting local objectives, instructional needs, and individual student needs.
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Appendix A-8

1. BUSINESS REQUIREMENTS

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9/11/13

Attachment 1: Project Requirements

Appendix A-9

B2.6	The Solution includes adaptive lessons and/or assessments so that instruction can be personalized.	M	Yes	Standard	Upon completion of our diagnostic assessment, Accucess, students receive personalized, prescriptive learning paths through Edmentum Courseware content. Each grade level contains multiple subsections organized by strand. For each of these sections within a grade level a pretest is available for learners to expedite their progress through exemptions of prior knowledge. Additionally, learners can go directly to the mastery test for each objective and if they can attain 80% or greater, that module shows as completed. Accucess can also be assigned as a progress checkpoint to reevaluate skills or update the prescription learning path to reflect current performance.
<b>Structural Requirements</b>					

1. BUSINESS REQUIREMENTS

EP  
9/11/18

Attachment 1: Project Requirements

Appendix A-10

B3.1	The Solution provides a student dashboard showing progress and identifying next steps for the student.	M	Yes	Standard	Students have an easy-to-understand dashboard that provides a pacing goal for assignments. They can track whether they are on pace, slightly off pace, significantly off pace, or ahead of pace with colored icons. Students can hover their mouse over the pacing bar and their status will appear, along with where they should be on the timeline. They can run their own portfolio and progress reports from their interface as well.
B3.2	The Solution provides an instructor dashboard for tracking and monitoring student progress and time-on-task.	M	Yes	Standard	With the teacher dashboard, instructors can easily see how students are pacing against course goals, which students are behind pace, overall and current grades, and completed activities. Our program also provides a program dashboard for administrators.
B3.3	The Solution includes report tools that can be downloaded by program and class.	M	Yes	Standard	Robust real-time data and reporting tools are included. Reports can be exported in several file types.

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9/11/18

Attachment 1: Project Requirements

B3.4	The Solution provides help documentation for students and instructors.	M	Yes	Standard	Student and teacher tools and help resources are provided within the program. Both students and teachers also have access to the Help Center, which offers support and information. Each course contains a Teacher Guide and Syllabus, along with online support resources, FAQs, etc. For students, each course contains a Student Orientation Toolkit with an embedded six-minute orientation video. This is typically all the student needs to get started.
B3.5	Users are not required to enter personally identifying information except for a name, email address and center/program of attendance.	M	Yes	Standard	Users are only required to enter name, email address, and center/program as personally identifying information.

Appendix A-11

1. BUSINESS REQUIREMENTS

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2/11/18

Attachment 1: Project Requirements

APPLICATION REQUIREMENTS					
State Requirements			Vendor		
Req. #	Requirement Description	Criticality	Vendor Response	Delivery Method	Comments
<b>GENERAL SPECIFICATIONS</b>					
A1.1	Ability to access data using open standards access protocol (please specify supported versions in the comments field).	M	Yes	Standard	With data that is commonly shared with other vendors' software solutions (Interop data), open standards such as LMS, QTI, and JSON are utilized.
A1.2	Data is available in commonly used format over which no entity has exclusive control, with the exception of National or International standards. Data is not subject to any copyright, patent, trademark or other trade secret regulation.	M	Yes	Standard	Interop data is available in commonly used formats over which no entity has exclusive control.
A1.3	Web-based compatible and in conformance with the following W3C standards: HTML5, CSS 2.1, XML 1.1	M	Yes	Standard	Edmentum programs are web-based compatible. We are committed to ensuring our dynamic learning environment is accessible to all students. Edmentum Courseware is authored in HTML5 with a few exceptions to our legacy courses. Applications are authored with HTML5 and CSS 2.1 as well as XML 1.1, where utilized.
<b>APPLICATION SECURITY</b>					
A2.1	Verify the identity or authenticate all of the system client applications before allowing use of the system to prevent access to inappropriate or confidential data or services.	M	Yes	Standard	Client applications verify the identity and authenticate before accessing data and services.

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9/14/19

Attachment 1: Project Requirements

Req.#	Requirement Description	Criticality	Vendor Response	Delivery Method	Comments
A2.2	Verify the identity and authenticate all of the system's human users before allowing them to use its capabilities to prevent access to inappropriate or confidential data or services.	M	Yes	Standard	Each user is provided a unique center, username, and password combination for authentication. Authentication is completed over an SSL connection.
A2.3	Enforce unique user names.	M	Yes	Standard	Each user is provided a unique username and password.
A2.4	Enforce complex passwords for Administrator Accounts in accordance with DoIT's statewide <i>User Account and Password Policy</i>	M	Yes	Standard	Passwords are determined by the customer.
A2.5	Enforce the use of complex passwords for general users using capital letters, numbers and special characters in accordance with DoIT's statewide <i>User Account and Password Policy</i> .	M	Yes	Standard	Passwords are determined by the customer.
A2.6	Encrypt passwords in transmission and at rest within the database.	M	Yes	Standard	All usernames, passwords, and permissions are encrypted and stored on a Secret Server. The logon process uses SSL so the transmission of account data/information is encrypted.
A2.7	Establish ability to expire passwords after a definite period of time in accordance with DoIT's statewide <i>User Account and Password Policy</i>	M	Yes	Standard	Passwords are generated by the customer and are the responsibility of the customer to change, update, or deactivate. As such, the client determines and sets password policies for users upon provisioning accounts.
A2.8	Provide the ability to limit the number of people that can grant or change authorizations	M	Yes	Standard	Account administrators can grant or change permissions. Typically the account administrator role is designated to one or two people.

Appendix A-13

W  
9/11/08

Attachment 1: Project Requirements

Req#	Requirement Description	Criticality	Vendor Response	Delivery Method	Comments
A2.9	Establish ability to enforce session timeouts during periods of inactivity.	M	Yes	Standard	By default, learners are timed out of Edmentum Courseware after 15 minutes of inactivity.
A2.10	The application shall not store authentication credentials or sensitive data in its code.	M	Yes	Standard	Edmentum does not store credentials or sensitive information in code.
A2.11	Log all attempted accesses that fail identification, authentication and authorization requirements.	M	Yes	Standard	Regarding Edmentum's infrastructure and networks, these are constantly scanned for attempted intrusion and/or malicious attack signatures. These logs are regularly audited and remediation steps are taken as necessary. Regarding application logins, we do not record attempted login access that fail authentication and authorization, however.
A2.12	The application shall log all activities to a central server to prevent parties to application transactions from denying that they have taken place.	M	Yes	Standard	User actions are tagged by user ID and logged.
A2.13	All logs must be kept for 90 days	M	Yes	Standard	Logs are kept beyond 90 days.
A2.14	The application must allow a human user to explicitly terminate a session. No remnants of the prior session should then remain.	M	Yes	Standard	When a user logs out of our system, their session is terminated.
A2.15	Do not use Software and System Services for anything other than they are designed for.	M	Yes	Standard	Our software and system services are designed for the particular purposes described herein.
A2.16	The application Data shall be protected from unauthorized use when at rest	M	Yes	Standard	Data at rest is encrypted using SQL transparent data encryption (TDE) and available only to authenticated and authorized users and services.

Appendix A-14

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8/14/19

Attachment 1: Project Requirements

Req.#	Requirement Description	Criticality	Vendor Response	Delivery Method	Comments
A2.17	The application shall keep any sensitive Data or communications private from unauthorized individuals and programs.	M	Yes	Standard	We employ data encryption for all sensitive data at rest and in transit.
A2.18	Subsequent application enhancements or upgrades shall not remove or degrade security requirements	M	Yes	Standard	All changes to production system applications and/or hardware are tested and/or vetted prior to deployment.
A2.19	Utilize change management documentation and procedures	M	Yes	Standard	All changes to production system applications and/or hardware are tested and go through a formal change management approval and release process.

Appendix A-15

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9/10/12

Attachment: Project Requirements

TESTING					
State Requirements			Vendor		
Req.#	Requirement/Description:	Criticality	Vendor Response	Delivery Method	Comments
<b>APPLICATION SECURITY TESTING</b>					
T1.1	All components of the Software shall be reviewed and tested to ensure they protect the State's web site and its related Data assets.	M	Yes	Standard	Software is tested.
T1.2	The Vendor shall be responsible for providing documentation of security testing, as appropriate. Tests shall focus on the technical, administrative and physical security controls that have been designed into the System architecture in order to provide the necessary confidentiality, integrity and availability.	M	Yes	Standard	We conduct regular security testing of technical, administrative, and physical security controls. These tests are conducted by both internal resources and contracted to external parties. Documentation of test results is available upon request.
T1.3	Provide evidence that supports the fact that Identification and Authentication testing has been recently accomplished; supports obtaining information about those parties attempting to log onto a system or application for security purposes and the validation of users	M	Yes	Standard	All of our testing, from daily testing of features to periodic regression testing, goes through the same channels that fully exercise our authentication and authorization systems.
T1.4	Test for Access Control; supports the management of permissions for logging onto a computer or network	M	Yes	Standard	All of our testing fully exercises our roles and permission components of our authorization system.
T1.5	Test for encryption; supports the encoding of data for security purposes, and for the ability to access the data in a decrypted format from required tools.	M	Yes	Standard	In exercising our authentication system, we regularly test the encoding/decoding of encrypted data.

Appendix A-16

CS  
9/11/06

Attachment: Project Requirements

T1.6	Test the Intrusion Detection; supports the detection of illegal entrance into a computer system	M	Yes	Standard	Our infrastructure and networks are constantly scanned for attempted intrusion and/or malicious attack signatures. These logs are regularly audited and remediation steps are taken as necessary.
T1.7	Test the Verification feature; supports the confirmation of authority to enter a computer system, application or network	M	Yes	Standard	Users are authenticated by the authentication/authorization system.
T1.8	Test the User Management feature; supports the administration of computer, application and network accounts within an organization.	M	Yes	Standard	User administration is regularly tested via our regression test process.
T1.9	Test Role/Privilege Management; supports the granting of abilities to users or groups of users of a computer, application or network	M	Yes	Standard	Edmentum has four user roles that support a structured environment within the management system: Account Administrator, Administrator, Instructor, and Learner.
T1.10	Test Audit Trail Capture and Analysis; supports the identification and monitoring of activities within an application or system	M	Yes	Standard	Edmentum uses industry standard system and application monitoring and data capturing tools and methods to provide for audit trail capture and analysis
T1.11	Test Input Validation; ensures the application is protected from buffer overflow, cross-site scripting, SQL injection, and unauthorized access of files and/or directories on the server.	M	Yes	Standard	All user input is defanged and otherwise sanitized to prevent the attack types noted.

Appendix A-17

3. TESTING

CP  
9/11/13

Attachment: Project Requirements

T.1.12	For web applications, ensure the application has been tested and hardened to prevent critical application security flaws. ( At a minimum, the application shall be tested against all flaws outlined in the Open Web Application Security Project (OWASP) Top Ten ( <a href="http://www.owasp.org/index.php/OWASP_Top_Ten_Project">http://www.owasp.org/index.php/OWASP_Top_Ten_Project</a> ))	M	Yes	Standard	Edmentum follows all recommended security best practices, including regularly scheduled security vulnerability scans. Application security is audited on a biannual basis by an independent third-party organization, and any findings of a critical nature are remediated in a timely fashion.
T1.13	Provide the State with validation of 3rd party security reviews performed on the application and system environment. The review may include a combination of vulnerability scanning, penetration testing, static analysis of the source code, and expert code review (please specify proposed methodology in the comments field).	M	Yes	Standard	Edmentum follows all recommended security best practices, including regularly scheduled security vulnerability scans. External network vulnerability testing is performed on a quarterly basis. In addition, Edmentum performs internal vulnerability scans on at least an annual basis. Application security is audited on a biannual basis by an independent third-party organization, and any findings of a critical nature are remediated in a timely fashion. Internal security practices are also evaluated by an independent third party on a biannual basis. Records of the audits may be provided in a redacted form upon request.

Appendix A-18

3. TESTING

C0  
9/11/13

Attachment: Project Requirements

T1.14	Prior to the System being moved into production, the Vendor shall provide results of all security testing to the Department of Information Technology for review and acceptance.	M	Yes	Standard	The system is in production, with regularly scheduled maintenance and feature updates. Our security testing results are made available for review.
T1.15	Vendor shall provide documented procedure for migrating application modifications from the User Acceptance Test Environment to the Production Environment.	M	Yes	Standard	After application modifications pass acceptance testing and regression testing of the full system passes, the release components are packaged for delivery to a non-production staging environment, where testing of the deployment as well as another round of testing take place. Upon passing, the release assets are handed off to our data center operations, where limited authorized personnel deploy the new release to production.
<b>STANDARD TESTING</b>					
T2.1	The Vendor must test the software and the system using an industry standard and State approved testing methodology as more fully described in Appendix G-2.	M	Yes	Standard	Edmentum uses industry standard testing methods and tools to thoroughly test its solutions. This includes test case design and development, data and system preparation, execution of unit tests, integration tests, regression tests, conversion/migration tests, installation tests, security tests, performance tests, and UAT.

Appendix A-19

3. TESTING

Σ  
9/11/18

Attachment: Project Requirements

T2.2	The Vendor must perform application stress testing and tuning as more fully described in Appendix G-2.	M	Yes	Standard	Edmentum uses industry standard testing methods and tools to perform application stress testing and tuning. This testing is done in an ongoing basis and performance is tuned to achieve maximized levels.
T2.3	The Vendor must provide documented procedure for how to sync Production with a specific testing environment.	M	Yes	Standard	Our database team utilizes database scripting for synchronizing lower environments, such as test and pre-stage environments, with our production data.
T2.4	The vendor must define and test disaster recovery procedures.	M	Yes	Standard	For disaster recovery purposes, Edmentum operates two fully redundant data centers (in Texas and Minnesota) that can fail over to each other in the event of an emergency. A more detailed Disaster Recovery Plan is available and can be provided upon request. In addition, Edmentum backs up all data daily and stores it locally and at an off-site location. Edmentum updates all servers with the latest security patches and uses a sophisticated firewall technology to prevent unauthorized access.

Appendix A-20

3. TESTING

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9/11/18

## HOSTING-CLOUD REQUIREMENTS

State Requirements			Vendor		
Req #	Requirement Description	Criticality	Vendor Response	Delivery Method	Comments
<b>OPERATIONS</b>					
H1.1	Vendor shall provide an ANSI/TIA-942 Tier 3 Data Center or equivalent. A tier 3 data center requires 1) Multiple independent distribution paths serving the IT equipment, 2) All IT equipment must be dual-powered and fully compatible with the topology of a site's architecture and 3) Concurrently maintainable site infrastructure with expected availability of 99.982%	M	Yes	Standard	Our data centers are Tier 3 compliant.
H1.2	Vendor shall maintain a secure hosting environment providing all necessary software, and Internet bandwidth to manage the application and support users with permission based logins.	M	Yes	Standard	Our applications are hosted in secure environments. We have sufficient bandwidth to manage application, support users with permission based logins, and accommodate growth.
H1.3	The Data Center must be physically secured – restricted access to the site to personnel with controls such as biometric, badge, and others security solutions. Policies for granting access must be in place and followed. Access shall only be granted to those with a need to perform tasks in the Data Center.	M	Yes	Standard	Our data centers are Tier 3 compliant including a variety of physical security requirements including biometrics, badge access, guarded entrance, and access restrictions (granted to only authorized personnel).

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H1.4	Vendor shall install and update all server patches, updates, and other utilities within 60 days of release from the manufacturer.	M	Yes	Standard	Systems are patched on at least a quarterly basis unless critical vulnerabilities need to be addressed. All patches and updates are first tested in a non-production environment before being applied to production.
H1.5	Vendor shall monitor System, security, and application logs.	M	Yes	Standard	System security and application logs are created and regularly audited and remediation steps are taken as necessary.
H1.6	Vendor shall manage the sharing of data resources.	M	Yes	Standard	Edmentum can comply - see our Standard Terms and Conditions at <a href="http://www.edmentum.com/terms">www.edmentum.com/terms</a>
H1.7	Vendor shall manage daily backups, off-site data storage, and restore operations.	M	Yes	Standard	Edmentum performs daily backups, which are stored in an off-site location.
H1.8	The Vendor shall monitor physical hardware.	M	Yes	Standard	All hardware components including firewalls, load balancers, storage controllers, servers, blade infrastructure and switches are all fully monitored.
H1.9	The Vendor shall report any breach in security in conformance with State of NH RSA 359-C:20. Any person engaged in trade or commerce that is subject to RSA 358-A:3, I shall also notify the regulator which has primary regulatory authority over such trade or commerce. All other persons shall notify the New Hampshire attorney general's office.	M	Yes	Standard	Edmentum will notify customers of any breaches related to secure customer data.

DISASTER RECOVERY

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2/10/18

H2.1	Vendor shall have documented disaster recovery plans that address the recovery of lost State data as well as their own. Systems shall be architected to meet the defined recovery needs.	M	Yes	Standard	A detailed Disaster Recovery Plan is available and can be provided upon request.
H2.2	The disaster recovery plan shall identify appropriate methods for procuring additional hardware in the event of a component failure. In most instances, systems shall offer a level of redundancy so the loss of a drive or power supply will not be sufficient to terminate services however, these failed components will have to be replaced.	M	Yes	Standard	All production systems are designed to be fully redundant for all critical points of failure. In case of hardware failure, the procurement of additional hardware is included in the high availability and disaster recovery plans.
H2.3	Vendor shall adhere to a defined and documented back-up schedule and procedure.	M	Yes	Standard	Edmentum performs daily backups, which are stored in an off-site location.
H2.4	Back-up copies of data are made for the purpose of facilitating a restore of the data in the event of data loss or System failure.	M	Yes	Standard	Edmentum performs daily backups, which are stored in an off-site location. These backups may be used to restore data in the event of data loss or system failure.
H2.5	Scheduled backups of all servers must be completed regularly. The minimum acceptable frequency is differential backup daily, and complete backup weekly.	M	Yes	Standard	Edmentum performs a full backup of all data daily and stores it locally and at the disaster recovery data center location.
H2.6	Tapes or other back-up media tapes must be securely transferred from the site to another secure location to avoid complete data loss with the loss of a facility.	M	Yes	Standard	Backup data is maintained at both the primary and secondary data center locations to avoid data loss.

H2.7	Data recovery – In the event that recovery back to the last backup is not sufficient to recover State Data, the Vendor shall employ the use of database logs in addition to backup media in the restoration of the database(s) to afford a much closer to real-time recovery. To do this, logs must be moved off the volume containing the database with a frequency to match the business needs.	M	Yes	Standard	Database logs are not stored on the same volume as the database. Database logs are moved to off-site storage every 15 minutes
<b>HOSTING SECURITY</b>					
H3.1	The Vendor shall employ security measures ensure that the State's application and data is protected.	M	Yes	Standard	Edmentum follows all recommended security best practice. All usernames, passwords and permissions are encrypted and stored on a Secret Server. Individual student data is stored in Study Island's database and cannot be accessed without first accessing a username, password, and associated permissions. Edmentum operates secure data centers with redundant Internet connections, high-capacity Internet connectivity, and full fire and security monitoring 24/7 in Minneapolis, Minnesota, and Dallas, Texas. For disaster recovery purposes, Edmentum's data centers are fully redundant and back up all data daily and store it locally and at the off-site locations.

CO  
9/11/18

H3.2	If State data is hosted on multiple servers, data exchanges between and among servers must be encrypted.	M	Yes	Standard	Communication between database servers is encrypted using the AES encryption algorithm.
H3.3	All servers and devices must have currently-supported and hardened operating systems, the latest anti-viral, anti-hacker, anti-spam, anti-spyware, and anti-malware utilities. The environment, as a whole, shall have aggressive intrusion-detection and firewall protection.	M	Yes	Standard	All servers and devices have currently supported and hardened operating systems. The production environment is protected by a hardened perimeter including a robust firewall environment, DDoS protection, and updated anti-virus software.
H3.4	All components of the infrastructure shall be reviewed and tested to ensure they protect the State's hardware, software, and its related data assets. Tests shall focus on the technical, administrative and physical security controls that have been designed into the System architecture in order to provide confidentiality, integrity and availability.	M	Yes	Standard	Edmentum follows all recommended security best practices, including regularly scheduled security vulnerability scans. External network vulnerability testing is performed on a quarterly basis. In addition, Edmentum performs internal vulnerability scans on at least an annual basis. Application security is audited on a biannual basis by an independent third-party organization, and any findings of a critical nature are remediated in a timely fashion. Internal security practices are also evaluated by an independent third party on a biannual basis.

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H3.5	The Vendor shall ensure its complete cooperation with the State's Chief Information Officer in the detection of any security vulnerability of the hosting infrastructure.	M	Yes	Standard	Edmentum will notify customer of any breaches related to secure customer data.
H3.6	The Vendor shall authorize the State to perform scheduled and random security audits, including vulnerability assessments, of the Vendor' hosting infrastructure and/or the application upon request.	M	Yes	Standard	Edmentum will work with customer to facilitate approved security audits.
H3.7	All servers and devices must have event logging enabled. Logs must be protected with access limited to only authorized administrators. Logs shall include System, Application, Web and Database logs.	M	Yes	Standard	System security and application logs are created and regularly audited and remediation steps are taken as necessary. Access to the logs is restricted to authorized administrators.
H3.8	Operating Systems (OS) and Databases (DB) shall be built and hardend in accordance with guidelines set forth by CIS, NIST or NSA	M	Yes	Standard	We do not own the OS or DB but we do follow industry standards for OS and DB.
H3.9	The Vendor shall notify the State's Project Manager of any security breaches within two (2) hours of the time that the Vendor learns of their occurrence.	M	Yes	Standard	Edmentum will notify customer of any breaches related to secure customer data.

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9/11/18

H3.10	The Vendor shall be solely liable for costs associated with any breach of State data housed at their location(s) including but not limited to notification and any damages assessed by the courts.	M	Yes	Standard	Your remedies for any breach of the resulting agreement by us or our employees or agents are limited to prompt repair or replacement of the deficient product or service and in no case will our maximum aggregate liability/responsibility exceed twice the amounts you have paid for the affected products or services during the prior twelve months. Neither party shall be responsible for penalties, liquidated or consequential damages or similar.
<b>SERVICE LEVEL AGREEMENT</b>					
H4.1	The Vendor's System support and maintenance shall commence upon the Effective Date and extend through the end of the Contract term, and any extensions thereof.	M	Yes	Standard	Edmentum's support and maintenance is provided free of charge from the go live date through the end of the contract term and extensions.
H4.2	The vendor shall maintain Software in accordance with the specifications, terms, and requirements of the Contract, including providing, upgrades and fixes as required.	M	Yes	Standard	Edmentum can comply - see our Standard Terms and Conditions at <a href="http://www.edmentum.com/terms">www.edmentum.com/terms</a> .
H4.3	The vendor shall repair or replace the software, or any portion thereof, so that the System operates in accordance with the Specifications, terms, and requirements of the Contract.	M	Yes	Standard	Edmentum can comply - see our Standard Terms and Conditions at <a href="http://www.edmentum.com/terms">www.edmentum.com/terms</a> .

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H4.4	All software components of the Vendor hosting infrastructure shall be fully supported by their respective manufacturers at all times. All critical patches for operating systems, databases, web services, etc, shall be applied within sixty (60) days of release by their respective manufacturers.		Yes	Standard	Edmentum systems are maintained according to all manufacturer specified best practices. Systems are patched on at least a quarterly basis unless critical vulnerabilities need to be addressed. All patches and updates are first tested in a non-production environment before being applied to production.
H4.5	The State shall have unlimited access, via phone or Email, to the Vendor technical support staff between the hours of 8:30am to 5:00pm- Monday through Friday EST;	M	Yes	Standard	Edmentum has a high-response customer support service center. Phone calls are answered Monday through Friday from 8 a.m. to 7 p.m. (EST). Emails receive a response within 24 hours, but typical wait times are within a few hours of receipt.

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H4.6	<p>The Vendor shall conform to the specific deficiency class as described:</p> <ul style="list-style-type: none"> <li>o Class A Deficiency - Software - Critical, does not allow System to operate, no work around, demands immediate action; Written Documentation - missing significant portions of information or unintelligible to State; Non Software - Services were inadequate and require re-performance of the Service.</li> <li>o Class B Deficiency - Software - important, does not stop operation and/or there is a work around and user can perform tasks; Written Documentation - portions of information are missing but not enough to make the document unintelligible; Non Software - Services were deficient, require reworking, but do not require re-performance of the Service.</li> <li>o Class C Deficiency - Software - minimal, cosmetic in nature, minimal effect on System, low priority and/or user can use System; Written Documentation - minimal changes required and of minor editing nature; Non Software - Services require only minor reworking and do not require re-performance of the Service.</li> </ul>	M	Yes	Standard	Edmentum uses a defect classification system that conforms to the deficiency classes described herein.
H4.7	<p>As part of the maintenance agreement, ongoing support issues shall be responded to according to the following:</p> <ul style="list-style-type: none"> <li>a. Class A Deficiencies - The Vendor shall have available to the State on-call telephone assistance, with issue tracking available to the State, eight (8) hours per day and five (5) days a week with an email / telephone response within two (2) hours of request; or the Vendor shall provide support with remote diagnostic Services, within four (4) business hours of a request;</li> <li>b. Class B &amp; C Deficiencies - The State shall notify the Vendor of such Deficiencies during regular business hours and the Vendor shall respond back within four (4) hours of notification of planned corrective action; The Vendor shall repair or replace Software, and provide maintenance of the Software in accordance with the Specifications, Terms and Requirements of the Contract;</li> </ul>	M	Yes	Standard	Edmentum can comply.
H4.8	<p>The hosting server for the State shall be available twenty-four (24) hours a day, 7 days a week except for during scheduled maintenance.</p>	M	Yes	Standard	Our programs can be accessed 24/7 from anywhere with Internet connection outside of regularly scheduled maintenance windows.

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9/16/18

H4.9	A regularly scheduled maintenance window shall be identified (such as weekly, monthly, or quarterly) at which time all relevant server patches and application upgrades shall be applied.	M	Yes	Standard	Edmentum has a scheduled maintenance window for all production systems. All scheduled patches and/or application upgrades are performed during these times unless otherwise specified and communicated.
H4.10	If The Vendor is unable to meet the uptime requirement, The Vendor shall credit State's account in an amount based upon the following formula: (Total Contract Item Price/365) x Number of Days Contract Item Not Provided. The State must request this credit in writing.	M	Yes	Standard	Other than a credit we will issue a pro rata refund of license fees previously paid for periods extending beyond the effective date of a termination.
H4.11	The Vendor shall use a change management policy for notification and tracking of change requests as well as critical outages.	M	Yes	Standard	Edmentum has established processes for change and incident management. Any changes or incidents are tracked through these processes.
H4.12	A critical outage will be designated when a business function cannot be met by a nonperforming application and there is no work around to the problem.	M	Yes	Standard	Edmentum can comply.
H4.13	The Vendor shall maintain a record of the activities related to repair or maintenance activities performed for the State and shall report quarterly on the following: Server up-time; All change requests implemented, including operating system patches; All critical outages reported including actual issue and resolution; Number of deficiencies reported by class with initial response time as well as time to close.	M	Yes	Standard	Edmentum can comply.
H4.14	The Vendor will give two-business days prior notification to the State Project Manager of all changes/updates and provide the State with training due to the upgrades and changes.	M	Yes	Standard	Edmentum can comply.
H4.15	The Vendor must operate hosting Services on a network offering adequate performance to meet the business requirements for the State application. For the purpose of this RFP, adequate performance is defined as 99.9% uptime, exclusive of the regularly scheduled maintenance window.	M	Yes	Standard	Edmentum can comply.

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Attachment 1: Project Requirements

SUPPORT & MAINTENANCE REQUIREMENTS					
State Requirements			Vendor		
Req.#	Requirement/Description	Criticality	Vendor Response	Delivery Method	Comments
<b>SUPPORT &amp; MAINTENANCE REQUIREMENTS</b>					
S1.1	Repair Software, or any portion thereof, so that the System operates in accordance with the Specifications, terms, and requirements of the Contract.	M	Yes	Standard	Edmentum can comply. This is part of the Standard Operating Procedure for all Edmentum customers.
S1.2	The Vendor 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.	M	Yes	Standard	Edmentum can comply. This is part of the Standard Operating Procedure for all Edmentum customers.
S1.3	For all maintenance Services calls, The Vendor shall ensure the following information will be collected and maintained: 1) nature of the Deficiency; 2) current status of the Deficiency; 3) action plans, dates, and times; 4) expected and actual completion time; 5) Deficiency resolution information, 6) Resolved by, 7) Identifying number i.e. work order number, 8) Issue identified by;	P	Yes	Standard	Edmentum can comply. This is part of the Standard Operating Procedure for all Edmentum customers.
S1.4	The Vendor must work with the State to identify and troubleshoot potentially large-scale System failures or Deficiencies by collecting the following information: 1) mean time between reported Deficiencies with the Software; 2) diagnosis of the root cause of the problem; and 3) identification of repeat calls or repeat Software problems.	P	Yes	Standard	Edmentum can comply. This is part of the Standard Operating Procedure for all Edmentum customers.

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5. SUPPORT & MAINTENANCE

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Attachment 1: Project Requirements

PROJECT MANAGEMENT					
State Requirements			Vendor		
Req #	Requirement Description	Criticality	Vendor Response	Delivery Method	Comments
<b>PROJECT MANAGEMENT</b>					
P1.1	Vendor shall participate in an initial kick-off meeting to initiate the Project.	M	Yes	Standard	Edmentum will participate in a kickoff planning meeting to discuss the implementation and state goals and objectives.
P1.2	Vendor shall provide Project Staff as specified in the RFP.	M	Yes	Standard	The state will have an assigned relationship team, including a project manager to support this implementation.
P1.3	Vendor shall submit a finalized Work Plan within ten (10) days after Contract award and approval by Governor and Council. The Work Plan shall include, without limitation, a detailed description of the Schedule, tasks, Deliverables, critical events, task dependencies, and payment Schedule. The plan shall be updated no less than quarterly.	M	Yes	Standard	Edmentum will provide an Implementation Plan that will be updated on an agreed-upon schedule during the planning phase. This plan will be revisited on a quarterly or sooner basis.
P1.4	Vendor shall provide detailed quarterly status reports on the progress of the Project, which will include expenses incurred year to date.	M	Yes	Standard	Edmentum will provide quarterly status reports.

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Attachment 1: Project Requirements

P1.5	All user, technical, and System Documentation as well as Project Schedules, plans, status reports, and correspondence must be maintained as project documentation. (Define how- WORD format- on-Line, in a common library or on paper)	M	Yes	Standard	Edmentum's services team will maintain project documentation online in Word or PDF format. Project documentation, as it relates to the state of New Hampshire, will be maintained on internal Edmentum systems and shared with the State on a quaterly or better basis. Edmentum products contain support items such as a library available to all users; these items are in PDF, HTML, and video formats.
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Appendix A-33

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9/11/18

# edmentum™

Date: 3/27/2018  
 Order Number: Q-75612  
 Revision: 7  
 Order Form Expiration Date: 8/30/2018

**ORDER FORM**

Please fax all pages to 1.877.519.9555 or email to [orders@edmentum.com](mailto:orders@edmentum.com)  
 To Pay by Credit Card: Call 214.294.9901 or e-mail [creditcardprocessing@edmentum.com](mailto:creditcardprocessing@edmentum.com)

**Customer and Billing Address**

Customer No.: 478837  
 Customer Name: New Hampshire Bureau Of Adult Education  
 Billing Address: 21 S Fruit St  
 Concord, NH 03301

**Products and Services**

Products	Qty	License Start Date	License End Date	License Term (Months)	Extended Price
Adaptive Assessment with Prescriptions: Core Library - Program License	250	7/1/2018	6/30/2021	36	\$20,235.00
Fixed Form Assessment with Prescriptions: Higher Education and Career Readiness Library - Program License	1	7/1/2018	6/30/2021	36	\$0.00
Courseware: Core Library - Concurrent License	50	7/1/2018	6/30/2021	36	\$50,589.00
Courseware: Higher Education and Career Readiness Library - Concurrent License	50	7/1/2018	6/30/2021	36	\$32,236.50
Courseware: CTE Library - Concurrent License	7	7/1/2018	6/30/2021	36	\$5,564.51
ESL ReadingSmart/ReadingMate - Program License	50	7/1/2018	6/30/2021	36	\$1,952.00
Courseware: Electives Library - Concurrent License	3	7/1/2018	6/30/2021	36	\$2,673.00
Courseware Standard Service Package	1	Year 1	***	12	\$2,250.00
Courseware Standard Service Package	1	Year 2	***	12	\$2,250.00
Courseware Standard Service Package	1	Year 3	***	12	\$2,250.00
One-Time Discount	1	7/1/2018	6/30/2021	36	-\$0.01

Subtotal: \$120,000.00  
 Estimated Tax: \$0.00  
 Total US Funds: \$120,000.00

\*\* Unless otherwise specified in this Order Form, the Start Date for your license(s) will be one of the following: (a) the day immediately following the expiration date of the prior license term or (b) the date in which we have accepted your order and have issued log-in credentials for your software license.

\*\*\* Services purchased are valid for an annual term. Any service offering that is not used during the applicable term will expire and cannot be carried over or used in subsequent periods.

Adaptive Assessment with Prescriptions Products and Fixed Form Assessment with Prescriptions Products replace the product formerly known as Adaptive Intervention Solution. With the purchase of any Adaptive Assessment Library or Fixed Form Assessment Library, you will get the corresponding subject in the alternate Library for the duration of the contract period, if available.

**Invoicing and Payment Terms**

PO Due Date      Payment Due Date      Amount

Edmentum | N.W. 7504, P.O. Box 1450 | Minneapolis, MN 55485-7504 | [www.edmentum.com](http://www.edmentum.com)



EP  
2/11/18

# edmentum

Date: 3/27/2018  
Order Number: Q-75612  
Revision: 7  
Order Form Expiration Date: 8/30/2018

## ORDER FORM

Please fax all pages to 1.877.519.9555 or email to [orders@edmentum.com](mailto:orders@edmentum.com)  
To Pay by Credit Card: Call 214.294.9901 or e-mail [creditcardprocessing@edmentum.com](mailto:creditcardprocessing@edmentum.com)

Due at Time of Order	Net 15	\$40,000.00
7/1/2019	7/16/2019	\$40,000.00
7/1/2020	7/16/2020	\$40,000.00
	Total	\$120,000.00

### Terms and Conditions

For the purposes of this Order Form, "you" and "your" refer to Customer, and "we", "us" and "our" refer to edmentum Inc. and affiliates. This Order Form and any documents it incorporates (including the Standard Purchase and License Terms located at <http://www.edmentum.com/standardterms> and the documents it references) form the entire agreement between you and us ("Agreement"). You acknowledge that any terms and conditions in your purchase order or any other documents you provide that enhance our obligations or restrictions or contradict the Agreement do not have force and effect.

Notwithstanding anything in this Agreement to the contrary, in the event that this Order Form identifies a multi payment arrangement with only the initial payment covered by Your purchase order, We will enable You to cancel those years beyond the initial period to the extent that all of the following are satisfied and only with respect to the specific year in which they are all satisfied: (i) You took all necessary steps and exhausted all reasonable efforts to obtain such funding, including but not limited to including the funding in Your budget request for each year, (ii) You inform Us promptly of any situation whereby You have any reason to believe that funding might not be forthcoming, and (iii) You provide Us prompt written notice and comprehensive explanation of such funding failure and written representation from your Superintendent (or similar position) that funds have not been made available to license or purchase products or services during any portion of the license period You are requesting funding out of that are similar in any manner to those identified on your order form. Even if You satisfy subsections (i) through (iii), to the extent you have some funding available, You must purchase some licenses and/or services to the extent of such funding.

### Purchase Order

You acknowledge that this Agreement is non-cancelable and you will submit a Purchase Order with this Order Form covering the initial portion of the amount and you will submit future Purchase Orders based on the Invoicing and Payment Terms table and timely make corresponding payment(s) for the remaining amount(s) owed.

Customer Contact for Future Purchase Orders:

Name: \_\_\_\_\_

Email Address: \_\_\_\_\_

### Acceptance

This offer will expire on the Order Form Expiration Date noted above unless we earlier withdraw or extend the offer in writing. I represent that I have read the terms and conditions included in this Agreement, that I am authorized to accept this offer and the Agreements terms and conditions on behalf of the customer identified above and that I do accept this offer on behalf of the customer who agrees to adhere to the Agreements terms and conditions. To the extent that either parties process does not require that I execute this Order Form, I accept, acknowledge and agree to the terms and conditions identified in and referenced in this Agreement as signified by my receipt, use or access of the products and/or services identified. Please fax all pages to 1.877.519.9555 or email to [orders@edmentum.com](mailto:orders@edmentum.com).

Customer Signature: \_\_\_\_\_

Name (Printed or Typed): \_\_\_\_\_

Title: \_\_\_\_\_

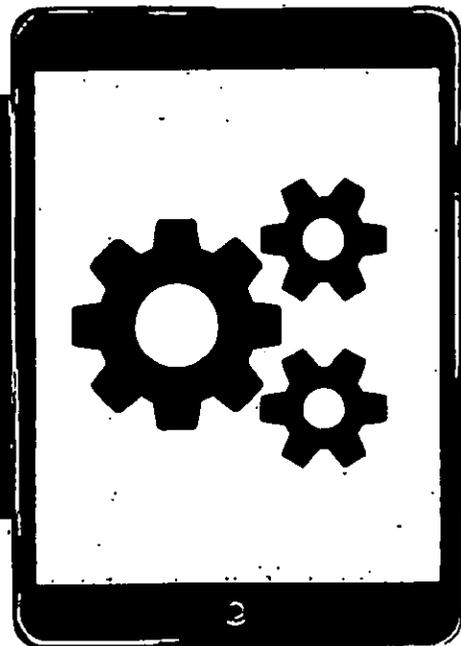
Date: \_\_\_\_\_



ESU  
9/14/18



# SYSTEM REQUIREMENTS



System requirements applies to the following Edmentum products: Courseware, Assessments, Exact Path, Study Island, and Study Island for Home.

*These requirements are applicable for the 2017-18 school year (including Summer School). Requirements are reviewed and updated yearly.*

## Browser

- Edge (latest)
- Internet Explorer® 11
- Chrome (latest)
- Firefox (latest)
- Safari (latest)

## Plug-Ins\*

- Adobe Flash®
  - Java
  - Office compatible software
- For a small percentage of our legacy content, you may need the following plug-ins:
- Shockwave®
  - Plato® Xtras

\*Please visit the following link for more information: <http://redirect.platoxtras.com/355823>

## Pop-Up Blockers

- [How to turn off pop-up blockers](#)

## Browser

We support the following tablet configurations:

OS	Browser	Version
Android	Chrome	(Latest)
iOS	Safari	(Latest)

Contact us today for more information.  
[www.edmentum.com/support](http://www.edmentum.com/support) - 800.447.5286 Option 9

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**TECHNICAL REQUIREMENTS** [www.ESLReadingSmart.com](http://www.ESLReadingSmart.com)

**Platform**

MAC

Windows

**System Requirements**

Minimum RAM: 32 MB

HD space: 5-10 MB free

Processor Speed: 200 MHz - Pentium I

Internet Connection

**Browser Plug-in Requirements**

Macromedia Flash 9.0 Internet Plug-in

JavaScript enabled in the browser

Pop-ups must be allowed in the browser

**Browser Requirements:**

Internet Explorer 9+

Safari 6+

Firefox (Latest Version)

Chrome (Latest Version)

**Network Recommendations - Open Protocols & Ports for the following**

HTTP: Port 80

HTTPS: Port 443

IP Range: 66.195.152.128 - 66.195.152.254

DNS: \*.[ESLreadingsmart.com](http://ESLreadingsmart.com) <- This is a wildcard for all sub-domains under [eslreadingsmart.com](http://eslreadingsmart.com)

Remove [www.eslreadingsmart.com](http://www.eslreadingsmart.com) from the network/server proxy.

Please make sure the local machine caching is turned OFF for \*.[ESLreadingsmart.com](http://ESLreadingsmart.com).

Updated 5/1/2015

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9/16/10

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 EDMENTUM, INC. is a Delaware Profit Corporation registered to transact business in New Hampshire on July 25, 2005. 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: 541214

Certificate Number: 0004134206



IN TESTIMONY WHEREOF,  
I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 18th day of July A.D. 2018.

Handwritten signature of William M. Gardner.

William M. Gardner  
Secretary of State

Edmentum, Inc.

Handwritten signature of Eric Doan.  

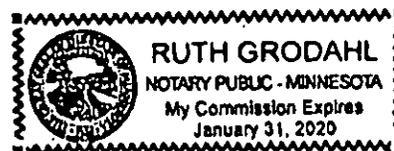
Eric Doan, CFO

7/23/18

Handwritten signature of Ruth Grodahl.

Notarized by Ruth Grodahl

7/23/18



Certificate of Authority # 1

(Corporation or LLC - Non-specific, open-ended)

Corporate Resolution

I, Eric Doan, hereby certify that I am duly elected Clerk/Secretary of  
(Name)  
Edmentum, Inc.. I hereby certify the following is a true copy of a vote taken at  
(Name of Corporation or LLC)

a meeting of the Board of Directors/shareholders, duly called and held on July 9, 2018  
at which a quorum of the Directors/shareholders were present and voting.

VOTED: That Eric Doan, CFO (may list more than one person) is  
(Name and Title)  
duly authorized to enter into contracts or agreements on behalf of

Edmentum, Inc. with the State of New Hampshire and any of  
(Name of Corporation or LLC)

its agencies or departments and further is authorized to execute any  
documents which may in his/her judgment be desirable or necessary to effect  
the purpose of this vote.

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

DATED: 9/11/18

ATTEST: Eric Doan, CFO

WRITTEN CONSENT OF THE SOLE MEMBER  
OF  
EDMENTUM ULTIMATE HOLDINGS, LLC

The undersigned, being the sole member (the "Sole Member") of Edmentum Ultimate Holdings, LLC, a Delaware limited liability company (the "Company"), hereby consents to and adopts the following resolutions, without a meeting in accordance with the Limited Liability Company Agreement of the Company and the procedures established in Section 18-302(d) of the Limited Liability Company Act of the State of Delaware, and hereby agrees that such actions and resolutions have the same force and effect as though duly taken and adopted at a meeting of the Sole Member of the Company duly called and legally held:

WHEREAS, the Sole Member has determined that it is in the best interest of the Company to appoint the following officers of the Company (the "Executives");

Jamie Candee	Chief Executive Officer and President
Eric Doan	Chief Financial Officer and Secretary

NOW, THEREFORE, BE IT RESOLVED, that the Executives are hereby appointed, effective as of June 1, 2017, to the offices of the Company set forth opposite their names above, to serve in accordance with the Limited Liability Company Agreement of the Company and applicable law until their successors shall have been duly elected and shall have qualified, or until their resignation or removal;

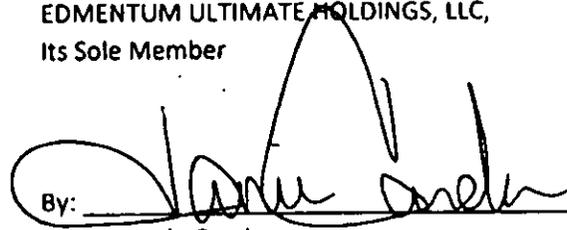
FURTHER RESOLVED, that all other lawful actions previously taken by any officer, manager or agent of the Company in connection with the transactions contemplated by the foregoing resolutions are hereby authorized, approved, adopted, confirmed and ratified in all respects as the acts and deeds of the Company; and

FURTHER RESOLVED, that the officers of the Company are hereby authorized and directed, in the name and on behalf of the Company, to execute and deliver all other documents, certificates and instruments, and to do and perform any and all such further acts and deeds, the officers may determine in their discretion to be necessary or advisable to carry out the terms, provisions, purposes or intent of the foregoing resolutions and the transactions contemplated thereby, the taking of any such action to constitute conclusive evidence of the exercise of such discretionary authority.

[Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned has caused this Written Consent to be executed as of this 11<sup>th</sup> day of September 2018.

EDMENTUM ULTIMATE HOLDINGS, LLC,  
Its Sole Member

By: 

Name: Jamie Candee

Title: Chief Executive Officer and President

