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STATE OF NEW HAMPSHIRE
 DEPARTMENT of NATURAL and CULTURAL RESOURCES
DIVISION OF FORESTS AND LANDS

172 Pembroke Road Concord, New Hampshire 03301
 Phone: 603-271-2214 Fax: 603-271-6488 www.nhdf.org

August 25, 2022

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

REQUESTED ACTION

Authorize the Department of Natural and Cultural Resources, Division of Forests and Lands (DFL), to enter into a contract with 3Sixty Holdings, LLC d/b/a AIS Network, (VC# 421214), Ashland, VA in the amount of \$114,450 for the development and implementation of an E-Commerce platform for the online sale of seedlings to the public from the State Forest Nursery in Boscawen, NH, with the option to renew for an additional five-year period, effective upon Governor and Council approval through June 30, 2025. 100% Other Funds (Agency income).

Funding is contingent on Governor and Executive Council approval of an accept and expend request for \$78,150 included on this agenda and is anticipated to be available in Fiscal Years 2024 and 2025, upon the continued appropriation of funds in the future operating budget with the authority to adjust encumbrances between fiscal years within the price limitation through the Budget Office, if needed and justified.

03-035-035-351010-35050000, Management and Protection

	<u>FY 2023</u>	<u>FY 2024</u>	<u>FY 2025</u>
103-502664 – Contracts for Ops Services	\$78,150	\$18,150	\$18,150

EXPLANATION

The purpose of this contract is to support an important public service and a self-funded program revenue stream and to provide the best possible services for our State Forest Nursery customers. Currently, a single staff member handles over 2,300 orders received either via mail with an enclosed check, or via credit card through a secure fax line. An E-Commerce platform will greatly improve the State Forest Nursery program efficiency and customer satisfaction by eliminating the need to process mail-in and fax orders and significantly reduce telephone inquiries regarding current inventory and order status by providing real time availability of species and instant order confirmation.

The DNCR-2022-110 E-Commerce Seedling Sales Contract was developed through the release of the DNCR-2022-110 E-Commerce Seedling Sales RFP in collaboration with the Department of Information and Technology (DoIT) to ensure that State standards are being met and that the technical and security issues that would be essential to the success of the project have been addressed.

The option of contracting with DoIT to develop an on-line store for the sale of seedlings was not a viable option due to the development time, the extensive support required, and the costs involved. (DoIT) has no funding available to accommodate this project.

On March 23, 2022, an invitation to submit proposals for developing an E-Commerce Platform System was posted on the Division of Purchase and Property's website and the Division of Forests and Land's website. The deadline to submit proposals was May 4, 2022, and three proposals were received and scored. AISN Network was selected based upon their overall score.

The current request of \$78,150 is for the initial development and implementation of the E-Commerce platform and the pro-rated costs of support and hosting for the remainder of this fiscal year once the online store goes live. The balance of the contract is the annual support and hosting fees and will be budgeted in fiscal years 24 and 25 accordingly.

DoIT has approved this contract and the Attorney General's Office has reviewed and approved this contract as to form, substance, and execution.

Respectfully submitted,

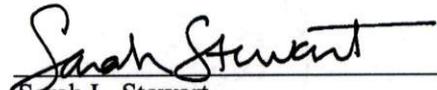
Concurred,

(156)



Patrick D. Hackley

Director



Sarah L. Stewart
Commissioner

STATE OF NEW HAMPSHIRE
DEPARTMENT of NATURAL and CULTURAL RESOURCES
Division of Forest and Lands

RFP 2022-110 E-commerce Seedling Sales Scoring Summary

Name of Company	State	Scoring Criteria and Maximum Points					Total Score	Total Cost
		Proposed Software Solution (40 Pts Max)	Technical Service and Project Mgt. (20 Pts Max)	Cooperate Qualifications (10Pts Max)	Staffing Qualifications (10 Pts Max)	Solution Cost (20 Pts Max)		
AIS Network	VA	38.67	17.00	10.00	8.00	20.00	93.67	\$114,450
Sovereign Sportsmen Solutions	TN	37.33	19.33	10.00	8.00	11.16	85.82	\$230,000
Comprise Technologies	NJ	39.00	19.00	10.00	7.67	11.57	87.24	\$207,280

EVALUATION COMMITTEE MEMBERS		
Name	Title	Relevant Experience
Nicole Warren	IT Lead/EDS Supervisor, NH Department of Information and Technology	Nicole has managed all IT projects, budgets, RFP's, RFB's and contracts for DNCR over the last 22 years.
William Guinn	Administrator, Forest Management Bureau	William (Will) has worked for the New Hampshire Division of Forest and Lands for 23 years and has been a NH licensed professional forester for 20 years. He got his start with the state as a seasonal employee lifting, grading, and counting seedlings at the State Forest Nursery. He spent much of his career in the field as a regional forester managing state reservations and other state-owned lands. He has been the administrator of the Forest Management Bureau for the past 6 years and oversees multiple programs including the sale of timber from state lands, the Fox Research and Demonstration Forest, the US Army Corps of Engineers flood control area management license, the State Forest Nursery, and the State Lands Wildlife Habitat Improvement Program with the New Hampshire Fish and Game Department.

Patrick Hackley	Director, NH Division of Forests and Lands	Prior to being appointed Director of the Division of forests and Lands two years ago, Patrick was a Timberland Broker and Real Estate Transaction Manager in the private sector where he conducted comprehensive valuations on all aspects of land - timber, conservation, and development; and provided financial analysis for private investors and land management organizations. Patrick has also been a representative in the forest industry trade association promoting the interests of the forest products industry in the safe, economical, efficient, and sustainable use of forest resources to meet the needs of the wood fiber supply chain through private enterprise. Patrick began his career as an industrial forester for a corporate timberland owner of nearly 2 million acres in the Northeast.



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/doi

Denis Goulet
Commissioner

August 23, 2022

Sarah L. Stewart, Commissioner
Department of Natural and Cultural Resources
172 Pembroke Road
Concord, NH 03301

Dear Commissioner Stewart:

This letter represents formal notification that the Department of Information Technology (DoIT) has approved your agency's request to enter into a contract with AIS Network of Ashland, VA, as described below and referenced as DoIT No. 2022-110.

This contract will aid with the online sale of seedlings to the public from the State Forest Nursery in Boscawen, NH.

This contract includes a not to exceed spend amount of \$114,450.00 and shall become effective upon Governor and Executive Council approval through June 30, 2025.

A copy of this letter should accompany your Agency's submission to Governor and Executive Council for approval.

Sincerely,

Denis Goulet

DG/RA
DoIT #2022-110
cc: Nicole Warren, DoIT - IT Lead

Good morning, Paul,

Regarding the draft copy of the proposed single agency contract with AIS Network: The sections related to merchant card services are acceptable. As stated, /edited, the Attestation of Compliance would need to be provided by the vendor just prior to the "go live" date.

I have kept JPMorgan Chase apprised of the progress and they are ready to expedite implementation once the contract has been approved by G&C.

Don Daley

Merchant Card Services Administrator

DAS Division of Procurement and Support Services State House Annex, 25 Capitol St, Room 102 Concord,
NH 03301

(603) 271-4307



STATE OF NEW HAMPSHIRE

DEPARTMENT OF NATURAL AND CULTURAL RESOURCES

E-COMMERCE SEEDLING SALES

DNCR-2022-110

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF NATURAL AND CULTURAL RESOURCES
DNCR-2022-110 E-COMMERCE SEEDLING SALES**

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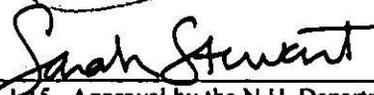
**STATE OF NEW HAMPSHIRE
DEPARTMENT OF NATURAL AND CULTURAL RESOURCES
DNCR-2022-110 E-COMMERCE SEEDLING SALES
STATE OF NEW HAMPSHIRE GENERAL PROVISIONS - P37**

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

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

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

1. IDENTIFICATION.

1.1 State Agency Name Department of Natural and Cultural Resources		1.2 State Agency Address 172 Pembroke Road	
1.3 Contractor Name 3Sixty Holdings, LLC d/b/a AIS Network		1.4 Contractor Address PO Box 2082 Ashland, VA 23005	
1.5 Contractor Phone Number Main: 847-202-1400 Project: 888-579-2476	1.6 Account Number 35050000-103	1.7 Completion Date June 30, 2025	1.8 Price Limitation \$114,450.00
1.9 Contracting Officer for State Agency William Guinn		1.10 State Agency Telephone Number (603) 271-2214	
1.11 Contractor Signature  Date: 8/25/22		1.12 Name and Title of Contractor Signatory Jay Atkinson,	
1.13 State Agency Signature  Date: 9/1/22		1.14 Name and Title of State Agency Signatory Sarah Stewart, Commissioner DNCR	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By: <i>Takmina Rakhmatova</i> On: 9/2/2022			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: _____			

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 Contractor Initials: 
 Date: 8/25/22

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

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

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

4. CONDITIONAL NATURE OF AGREEMENT.

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

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

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

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

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

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

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

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

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

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

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the

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STATE OF NEW HAMPSHIRE GENERAL PROVISIONS - P37

Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

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

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

8. EVENT OF DEFAULT/REMEDIES.

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

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

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

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

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

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

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

8.3. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall

be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

9. TERMINATION.

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

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

10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

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

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

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

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DEPARTMENT OF NATURAL AND CULTURAL RESOURCES
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STATE OF NEW HAMPSHIRE GENERAL PROVISIONS - P37

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

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

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

13. INDEMNIFICATION. Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

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

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

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

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

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

15. WORKERS' COMPENSATION.

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

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

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

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

18. CHOICE OF LAW AND FORUM. This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording

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chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

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

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

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

interpretation, construction or meaning of the provisions of this Agreement.

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

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

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

STATE OF NEW HAMPSHIRE
DEPARTMENT OF NATURAL AND CULTURAL RESOURCES
DNCR-2022-110 E-COMMERCE SEEDLING SALES
EXHIBIT A – SPECIAL PROVISIONS

EXHIBIT A - SPECIAL PROVISIONS

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

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

3.3 The Term may be extended up to Five (5) years(s), (“Extended Term”) at the sole option of the State, subject to the parties prior written Agreement on applicable fees for each extended Term, up to but not beyond June 30, 2030, under the same terms and conditions, subject to approval of the Governor and Executive Council.

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

5.5 The State’s liability under this Agreement shall be limited to monetary damages not to exceed the contract price pursuant to Paragraph 5.2. The Contractor agrees that it has an adequate remedy at law for any breach of this Agreement by the State and hereby waives any right to specific performance or other equitable remedies against the State. Subject to applicable laws and regulations, in no event shall the State be liable for any consequential, special, indirect, incidental, punitive, or exemplary damages. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State.

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

8.2.5 give the Contractor a written notice specifying the event of Default, terminate the agreement as breached, and procure Services that are the subject of the Contract from another source and Contractor shall be liable for reimbursing the State for the replacement Services, and all administrative costs directly related to the replacement of the Contract and procuring the Services from another source, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, and staff time costs; all of which shall be subject to the limitations of liability set forth in the Contract.

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

9. TERMINATION

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, and with written notice, terminate the Agreement for any reason, in whole or in part. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. The State shall be liable for cost of all Services and Deliverables for which Acceptance has been given by the State, provided through the date of termination but will not be liable for any costs for incomplete Services or winding down the Contract activities. The

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Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

9.2 Termination Procedure

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

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

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

9.2.3 If the Contract has expired, or terminated prior to the Completion Date, for any reason, the Contractor shall provide, for a period up to ninety (90) days after the expiration or termination, all transition services requested by the State, at no additional cost, to allow for the expired or terminated portion of the Services to continue without interruption or adverse effect, and to facilitate

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the orderly transfer of such Services to the State or its designees (“Transition Services”).

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

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

10.4 In performing its obligations under this Agreement, Contractor may gain access to Confidential Information of the State. Confidential Information includes any and all information owned or managed by the State of NH - created, received from or on behalf of any Agency of the State or accessed in the course of performing contracted Services - of which collection, disclosure, protection, and disposition is governed by state or federal law or regulation. This information includes, but is not limited to Protected Health Information (PHI), Personally Identifiable Information (PII), Personal Financial Information (PFI), Federal Tax Information (FTI), Social Security Numbers (SSN), Payment Card Industry (PCI), and or other sensitive and Confidential Information. The Contractor shall not use the Confidential Information developed or obtained during the performance of, or acquired, or developed by reason of the Agreement, except as directly connected to and necessary for the performance of the Agreement. Contractor shall maintain the confidentiality of and protect from unauthorized use, disclosure, publication, and reproduction (collectively “release”), all Confidential Information.

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

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

- a. shall have otherwise become publicly available other than as a result of disclosure by the receiving Party in breach hereof;
- b. was disclosed to the receiving Party on a non-confidential basis from a source other than the disclosing Party, which the receiving Party believes is not prohibited from disclosing such information as a result of an obligation in favor of the disclosing Party;
- c. is developed by the receiving Party independently of, or was known by the receiving Party prior to, any disclosure of such information made by the disclosing Party; or
- d. is disclosed with the written consent of the disclosing Party.

10.6 A receiving Party also may disclose the disclosing Party’s Confidential Information to the extent required by an order of a court of competent jurisdiction. Any disclosure of the Confidential Information shall require the prior written approval of the State. Contractor shall immediately notify the State if any request, subpoena or other legal process is served upon Contractor regarding the Confidential Information, and

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26. EXHIBITS/ATTACHMENTS

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

27. NON-EXCLUSIVE CONTRACT

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

28. GOVERNMENT APPROVALS

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

29. ORDER OF PRECEDENCE

In the event of conflict or ambiguity among any of the text within this agreement, the following Order of Precedence shall govern:

- i. State of New Hampshire, Department of Natural and Cultural Resources Contract Agreement DNCR-2022-110
- ii. State of New Hampshire, DNCR-2022-110 E-COMMERCE SEEDLING SALES, RFP.
- iii. Contractor Proposal Response to DNCR-2022-110 E-COMMERCE SEEDLING SALES, May 2, 2022
- iv. Additional Contractor Provided Documents (see Exhibit G)

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

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

1. STATEMENT OF WORK

The Solution shall provide the Division of Forests and Lands State Forest Nursery with a mechanism to offer and sell seedlings to the public, accept credit card payments, track inventory by species and age and generate required reports.

Contractor must not collect and remit sales taxes of other states on purchases made on the website.

- The Solution shall go live and be fully functional by November 15, 2022.
- The Solution shall be a Contractor hosted website.
- The Solution shall have a look and setup similar to the NH State Forest Nursery Catalog and shall include all species, ages and products offered in the catalog, with the ability to add additional species/products.
- The Solution shall also provide the ability to sell other merchandise in the future.
- Each species or product on the online store shall have a picture that can be easily changed by DFL staff.
- The Solution shall have a shopping cart that clearly shows the customer order total, including customizable shipping costs based on order totals and zip code zones provided by DFL.
- The Solution shall create a complete customer database which would include a field to capture a request for a physical catalog based on customer opt-in (check box in shopping cart).
- The Solution shall provide a real time inventory of each species (by ages) visible to customers and a back-end that allows Nursery staff to add additional stock that becomes available, and the removal of stock and receipt of other revenue (cash or check) from onsite sales.
- The back-end shall provide the ability to query customers by name to allow DFL staff to gather orders from the walk-in cooler using a hand held tablet (Android/IOS).
- The back-end shall have security access based on user roles.
- The Solution shall track revenue from both sales and shipping; and generate the required reports and export report data to Excel/CSV.
- The Solution shall have the ability to create additional customized reports and export data to Excel/CSV.

2. BUSINESS / TECHNICAL REQUIREMENTS

Business and Technical Requirements are identified in Exhibit G: Attachment 1

2.1 Compliance Requirements

Contractor agrees to supply the current status of Contractor's PCI DSS compliance, and evidence of its most recent validation of compliance prior to go live of the E-commerce Seedling Sales

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Solution to Department of Natural and Cultural Resources. Contractor must supply to Department of Natural and Cultural Resources an Attestation of compliance at least annually and upon request.

3. ACTIVITY, DELIVERABLE, AND MILESTONE

Table B-3: Deliverables		
DELIVERABLES		
	ACTIVITY, DELIVERABLE, OR MILESTONE	DELIVERABLE TYPE
PLANNING AND PROJECT MANAGEMENT		
1	Conduct Project Kickoff Meeting	Non-Software
2	Work Plan	Written
3	Project Status Reports	Written
4	Infrastructure Plan, including Desktop and Network Configuration Requirements	Written
5	Security Plan	Written
6	Communications and Change Management Plan	Written
7	Software Configuration Plan	Written
8	Systems Interface Plan and Design/Capability	Written
9	Testing Plan	Written
10	Data Conversion (Migration) Plan and Design	Written
11	Deployment Plan	Written
12	Comprehensive Training Plan and Curriculum	Written
13	End User Support Plan	Written
14	Business Continuity Plan	Written
15	Documentation of Operational Procedures	Written
INSTALLATION		
16	Provide Software Licenses if needed	Written

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17	Provide Fully Tested Data Conversion Software	Software
18	Provide Software Installed, Configured and Operational to Satisfy State Requirements	Software
TESTING		
19	Conduct Integration Testing	Non-Software
20	Conduct User Acceptance Testing	Non-Software
21	Perform Production Tests	Non-Software
22	Test In-Bound and Out-Bound Interfaces	Software
23	Conduct System Performance (Load/Stress) Testing	Non-Software
24	Certification of Penetration Testing and Application Vulnerability Scanning.	Non-Software
SYSTEM DEPLOYMENT		
25	Converted Data Loaded into Production Environment	Software
26	Provide Tools for Backup and Recovery of all Applications and Data	Software
27	Conduct Training	Non-Software
28	Cutover to New Software	Non-Software
29	Provide Documentation	Written
30	Execute Security Plan	Non-Software
31	Conduct Project Exit Meeting	Non-Software
OPERATIONS		
32	Ongoing Hosting Support	Non-Software
33	Ongoing Support & Maintenance	Software
34	Contractor must supply to DNCR an Attestation of Compliance at least annually and upon request.	Written

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4. DELIVERABLE REVIEW AND ACCEPTANCE

4.1 Non-Software and Written Deliverables Review and Acceptance

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

4.2 Software Deliverables Review and Acceptance

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

4.3 Number of Deliverables

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

4.4 Conditional and Unconditional Acceptance

By accepting a Deliverable, the State reserves the right to reject any and all Deliverables in the event the State detects any Deficiency in the System, in whole or in part, through completion of all Acceptance Testing, including but not limited to, Software/System Acceptance Testing, and any extensions thereof.

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7.1.3. Change of Project Manager

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

7.1.4. The Contractors Additional Key Project Staff

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

Phil Carapelle
Senior Application Engineer
203-417-2526
phil.carapelle@aisn.net

Oran Dillon
Principal Cybersecurity Engineer
804-334-0617
oran.dillon@aisn.net

Josh Darrin
Technical Architect/Web Development
joshua.darrin@codewithintegrity.com

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

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

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

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7.2 The State Key Project Staff

7.2.1. The State Contract Manager

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

William Guinn
Administrator, Forest Management Bureau
(603) 271-2645
william.t.guinn@dnrc.nh.gov

7.2.2. The State Project Manager

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

William Guinn
Administrator, Forest Management Bureau
(603) 271-2645
william.t.guinn@dnrc.nh.gov

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

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

8. WORK PLAN

The Contractor's Project Manager and the State Project manager shall finalize the Work Plan within Seven (7) days of the Effective Date and further refine the tasks required to implement the Project. Continued development and management of the Work Plan is a joint effort on the part of the Contractor and State Project Managers. The preliminary Work Plan created by the Contractor and the State is set forth in this Section.

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No	STATE DELIVERABLE	TASK	DEPENDENCY	ASSIGNED TO	PROGRESS	START	END BY
1.0	Planning and Project Management				0%	17-Aug	19-Aug
		Receive signed agreement from the State of New Hampshire			0%	17-Aug	17-Aug
1.1	1	Conduct Project Kickoff Meeting		AISN Team, State Team	0%	18-Aug	18-Aug
1.2		Distribute Kickoff meeting notes to team	1.1	AISN PM	0%	18-Aug	18-Aug
1.3		Provide access to team SharePoint portal and upload deliverables		AISN PM	0%	19-Aug	19-Aug
1.4		Schedule required status and discovery meetings		AISN PM	0%	19-Aug	19-Aug
1.4	2	Complete Work Plan		AISN PM	0%	22-Aug	31-Jul
1.5	3	Prepare for project status reports		AISN PM	0%	19-Aug	24-Aug
1.6	4	Complete Infrastructure, Desktop and Network Configuration Requirements		AISN Eng	0%	22-Aug	30-Sep
1.7	5	Document Security Plan		AISN Eng	0%	22-Aug	30-Sep
1.8	6	Complete Communication and Change management plan		AISN PM	0%	22-Aug	30-Sep
1.9	7	Document Software Configuration Plan		AISN App Eng	0%	22-Aug	30-Sep
1.10	8	Document Systems Interface Plan and Design/Capability		AISN App Eng	0%	22-Aug	30-Sep
1.11	9	Document Testing Plan		AISN App Eng	0%	22-Aug	30-Sep
1.12	10	Document Data Conversion (Migration) Plan and Design		AISN App Eng	0%	22-Aug	30-Sep
1.13	11	Document Deployment Plan		AISN PM	0%	22-Aug	30-Sep
1.14	12	Document Training Plan and Curriculum		AISN PM	0%	22-Aug	30-Sep
1.15	13	Document End User Support Plan		AISN PM	0%	22-Aug	30-Sep
1.16	14	Document Business Continuity Plan		AISN PM	0%	22-Aug	30-Sep
1.17	15	Complete Document of Operational Procedures		AISN Hosting Eng	0%	22-Aug	30-Sep
2.0	Installation				0%	14-Oct	14-Oct
2.1	16	Provide Software Licenses if needed		ASIN PM	0%	14-Oct	14-Oct
2.2	17	Provide Fully Tested Data Conversion Software		AISN App Eng	0%	22-Aug	14-Oct
2.3	18	Provide Software Installed, Configured, and Operational to Satisfy State Requirements (see design and development tasks)		AISN Developer	0%	22-Aug	14-Oct

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No	STATE DELIVERABLE	TASK	DEPENDENCY	ASSIGNED TO	PROGRESS	START	END BY
3.0 Design and Development					0%	22-Aug	14-Oct
3.1		CMS Setup		AISN Developer	0%	22-Aug	14-Oct
3.2		Provision CMS		AISN Developer	0%	22-Aug	14-Oct
3.3		Install plug-ins		AISN Developer	0%	22-Aug	14-Oct
3.3		Configure users		AISN Developer	0%	22-Aug	14-Oct
3.5		Develop Public Functions		AISN Developer	0%	22-Aug	14-Oct
3.6		Custom Theme & CSS		AISN Developer	0%	22-Aug	14-Oct
3.7		Home Page		AISN Developer	0%	22-Aug	14-Oct
3.8		Contact Us		AISN Developer	0%	22-Aug	14-Oct
3.9		Search		AISN Developer	0%	22-Aug	14-Oct
3.10		Help/FAQs		AISN Developer	0%	22-Aug	14-Oct
4.0 Testing					0%	17-Oct	0-Jan
4.1	19	Conduct Integration Testing		AISN Developer	0%	17-Oct	28-Oct
4.2	20	Complete User Acceptance Training		State	0%	17-Oct	28-Oct
4.3	21	Perform Production Tests		State	0%	17-Oct	28-Oct
4.4	22	Test In-bound and Out-Bound Interfaces		State	0%	17-Oct	28-Oct
4.5	23	Conduct System Performance (Load/Stress) Testing		AISN App Eng	0%	17-Oct	28-Oct
4.6	24	Certification of 3rd Party Pen Testing and Application Vulnerability Scanning			0%		
5.0 System Deployment					0%	29-Oct	14-Nov
5.1	25	Converted Data Loaded in Production Environment		AISN Developer	0%	29-Oct	1-Nov
5.2	26	Provide Tools for Backup and Recovery Tools of all Applications and Data		AISN Hosting Eng	0%	29-Oct	1-Nov
5.3	27	Conduct Training		AISN Developer	0%	2-Nov	9-Nov
5.4	28	Cutover to New Software		AISN Hosting Eng	0%	11-Nov	11-Nov
5.5	29	Provide Documentation		AISN PM	0%	11-Nov	11-Nov
5.6	30	Execute Security Plan		AISN Hosting Eng	0%	11-Nov	11-Nov
5.7	31	Conduct Project Exit Meeting		AISN PM, State Team	0%	14-Nov	14-Nov

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

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9. ACCEPTANCE & TESTING SERVICES

The Contractor shall provide the following Testing Services:

AIS Network shall provide end-to-end testing and acceptance of the Solution throughout the Project using an industry standard methodology. This shall include training, a detailed testing methodology which covers all “areas of testing” (refer to Terms and Definitions), security, required staffing with clear roles and responsibilities, test cases and scripting with associated Data, status and results Reporting. The Test Plan shall ensure designed and implemented Solutions are fully supported, tested, and documented.

End-to-end testing is based on the defined personas and the simulation of each experience through specific experiences. A public user end-to-end test scenario might include searching for, identifying, and purchasing a specific type seedling. A tester acting in the role of the persona will follow a specific series of steps to simulate the experience:

- Launching the page on the development platform
- Searching using keywords
- Identifying the desired product
- Selecting the desired product
- Adding the product to a shopping cart with the desired quantity
- Proceeding to checkout
- Providing billing and shipping information
- Paying for the product
- Receiving a receipt with transaction information

Prior to an end-to-end test, each component (the page, search, shopping cart, etc.) will be individually tested.

Test Phase	Contractor Role / Responsibility	State Role / Responsibility	Tools	Timeframe
Management of the Process	AISN team will manage the process and assign tasks	State will provide input on the process	Bugherd or SharePoint	Ongoing
Test Planning	AISN team will plan the testing with the State	State will plan testing with the Contractor	None	Ongoing
Test Scenario Development	AISN team will develop test scenarios with input from the State	State will provide input for the testing scenarios	None	Ongoing

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Data Preparation	AISN team will import datasets provided by the State	State responsible for exporting data from the existing platform	Export functionality on existing platform Import functionality of the target platform	Near start of project and potentially repeated as needed
System Preparation	AISN will prepare the system for testing	State will perform individual tasks (such as entering test data or defining variables as needed)	Browser	Ongoing
Unit Testing	AISN will test components as launched	State will test components as launched	Browser Bug tracking system TBD	Ongoing
System Integration Testing	AISN will test components as launched	State will test components as launched	Browser Bug tracking system TBD	Ongoing
Defect Tracking	AISN will test components and track defects as launched	State will test components and track defects as launched	Browser Bug tracking system TBD	Ongoing

AIS Network uses the following 4-level scale of Defect Severity:

Low	Bug/defect does not impact the functionality of the system and/or is not evident. Example: A spelling mistake on the interface.
Minor	Bug/defect causes confusion or undesired behavior but does not impact functionality or significantly impact user experience. Example: User interface bugs are often categorized here.
Major	Bug/defect significantly impacts the system, but it remains functional and usable. Example: Broken import/export or reporting functionality.
Critical	Bug/defect renders the entire system and/or some critical functionality unusable. Example: Broken shopping cart.

AIS Network uses the online platform <https://Bugherd.com> to track defects. If DNCR cannot install the necessary extension in its browser due standards set by DOIT, a live Excel document hosted on AIS Network’s dedicated SharePoint site for the project will be utilized. AIS Network shall predefine the fields in the Excel document for setting severity and priority to maintain consistency across all user input.

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10. MAINTENANCE, OPERATIONS AND SUPPORT

10.1 System Maintenance

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

10.2 System Support

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

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

Class A Deficiencies (AISN Security Level 1) – The Contractor 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 one (1) hour of notification; and the Contractor shall provide remote diagnostic services, with corrective action to be completed within six (6) of a request;

Class B Deficiencies (AISN Security Level 2) – The State shall notify the Contractor of such Deficiencies during regular Business Hours and the Contractor shall respond back within one (1) hour of notification with planned corrective action to be completed within twenty-four (24) hours.

Class C Deficiencies (AISN Security Level 3) – The State shall notify the Contractor of such Deficiencies during regular Business Hours and the Contractor shall respond back within one (1) hour of notification with planned corrective action to be completed within three (3) days.

10.3 Support Obligations

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

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

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

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

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

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

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

10.4 Contract Warranties and Representations

10.4.1. System

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

10.4.2. Software

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

For any breach of the above Software warranty, in addition to all its other remedies at law and in equity, at the State's option the Contractor shall:

- a. provide the correction of program errors that cause breach of the warranty, or if Contractor cannot substantially correct such breach in a commercially reasonable manner, the State may end its program license if any and recover the fees paid to Contractor for the program

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license and any unused, prepaid technical support fees the State has paid for the program license; or

- b. the re-performance of the deficient Services, or
- c. if Contractor cannot substantially correct a breach in a commercially reasonable manner, the State may end the relevant Services and recover the fees paid to Contractor for the deficient Services.

10.4.3. Compatibility

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

10.4.4. Services

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

11. DATA PROTECTION

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

- a. The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and non-public information. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own Personal Data and non-public data of similar kind.
- b. All data obtained by the Contractor in the performance of this contract and all Personal Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the Personal Data.
- c. Unless otherwise stipulated, the Contractor shall encrypt all non-public data at rest and in transit. The State shall identify data it deems as non-public data to the Contractor. The level of protection and encryption for all non-public data shall be identified and made a part of this contract.
- d. At no time shall any data or processes – that either belong to or are intended for the use of the State or its officers, agents or employees – be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the State.
- e. The Contractor shall not use any information collected in connection with the service issued from this Contract for any purpose other than fulfilling the service.

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11.1 Data Location

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

11.2 Security Incident or Data Breach

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

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

11.3 Breach Responsibilities

- 11.3.1. This section only applies when a Data Breach occurs with respect to State data within the possession or control of the Contractor and/or the third-party designee hosting the data as agreed upon by the Contractor and the State.
- 11.3.2. The Contractor, unless stipulated otherwise, shall immediately notify the appropriate State identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.
- 11.3.3. The Contractor, unless stipulated otherwise, shall promptly notify the appropriate State identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a Data Breach the Contractor shall:

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

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

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

12. SOFTWARE AGREEMENT

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

13. ADMINISTRATIVE SERVICES

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

14. TRAINING

The Contractor shall provide the following Training Services:

AIS Network shall bring DFL State Forest Nursery Staff into the Solution development process to provide feedback and input regarding the administrative interfaces. Part of this process shall include an ongoing training component as the AIS Network provides instruction for testing the platform's functionality.

As the project makes its way into the User Acceptance Testing (UAT) stage, our AIS Network shall conduct training sessions over Zoom (or MS Teams) to provide the DFL State

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Forest Nursery Staff with a complete knowledge transfer regarding the usage of the various components. These sessions may be recorded for future use by the DFL State Forest Nursery staff.

AIS Network shall create documentation as part of the Solution so that it is easily accessible to the DFL State Forest Nursery Staff. The combination of open-source components and COTS modules AIS Network shall curate to build the Solution comes with a library of Contractor-maintained documentation. AIS Network shall document each component within the Solution along with links to the relevant and current support forums and documentation.

15. MERCHANT CARD SERVICES -

The Contractor agrees to the following provisions:

- a. Contractor shall comply with all credit card brand rules, as applicable, in regards to their environment. The Contractor will work with the State if any non-compliance issues occur to ensure proper remediation of any non-compliance issues.
- b. PCI DSS Requirement 12.8 of the latest edition, Service Provider – If the Contractor provides Services on the production environment used in the processing, transmission and/or storage of Cardholder Data, it is hereby agreed that:
 - i. Contractor agrees that it is responsible for the security of all Cardholder Data that it obtains or possesses, including but not limited to the functions relating to storing, processing, and transmitting the Cardholder Data;
 - ii. Contractor attests that, as of the Effective Date of this contract, it has complied with all applicable requirements to be considered PCI DSS compliant, and has performed the necessary steps to validate its compliance with PCI DSS; and
 - iii. Contractor agrees to supply the current status of Contractor's PCI DSS compliance, and evidence of its most recent validation of compliance prior to go live of the E-commerce Seedling Sales Solution to Department of Natural and Cultural Resources. Contractor must supply to Department of Natural and Cultural Resources an Attestation of compliance at least annually and upon request.
 - iv. Contractor shall immediately notify NH DoIT Chief Information Security Officer and the Merchant Card Administrator if it learns that it is no longer PCI DSS compliant and shall immediately provide Department of Natural and Cultural Resources the steps being taken to remediate the non-compliance status. In no event shall Contractor's notification to NH DoIT Chief Information Security Officer be later than seven (7) calendar days after Contractor learns it is no longer PCI DSS compliant.

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- v. Contractor acknowledges that any indemnification provided for under the Contract referenced above applies to the failure of the Contractor to be and to remain PCI DSS compliant.
- vi. Contractor shall agree to work with Department of Natural and Cultural Resources in order to clarify how responsibilities for PCI DSS requirements may be shared, by completing a CPI DSS Responsibility Matrix.
- c. Contractor shall disclose any Nested Third Party Service Provider (TPSP) that is a part of the Cardholder Environment. Contractor shall document the Nested TPSP's allocation of liability, responsibility and costs relating to actions of outsourced contractors and/or notifying the Contractor regarding incidents. Department of Natural and Cultural Resources shall require an Attestation of Compliance on an annual basis and upon request from the Nested Third Party Service Provider.

16. TERMS AND DEFINITIONS

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

17. CONTRACTOR'S CERTIFICATES

Required Contractor Certificates are attached in Exhibit G.

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EXHIBIT C – PRICE AND PAYMENT SCHEDULE

EXHIBIT C – PRICE AND PAYMENT SCHEDULE

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

1. CONTRACT PRICE

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

2. TRAVEL EXPENSES

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

3. SHIPPING FEES

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

4. INVOICING

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

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

5. INVOICE ADDRESS

Invoices may be sent to:

Division of Forests and Lands
William Guinn
172 Pembroke Road
Concord, NH, 03301

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6. PAYMENT ADDRESS

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

7. OVERPAYMENTS TO THE CONTRACTOR

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

8. CREDITS

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

9. PROJECT HOLDBACK

The State shall withhold ten percent (10%) of the price for each Deliverable, except Software License fees, as set forth in the Payment Table, until successful conclusion of the Warranty Period. The holdback will be released to the Contractor when the State determines that the defective or nonperforming component of the System has been resolved.

10. LIQUIDATED DAMAGES

The State shall have the right to assess Liquidated Damages at a rate of five percent (5%) of the monthly fees for each hour there is a defective or non-performing component of the System that is unresolved in the timeframes specified for Class A, B, or C deficiencies as defined above in Exhibit B, Section 10. Maintenance, Operations and Support.

- If the State is in default or in breach of their agreement with AISN the State shall not be eligible to receive a credit in the above circumstances.
- The total of credits in a particular month cannot exceed the actual billing for that month.
- Credits shall be calculated only for the servers actually affected by an incident.
- Credits must be requested through noc@aisn.net within 30 days of the precipitating incident.
- Issues caused by State errors, State failure to implement recommendations of AISN, acts of war, terrorism, and natural disasters shall not be deemed to be a failure by AISN to provide adequate service under this agreement.

The imposition of Liquidated Damages is not a punitive action against the Contractor. The Parties acknowledge that actual damages to the State based on ongoing deficiencies would be difficult to ascertain and agree that the Liquidated Damages set forth herein are an attempt by the parties to determine a fair assessment of the damages that would be suffered by the State based on a defect or non-performance of the system.

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EXHIBIT C – PRICE AND PAYMENT SCHEDULE**

11. PAYMENT SCHEDULE

11.1 Contract Type

11.1.1 Activities / Deliverables / Milestones Pricing

This is a Not to Exceed Contract. The total Contract value is indicated in P-37 General Provisions - Block 1.8: Price Limitation for the period between the Effective Date through date indicated in P-37 General Provisions - Block 1.7: Completion Date. The Contractor shall be responsible for performing its obligations in accordance with the Contract. This Contract will allow the Contractor to invoice the State for the following activities, deliverables, or milestones appearing in the price and payment tables below:

ACTIVITY//DELIVERABLES//MILESTONES PRICING WORKSHEET				
ACTIVITY, DELIVERABLE, OR MILESTONE		DELIVERABLE TYPE	PROJECTED DELIVERY DATE	MILESTONE PAYMENT
PLANNING AND PROJECT MANAGEMENT				
1	Conduct Project Kickoff Meeting	Non-Software	08/18/2022	\$500.00
2	Work Plan	Written	08/25/2022	\$500.00
3	Project Status Reports	Written	08/25/2022 – 11/11/2022	\$500.00
4	Infrastructure Plan, including Desktop and Network Configuration Requirements	Written	08/25/2022	\$500.00
5	Security Plan	Written	08/31/2022	\$500.00
6	Communications and Change Management Plan	Written	08/31/2022	\$500.00
7	Software Configuration Plan	Written	09/30/2022	\$500.00
8	Systems Interface Plan and Design/Capability	Written	09/30/2022	\$500.00
9	Testing Plan	Written	09/30/2022	\$500.00
10	Data Conversion Plan and Design	Written	09/30/2022	\$500.00
11	Deployment Plan	Written	09/30/2022	\$500.00
12	Comprehensive Training Plan and Curriculum	Written	09/30/2022	\$500.00
13	End User Support Plan	Written	09/30/2022	\$500.00
14	Business Continuity Plan	Written	09/30/2022	\$500.00
15	Documentation of Operational Procedures	Written	09/30/2022	\$500.00
INSTALLATION				
16	Provide Software Licenses (if needed)	Written	10/14/2022	\$500.00

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17	Provide Fully Tested Data Conversion Software	Software	10/14/2022	\$500.00
18	Provide Software Installed, Configured, and Operational to Satisfy State Requirements	Software	10/14/2022	\$500.00
TESTING				
19	Conduct Integration Testing	Non-Software	10/19/2022	\$500.00
20	Conduct User Acceptance Testing	Non-Software	10/19/2022	\$500.00
21	Perform Production Tests	Non-Software	10/19/2022	\$500.00
22	Test In-Bound and Out-Bound Interfaces	Software	10/19/2022	\$500.00
23	Conduct System Performance (Load/Stress) Testing	Non-Software	10/19/2022	\$500.00
24	Certification of Pen Testing and Application Vulnerability Scanning	Non-Software	10/19/2022	\$500.00
SYSTEM DEPLOYMENT				
25	Converted Data Loaded into Production Environment	Software	11/01/2022	\$500.00
26	Provide Tools for Backup and Recovery of all Applications and Data	Software	11/01/2022	\$500.00
27	Conduct Training	Non-Software	11/09/2022	\$500.00
28	Cutover to New Software	Non-Software	11/11/2022	\$500.00
29	Provide Documentation	Written	11/11/2022	\$500.00
30	Execute Security Plan	Non-Software	11/11/2022	\$500.00
31	Conduct Project Exit Meeting	Non-Software	11/14/2022	\$500.00
ONGOING OPERATIONS				
32	Ongoing Hosting Support	Non-Software	11/11/2022	n/a
33	Ongoing Support & Maintenance	Software	11/11/2022	n/a
34	Contractor must supply to DNCR an Attestation of compliance at least annually and upon request.	Written	Annually	
TOTAL COST				\$15,500.00

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11.1.2 E-Commerce Platform Development Pricing

Table 11.1.2. E-COMMERCE PLATFORM DEVELOPMENT PRICING WORKSHEET		
	DESCRIPTION	INITIAL COST
1	Development of the Solution	\$ 50,000.00
2	First year licensing - plugins	\$ 1,000.00
3	First year licensing - Control Panel (quantity 2)	\$ 250.00
4	First year licensing - VPN client (one user)	\$ 150.00
Total		\$51,400.00

11.1.3 Hosting, Technical Support, Maintenance Pricing

Table 11.1.3. HOSTING, TECHNICAL SUPPORT, MAINTENANCE PRICING WORKSHEET				
DESCRIPTION	SFY 23 (8 months)	SFY 24 (12 months)	SFY 25 (12 months)	Total
Front end server: CentOS, (4) vCPU, (4) RAM, 100 GB Standard Storage, Backup, IDS, patching service (quantity 1)	\$ 1,600.00	\$ 2,400.00	\$ 2,400.00	\$6,400.00
Database server: CentOS, (4) vCPU, (4) RAM, 100 GB Standard Storage, Backup, IDS, patching service (quantity 1)	\$ 1,600.00	\$ 2,400.00	\$ 2,400.00	\$6,400.00
Hosting operations and maintenance	\$ 4,000.00	\$ 6,000.00	\$ 6,000.00	\$16,000.00
Application operations and maintenance (Scanning, WordPress updates, etc.)	\$ 2,800.00	\$ 4,200.00	\$ 4,200.00	\$11,200.00
SSL Certificate	\$ 250.00	\$ 250.00	\$ 250.00	\$750.00
Control Panel (quantity 2) (SFY 23 price provided in table E-1.2)	\$ 0.00	\$250.00	\$250.00	\$500.00
VPN client (one user) (SFY 23 price provided in table E-1.2)	\$ 0.00	\$ 150.00	\$ 150.00	\$300.00

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Plugins and extensions (SFY 23 price provided in table E-1.2)	\$ 0.00	\$ 1,000.00	\$ 1,000.00	\$2,000.00
Payment processing support	\$ 1,000.00	\$ 1,500.00	\$ 1,500.00	\$4,000.00
TOTAL	\$11,250.00	\$18,150.00	\$18,150.00	\$47,550.00

11.1.4 Implementation Pricing Summary

Table 11.1.4. IMPLEMENTATION COST SUMMARY PRICING WORKSHEET		
COST TABLE #	COST TYPE	TOTAL COST
1	Activities/Deliverables/Milestones Pricing (Total from Activity/Deliverables Pricing Worksheet)	\$ 15,500.00
2	E-Commerce Platform Development (Total from E-Commerce Platform Development)	\$ 51,400.00
3	Hosting, Technical Support, Maintenance Pricing Worksheet (Total from Hosting, Technical Support, Maintenance Pricing Worksheet Worksheet)	\$ 47,550.00
Grand Total		\$114,450.00

11.1.5 Contractor Staff, Resource Hours, and Rates Worksheet

Table 11.1.5. CONTRACTOR STAFF, RESOURCE HOURS AND RATES PRICING WORKSHEET				
	Project Manager (key) Ron Ellenberger	Web Developer	Hosting and Security Engineer	Senior Application Engineer (key) Phil Carapelle
Planning And Project Management	32	10	4	16
Installation	0	8	4	0
Testing	0	8	4	8
System Deployment	0	425	4	16

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Operations	0	0	16	0
Total Hours	32	451	32	40
Hourly Rate	\$170.00	\$115.00	\$95.00	\$150.00
Contractor Resource Price Total (Hours X Rate)	\$5,440.00	\$51,865.00	\$3,040.00	\$6,000.00

11.1.6 Future Contractor Rates Worksheet

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

Table 11.1.6.			
FUTURE CONTRACTOR PRICING WORKSHEET			
CONTRACTOR ROLE	SFY 23	SFY 24	SFY 25
Project Manager (key)	\$ 170.00	\$ 170.00	\$ 170.00
Web developer	\$ 115.00	\$ 115.00	\$ 115.00
Hosting Engineer (key)	\$ 95.00	\$ 95.00	\$ 95.00
Senior Application Engineer (key)	\$ 150.00	\$ 150.00	\$ 150.00
Total	n/a	n/a	n/a

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EXHIBIT D- SOFTWARE LICENSE AGREEMNET**

EXHIBIT D – SOFTWARE LICENSE AGREEMENT

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

1. License Grant.

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

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

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

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

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

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

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

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

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

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

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

If Contractor believes or it is determined that any of the Contracted Resources may have violated someone else's intellectual property rights, Contractor may choose to either modify the Contracted Resources to be non-infringing or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, Contractor may end the license, and require return of the applicable Contracted Resources and refund all fees the State has paid Contractor under the Contract.

Unless specified otherwise in this agreement,

- a. Contractor will not indemnify the State if the State alters the Contracted Resources without Contractor's consent or uses it outside the scope of use identified in Contractor's user Documentation or if the State uses a version of the Contracted Resources which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Contracted Resources which was provided to the State at no additional cost. Contractor will not indemnify the State to the extent that an infringement claim is based upon any information design, Specification, instruction, Software, data, or material not furnished by Contractor. Contractor will not indemnify the State to the extent that an infringement claim is based upon the combination of any Contracted Resources with any products or services not provided by Contractor without Contractor's consent.

7. Control of All Component Elements. Contractor acknowledges and agrees that it is responsible for maintaining all licenses or permissions to use any third-party software, equipment, or services that are component parts of any deliverable provided under this agreement for the entire term of the contract. Nothing within this provision shall be construed to require Contractor to maintain licenses and permissions for Software acquired by the State directly or through third-parties which may be integrated with the Contractor's deliverables.

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

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EXHIBIT D- SOFTWARE LICENSE AGREEMNET

9. Data Transition. At the request of the State prior to or upon expiration or termination of this Contract, Contractor shall provide all assistance as the State may reasonably require to transfer data to the state or transition the Contractor's contractual obligations, or any portion thereof, to any other supplier with whom the State's contracts for provision of same. If this Contract includes Contractor's provision of licensed products, Contractor shall take no action to restrict or terminate the use of such licensed products after the date of expiration or termination of the Contract or during any Transition Period, or both. The State shall pay for any additional maintenance or licensing fees during any Transition Period at the hourly rate or at a fee agreed upon by Contractor and the State. Contractor shall provide all reasonable transition assistance requested by the State to allow for the expired or terminated portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to the State. The transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to transition assistance. Further, any Transition Period will not affect any of the State's rights in regards to any purchased Software perpetual licenses which are paid in full.

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EXHIBIT E – ADMINISTRATIVE SERVICES**

EXHIBIT E – ADMINISTRATIVE SERVICES

1. DISPUTE RESOLUTION

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

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

Table E-1. DISPUTE RESOLUTION RESPONSIBILITY AND SCHEDULE TABLE			
LEVEL	CONTRACTOR POINT OF CONTACT	STATE POINT OF CONTACT	CUMULATIVE ALLOTTED TIME
Primary	Kim Lawrence	Administrator-Forest Management Bureau	5 Days
Second	Eddie McAndrew	Director, DFL	10 Days
Third	Jay Atkinson	Commissioner, DNCR	15 Days

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

2. ACCESS AND COOPERATION

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

3. RECORD RETENTION

Contractor and its Subcontractors shall maintain all Project records including but not limited to books, records, documents, and other evidence of accounting procedures and practices, which properly and sufficiently reflect all direct and indirect costs invoiced in the performance of their respective obligations under the Contract. Contractor and its Subcontractors shall retain all such records for three (3) years following termination of the Contract, including any extensions. Records relating to any litigation matters regarding the Contract shall be kept for one (1) year following the termination of all litigation, including the termination of all appeals or the expiration of the appeal period.

Upon prior notice and subject to reasonable time frames, all such records shall be subject to inspection, examination, audit and copying by personnel so authorized by the State and

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EXHIBIT E – ADMINISTRATIVE SERVICES

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. Contractor shall include the record retention and Review requirements of this section in any of its subcontracts.

4. ACCOUNTING

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

5. AUDIT

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

6. MISCELLANEOUS WORK REQUIREMENTS

6.1 Access to State Systems

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

6.1.1. Computer Use

- a. Every Authorized User has the responsibility to assure the protection of information from unauthorized access, misuse, theft, damage, destruction, modification, or disclosure.
- b. That information shall be used solely for conducting official State business, and all other use or access is strictly forbidden including, but not limited to, personal, or other private and non-State use and that at no time shall Contractor access or attempt to access any information without having the express authority to do so.
- c. That at no time shall Contractor access or attempt to access any information in a manner inconsistent with the approved policies, procedures, and /or agreements relating to system entry/access.
- d. That all software licensed, developed, or being evaluated by the State cannot be copied, shared, distributed; sub-licensed, modified, reverse engineered, rented, or sold, and that at all times Contractor must use utmost care to protect and keep such software strictly confidential in accordance with the license or any other agreement executed by the State. Only equipment or software owned, licensed, or being evaluated by the State, can be used by Contractor Personal software (including but not limited to palmtop sync software) shall not be installed on any equipment.

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EXHIBIT F – TERMS AND DEFINITIONS**

EXHIBIT F – TERMS AND DEFINITIONS

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

TERM	DEFINITION
Acceptance	Notice from the State that a Deliverable has satisfied Acceptance Test or Review.
Agreement	A Contract duly executed and legally binding.
Confidential Information	<p>Information required to be kept Confidential and restricted from unauthorized disclosure under the Contract. "Confidential Information" or "Confidential Data" means all private/restricted confidential information disclosed by one party to the other such as all medical, health, financial, public assistance benefits and personal information including without limitation, Protected Health Information and Personally Identifiable Information.</p> <p>Confidential Information also includes any and all information owned or managed by the State of NH - created, received from or on behalf of any state agency or accessed in the course of performing contracted services - of which collection, disclosure, protection, and disposition is governed by state or federal law or regulation. This information includes but is not limited to Personal Health Information (PHI), Personally Identifiable Information (PII), Personal Financial Information (PFI), Federal Tax Information (FTI), Social Security Numbers (SSN), Payment Card Industry (PCI), and or other sensitive and confidential information.</p>
Contract	An agreement between the State of New Hampshire and a Contractor which creates binding obligations for each party to perform as specified in the contract documents. Contract documents include the State P-37 General Provisions, and all Exhibits and attachments, which represent the understanding and acceptance of the reciprocal legal rights and duties of the parties with respect to the Scope of Work.
Data	State records, files, forms, electronic information and other documents or information, in either electronic or paper form, that will be used /converted by the Contractor during the contract term.

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Data Breach	Data Breach means the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for another than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic. With regard to Protected Health Information, "Data Breach" shall have the same meaning as the term "Breach" in section 164.402 of Title 45, Code of Federal Regulations.
Deficiency (-ies)/Defects	A failure, shortcoming or error in a Deliverable resulting in a Deliverable, the Software, or the System, not conforming to its Specifications.
Deliverable	A Deliverable is any Written, Software, or Non-Software Deliverable (letter, report, manual, book, code, or other), provided by the Contractor to the State or under the terms of a Contract requirement.
Documentation	All information that describes the installation, operation, and use of the Software, either in printed or electronic format.
Enhancements	Updates, additions, modifications to, and new releases for the Software or System, and all changes to the Documentation as a result of improvement in quality, value, or extent.
Hosted Services	Applications, IT infrastructure components or functions that organizations access from external service providers, typically through an internet connection.
Hosted System	The combination of hardware, software and networking components used by the Application Service Provider to deliver the Hosted Services.
Identification and Authentication	Supports obtaining information about those parties attempting to log on to a system or application for security purposes and the validation of those users.
Implementation	The process for making the System fully Operational for processing the Data.
Non-Public Information	Information, other than Personal Information, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the State because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.

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Operational	Operational means that the System is ready for use and fully functional, all Data has been loaded; the System is available for use by the State in its daily operations, and the State has issued Acceptance.
Personal Information	“Personal Information” (or “PI”) or “Personally Identifiable Information” (PII) means information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, personal information as defined in New Hampshire RSA 359-C:19, biometric records, etc., alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.
Project	The planned undertaking regarding the entire subject matter of an RFP and Contract and the activities of the parties related hereto.
Proposal	A written plan put forth by a Contractor for consideration in response to a solicitation by the State.
Security Incident	“Security Incident” shall have the same meaning “Computer Security Incident” in section two (2) of NIST Publication 800-61, Computer Security Incident Handling Guide, National Institute of Standards and Technology, U.S. Department of Commerce.
Services	The work or labor to be performed by the Contractor on the Project as described in a contract.
Software	All Custom, SAAS and COTS computer programs and applications provided by the Contractor under the Contract.
Software Deliverables	All Custom, SAAS and COTS Software and Enhancements.
Software License	Licenses provided to the State under this Contract.
Software-as-a-Service (SaaS)	The capability provided to the State to use the Contractor’s applications running on a cloud infrastructure. The applications are accessible from various client devices through a thin-client interface such as a Web browser (e.g., Web-based email) or a program interface. The State does not manage or control the underlying cloud infrastructure including network, servers, Operating Systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.

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Specifications	Written details that set forth the requirements which include, without limitation, the RFP, the Proposal, the Contract, any performance standards, Documentation, applicable State and federal policies, laws and regulations, State technical standards, subsequent State-approved Deliverables, and other specifications and requirements described in the Contract Documents. The Specifications are, by this reference, made a part of the Contract as though completely set forth herein.
State Data	All Data created or in any way originating with the State, and all Data that is the output of computer processing of or other electronic manipulation of any Data that was created by or in any way originated with the State, whether such Data or output is stored on the State's hardware, the Contractor's hardware or exists in any system owned, maintained or otherwise controlled by the State or by the Contractor.
State Fiscal Year (SFY)	The New Hampshire State Fiscal Year (SFY) runs from July 1 of the preceding calendar year through June 30 of the applicable calendar year.
Subcontractor	A person, partnership, or company not in the employment of, or owned by, the Contractor which is performing Services under this Contract under a separate Contract with or on behalf of the Contractor.
System	All Software, specified hardware, interfaces and extensions, integrated and functioning together in accordance with the Specifications.
Term	Period of the Contract from the Effective Date through the Completion Date identified in the P-37 General Provisions or termination.
Verification	Supports the confirmation of authority to enter a computer system application or network.
Warranty	The conditions under, and period during, which the Contractor will repair, replace, or other compensate for, the defective item without cost to the buyer or user. It also delineates the rights and obligations of both parties in case of a claim or dispute.
Warranty Period	A period of coverage during which the Contractor is responsible for providing a guarantee for products and Services delivered as defined in the Contract.

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Work Plan	Documentation that details the 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 B: <i>Business/Technical Requirements and Deliverables</i> . 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.
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B1.7	The Solution must provide a real time inventory of each species (by ages) visible to customers and a back-end that allows DFL staff to add additional stock that becomes available, and the removal of stock and receipt of other revenue (cash or check) from onsite sales.	M	Yes	Standard	This functionality is part of the Word Press / WooCommerce installation.
B1.8	The Solution must have the ability to customize shipping costs based on order total and zip code zones provided by DFL.	M	Yes	Standard	The Contractor accepts this requirement.
B1.9	The Solution must track revenue from sales, shipping, and transaction fees.	M	Yes	Standard	The Contractor accepts this requirement.
B1.10	Contractors Solution must provide reporting capability at the very least on revenue, inventory, orders, shipping, website traffic (see Appendix K).	M	Yes	Standard	The Contractor accepts this requirement.
B1.11	Contractor's Solution must have unlimited bandwidth and no product limitations.	M	Yes	Standard	The Contractor will provide the bandwidth to meet performance requirements.
B1.12	Contractors Solution must have the ability to create and generate ad hoc reporting.	M	Yes	Standard	This functionality is part of the Word Press / WooCommerce installation.
B1.13	Reporting should have the ability to export in CSV or XLS.	M	Yes	Standard	This functionality is part of the Word Press / WooCommerce installation.
B1.14	The Contractor Solution must accept Visa, MasterCard, Discover, and debit cards on behalf of the State.	M	Yes	Standard	Any card accepted via Elavon can be used.
B1.15	All receipts must list the refund policy as well as the website prior to clicking submit or pay now.	M	Yes	Standard	The Contractor accepts this requirement.
B1.16	A confirmation number is provided for all approved online payments.	M	Yes	Standard	The Contractor accepts this requirement.

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APPLICATION REQUIREMENTS					
State Requirements			Contractor		
Req #	Requirement Description	Criticality	Contractor Response	Delivery Method	Comments
GENERAL SPECIFICATIONS					
A1.1	Contractor solution must be mobile friendly compatible with all mobile operating systems (iOS, Android, and Windows, etc.)	M	Yes	Standard	This functionality is part of the Word Press / WooCommerce installation.
A1.2	Contractors solution must be responsive to any size screen when viewed on mobile, laptops, desktops or tablets.	M	Yes	Standard	This functionality is part of the Word Press / WooCommerce installation.
A1.3	Ability to access data using open standards access protocol (please specify supported versions in the comments field).	M	Yes	Standard	The solution will be hosted on a URL protected by an SSL certificate issued by a certified authority.
A1.4	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	This functionality is part of the Word Press / MariaDB environment.
A1.5	Web-based compatible and in conformance with the following W3C standards: HTML5, CSS 2.1, XML 1.1 and WCAG 2.1 AA	M	Yes	Standard	The solution is hosted using the Apache web service, which is compliant.
APPLICATION SECURITY					
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	Vulnerability scans and related remediation will be done prior to release.
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	Authentication of human users is required to permit the use of the application's capabilities.

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A2.3	Enforce unique user names.	M	Yes	Standard	This functionality is part of the Word Press / WooCommerce installation.
A2.4	Enforce complex passwords for Administrator Accounts in accordance with DoIT's statewide User Account and Password Policy.	M	Yes	Standard	This functionality is part of the Word Press installation.
A2.5	Enforce the use of complex passwords for general users using capital letters, numbers and special characters in accordance with DoIT's statewide User Account and Password Policy.	M	Yes	Standard	This functionality is part of the Word Press installation.
A2.6	Encrypt passwords in transmission and at rest within the database.	M	Yes	Standard	This functionality is part of the Word Press installation.
A2.7	The application has the ability to Expire passwords after a definite period of time.	M	Yes	Standard	This functionality is supported via WordPress extension/plugin.
A2.8	Establish ability to expire passwords after a definite period of time in accordance with DoIT's statewide User Account and Password Policy.	M	Yes	Standard	This functionality is supported via WordPress extension/plugin.
A2.9	Provide the ability to limit the number of people that can grant or change authorizations.	M	Yes	Standard	This will be controlled manually by setting a policy for the creation of 'back-office' storefront accounts and roles.
A2.10	Establish ability to enforce session timeouts during periods of inactivity.	M	Yes	Standard	This functionality is supported via WordPress extension/plugin.
A2.11	The application shall not store authentication credentials or sensitive data in its code.	M	Yes	Standard	This functionality is built into the application.
A2.12	Log all attempted accesses that fail identification, authentication and authorization requirements.	M	Yes	Standard	This requirement will be met with the use of a security Word Press plugin such as WordFence.

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A2.13	The application shall log all activities to a central server to prevent parties to application transactions from denying that they have taken place.	M	No	Not Available/Not Proposing	Full financial transaction logs are maintained with the payment processor. All other logs are local to the subject server.
A2.14	All logs must be kept for (90-days).	M	Yes	Standard	Apache and OS logs are kept until the State requests pruning.
A2.15	The application must allow a human user to explicitly terminate a session. No remnants of the prior session should then remain.	M	Yes	Standard	Explicit logout functionality is part of the application and completely terminates the current session.
A2.16	Do not use Solution and System Services for anything other than they are designed for.	M	Yes	Standard	This is standard operating procedure for applications hosted at AIS Network.
A2.17	The application Data shall be protected from unauthorized use when at rest.	M	Yes	Standard	This is provided by protecting the back-end database from the public-facing internet. Additionally, the 2 servers will be network segmented.
A2.18	The application shall keep any sensitive Data or communications private from unauthorized individuals and programs.	M	Yes	Standard	This is provided by protecting the back-end database from the public facing internet. Additionally, the 2 servers will be network segmented.
A2.19	Subsequent application enhancements or upgrades shall not remove or degrade security requirements.	M	Yes	Standard	It is the Contractor's standard policy that all upgrades improve the environment.
A2.20	Utilize change management documentation and procedures.	M	Yes	Standard	This is standard operating procedure for applications hosted at AIS Network.

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PCI DSS COMPLIANCE					
A3.1	Contractor attests that, as of the Effective Date of this RFP, it has complied with all applicable requirements to be considered PCI DSS compliant, and has performed the necessary steps to validate its compliance with PCI DSS.	M	Yes	Standard	The Contractor accepts this requirement.
A3.2	Contractor will supply the current status of the application's PCI DSS compliance status, and evidence of its most recent validation of compliance Attestation of Compliance.	M	Yes	Standard	Application will be hosted in a PCI-compliant environment, and all open-source and COTS components are known to be PCI compliant.
A3.3	Contractor must comply with all credit card brand rules, as applicable, in regard to their environment. The Contractor will work with the State if any non-compliance issues occur to ensure proper remediation of any non-compliance issues.	M	Yes	Standard	Contractor will use a fully compliant payment processor, such as Elavon or Stripe.
A3.4	Contractor is required to provide a PA-DSS Implementation Guide with instructions on secure product implementation, secure configuration specifics, and to clearly delineate Contractor responsibilities for meeting PCI DSS requirements. It should detail how to enable security settings within the network.	M	N/A	Not Available/Not Proposing	The WordPress core, and WooCommerce extension, do not store, process or transmit Cardholder Data. All Cardholder Data processing is handled via embedded (iframe or similar) page or plugin provided by Payment Processor. Security settings will be configured and implemented as part of the solution, and are not adjustable at the user level.

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A3.5	Contractor shall immediately notify the NH DoIT Chief Information Security Officer and the Merchant Card Administrator if it learns its application is no longer PA DSS compliant and shall immediately provide the DOIT Chief Information Security Officer of the steps being taken to remediate the non-compliance status. In no event should Contractor's notification to the DoIT be later than seven (7) calendar days after Contractor learns it is no longer PA DSS complaint.	M	Yes	Standard	The Contractor accepts this requirement.
A3.6	Contractor must met PCI DSS Requirement 12.8 of the latest edition, Service Provider.	M	Yes	Standard	Payment processor (Elavon or Stripe) is the system of record for credit card transactions through this application. They are the only Third-Party Service Provider for the Cardholder Environment.
A3.7	The Contractor will run, at least, quarterly vulnerability scans according to PCI DSS requirement 11.2	M	Yes	Standard	This is included in the operations and maintenance service.
A3.8	Contractor agrees that it is responsible for the security of cardholder data that it possesses, including the functions relating to storing, processing, and transmitting of the cardholder data.	M	Yes	Standard	The Contractor accepts this requirement.
A3.9	Contractor shall disclose any Nested Third Party Service Provider (TPSP) that is a part of the Cardholder Environment and require an Attestation of Compliance on an annual basis and/or upon request from the Nested Third Party Service Provider.	M	Yes	Standard	The Contractor accepts this requirement.

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TESTING REQUIREMENTS					
State Requirements					
Req #	Requirement Description	Criticality	Contractor Response	Delivery Method	Comments
APPLICATION SECURITY TESTING					
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	
T1.2	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 (http://www.owasp.org/index.php/OWASP_Top_Ten_Project)).	M	Yes	Standard	Web Application scans and related remediation will be done prior to release.
T1.3	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	PCI-ASV scanning will be performed with Tenable as the ASV.
T1.4	Prior to the System being moved into production, the Contractor shall provide results of all security testing to the Department of Information Technology for review and acceptance.	M	Yes	Standard	Vulnerability scans and related remediation will be done prior to release.
T1.5	Contractor shall provide documented procedure for migrating application modifications from the User Acceptance Test Environment to the Production Environment.	M	Yes	Standard	The Contractor accepts this requirement.

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STANDARD TESTING					
T2.1	The Contractor must test the software and the system using an industry standard and State approved testing methodology.	M	Yes	Standard	Web application scanning/testing performed as part of operations and maintenance.
T2.2	The Contractor must perform application stress testing and tuning.	M	Yes	Standard	Web application scanning/testing performed as part of operations and maintenance.
T2.3	The Contractor must provide documented procedure for how to sync Production with a specific testing environment.	M	No	Not Available/Not Proposing	Project scope does not include a specific testing environment.
T2.4	The Contractor must define and test disaster recovery procedures.	M	Yes	Standard	The Contractor accepts this requirement.
HOSTING-CLOUD REQUIREMENTS					
H1.1	Contractor 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	AIS Network data centers are Tier IV-compliant.
H1.2	Contractor shall maintain a secure hosting environment providing all necessary hardware, software, and Internet bandwidth to manage the application and support users with permission-based logins.	M	Yes	Standard	AIS Network data centers are Tier IV compliant.

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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	AIS Network data centers are IV-compliant and follow industry standard access security policies.
H1.4	Contractor shall install and update all server patches, updates, and other utilities within 60 days of release from the manufacturer.	M	Yes	Standard	This is part of the monthly operations and maintenance service.
H1.5	Contractor shall monitor System, security, and application logs.	M	Yes	Standard	Contractor uses VMware to monitor the health of client servers.
H1.6	Contractor shall manage the sharing of data resources.	M	Yes	Standard	There is not sharing of data for the solution. The database server is provisioned for the sole use of the State.
H1.7	Contractor shall manage daily backups, off- site data storage, and restore operations.	M	Yes	Standard	This is included in the hosting service.
H1.8	The Contractor shall monitor physical hardware.	M	Yes	Standard	This process is standard operating procedure.
H1.10	The Contractor 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	This process is standard operating procedure.
DISASTER RECOVERY					
H2.1	Contractor 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	Contractor has documented business continuity and disaster recovery plans that address these requirements.

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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	Solution Infrastructure is virtualized and built on a physical infrastructure with redundancy built in. Recovery plans include the acquisition of additional hardware in the event of component failure.
H2.3	Contractor shall adhere to a defined and documented back-up schedule and procedure.	M	Yes	Standard	This is included in the hosting service.
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	This is included in the hosting service.
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	This is included in the hosting service.
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	Data backups employ a geo- dispersed model for the location of the backups.
H2.7	Data recovery – In the event that recovery back to the last backup is not sufficient to recover State Data, the Contractor 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	No	Not Available/ Not Proposing	Solution being proposed is a single-server solution. VM is backed up every 6 hours, including databases and logs.
HOSTING SECURITY					
H3.1	The Contractor shall employ security measures ensure that the State's application and data is protected.	M	Yes	Standard	The Contractor will follow strict access controls and security.
H3.2	If State data is hosted on multiple servers, data exchanges between and among servers must be encrypted.	M	Yes	Standard	State data is hosted on a single server. System backups are encrypted.

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H3.9	The Contractor shall notify the State's Project Manager of any security breaches within two (2) hours of the time that the Contractor learns of their occurrence.	M	Yes	Standard	The Contractor accepts this requirement.
H3.10	The Contractor 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	No	Not Available/ Not Proposing	Subject to the limitations of liability contained in the contract, with respect to any breach of State data residing in Contractor's systems, Contractor will, to the extent that the breach is caused by Contractor's breach of any of its data security obligations under the contract, be responsible for the reasonable costs of providing notifications to impacted individuals where required by law and for third-party damages assessed by a court of competent jurisdiction; provided, however, the Contractor shall have no liability with respect to any such data breach that is caused by or facilitated by or through any State personnel or systems.
SERVICE LEVEL AGREEMENT					
H4.1	The Contractor'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	The Contractor accepts this requirement.
H4.2	The Contractor shall maintain the hardware and Software in accordance with the specifications, terms, and requirements of the Contract, including providing, upgrades and fixes as required.	M	Yes	Standard	The Contractor accepts this requirement.
H4.3	The Contractor shall repair or replace the hardware or software, or any portion thereof, so that the System operates in accordance with the Specifications, terms, and requirements of the Contract.	M	Yes	Standard	The Contractor accepts this requirement.

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H4.4	All hardware and software components of the Contractor 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.	M	Yes	Standard	The Contractor's data center uses fully compliant and patched servers and related hardware such as routers, switches, firewalls and other security appliances.
H4.5	The State shall have unlimited access, via phone or Email, to the Contractor technical support staff between the hours of 8:00am to 4:00pm- Monday through Friday EST.	M	Yes	Standard	The Contractor accepts this requirement.
H4.6	The Contractor shall conform to the specific deficiency class as described: 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. 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.	M	No	Custom	Please refer to Contractor-included SLAs. State Agreed to this during the Oral presentation on 5/18/22 and added Contractor SLAs to contract language
H4.7	As part of the maintenance agreement, ongoing support issues shall be responded to according to the following: Class A Deficiencies - The Contractor shall have available to the State on-call telephone assistance, with issue tracking available to the State, eight (8) hours per day and five (5) days a week with an email / telephone response within two (2) hours of request; or the Contractor shall provide support on-site or with remote diagnostic Services, within four (4) business hours of a request; Class B & C Deficiencies -The State shall notify the Contractor of such Deficiencies during regular business hours and the Contractor shall respond back within four (4) hours of notification of planned corrective action; The Contractor shall repair or replace Software, and provide maintenance of the Software in accordance with the Specifications, Terms and Requirements of the Contract.	M	No	Custom	Please refer to Contractor-included SLAs. State Agreed to this during the Oral presentation on 5/18/22 and added Contractor SLAs to contract language

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H4.8	The hosting server for the State shall be available twenty-four (24) hours a day, 7 days a week except for during scheduled maintenance.	M	Yes	Standard	The Contractor's servers are hosted in a Tier III or IV data center and are available according to the Contractor's standard SLA.
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	Maintenance windows for these tasks will be scheduled monthly.
H4.10	If The Contractor is unable to meet the uptime requirement, The Contractor 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	No	Custom	Please refer to Contractor-included SLAs.
H4.11	The Contractor shall use a change management policy for notification and tracking of change requests as well as critical outages.	M	Yes	Standard	The Contractor accepts this requirement.
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	The Contractor accepts this requirement.
H4.13	The Contractor 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	The Contractor accepts this requirement
H4.14	The Contractor 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	The Contractor accepts this requirement.

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SUPPORT & MAINTENANCE REQUIREMENTS					
State Requirements					
Req #	Requirement Description	Criticality	Contractor Response	Delivery Method	Comments
SUPPORT & MAINTENANCE REQUIREMENTS					
S1.1	The Contractor'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	The Contractor accepts this requirement.
S1.2	Maintain the hardware and Software in accordance with the Specifications, terms, and requirements of the Contract, including providing, upgrades and fixes as required.	M	Yes	Standard	The Contractor accepts this requirement.
S1.3	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	The Contractor accepts this requirement.
S1.4	The State shall have unlimited access, via phone or Email, to the Contractor technical support staff between the hours of 8:00am to 4:00pm- Monday through Friday EST.	M	Yes	Standard	The Contractor accepts this requirement.

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S1.5	<p>The Contractor response time for support shall conform to the specific deficiency class as described below or as agreed to by the parties:</p> <p>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.</p> <p>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.</p> <p>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.</p>	M	No	Custom	<p>Please refer to Contractor-included SLAs.</p> <p>State Agreed to this during the Oral presentation on 5/18/22 and added Contractor SLAs to contract language</p>
S1.6	<p>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.</p>	M	Yes	Standard	<p>This is covered in the hosting and monthly operations and maintenance service and vulnerability scanning.</p>
S1.7	<p>For all maintenance Services calls, The Contractor 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;</p> <p>5) Deficiency resolution information, 6) Resolved by, 7) Identifying number i.e. work order number, 8) Issue identified by;</p>	M	Yes	Standard	<p>Application service calls will generally be accepted via an email to support@aisn.net. The email will then get converted to a ticket that will be routed to the appropriate support person.</p>

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S1.8	The Contractor 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.	M	Yes	Standard	The Contractor accepts this requirement.
S1.9	As part of the Software maintenance agreement, ongoing software maintenance and support issues, shall be responded to according to the following or as agreed to by the parties: Class A Deficiencies - The Contractor 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 Contractor shall provide support on-site or with remote diagnostic Services, within four (4) business hours of a request; Class B & C Deficiencies –The State shall notify the Contractor of such Deficiencies during regular business hours and the Contractor shall respond back within four (4) hours of notification of planned corrective action; The Contractor shall repair or replace Software, and provide maintenance of the Software in accordance with the Specifications, Terms and Requirements of the Contract; or as agreed between the parties.	M	No	Custom	Please refer to Contractor-included SLAs.
S1.10	The Contractor shall use a change management policy for notification and tracking of change requests as well as critical outages.	M	Yes	Standard	The Contractor accepts this requirement.
S1.11	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	The Contractor accepts this definition.
S1.12	The Contractor shall maintain a record of the activities related to repair or maintenance activities performed for the State and shall report quarterly on the following: All change requests implemented; 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	No	Custom	Contractor shall abide by Contractor's standards of operations and maintenance and applicable policies and procedures.
S1.13	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	This is part of the monthly operations and maintenance service.

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S1.14	The Contractor shall 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	The Contractor accepts this requirement.
S1.15	The State shall provide the Contractor with a personal secure FTP site to be used by the State for uploading and downloading files if applicable.	M	Yes	Standard	The Contractor will make use of this to exchange files with the State when needed.
PROJECT MANAGEMENT					
State Requirements					
Req #	Requirement Description	Criticality	Contractor Response	Delivery Method	Comments
PROJECT MANAGEMENT					
P1.1	Contractor shall participate in an initial kick-off meeting to initiate the Project.	M	Yes	Standard	The Contractor accepts this requirement.
P1.2	Contractor shall provide Project Staff as specified in the RFP.	M	Yes	Standard	The Contractor accepts this requirement.
P1.3	Contractor 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, milestones/critical events, task dependencies, and payment Schedule. The plan shall be updated no less than every two weeks.	M	Yes	Standard	The Contractor accepts this requirement.
P1.4	Contractor shall provide detailed bi-weekly or monthly status reports on the progress of the Project, which will include expenses incurred year to date.	M	Yes	Standard	The Contractor accepts this requirement.
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	A SharePoint site or library will be provisioned and made available to the State.

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2. CONTRACTOR CERTIFICATES

- a. Contractor's Certificate of Good Standing

State of New Hampshire
Department of State

CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that 3SIXTY HOLDINGS, LLC is a Virginia Limited Liability Company registered to do business in New Hampshire as AIS NETWORK on June 27, 2022. 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; and the attached is a true copy of the list of documents on file in this office.

Business ID: 906006
Certificate Number: 0006796948



IN TESTIMONY WHEREOF,
I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 27th day of June A.D. 2022.

A handwritten signature in black ink, appearing to read "David M. Scanlan".

David M. Scanlan
Secretary of State

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b. Contractor's Certificate of Vote/Authority

Certificate of Authority #1

(Corporation, Non-profit Corporation)

Corporate Resolution

I, Laurie H. Atkinson, hereby certify that I am duly elected Clerk/Secretary/Officer of 35xty Holdings LLC. I hereby certify the following is a true and correct copy of a vote taken at a meeting of the Board of Directors/shareholders, duly called and held on August 21, 2022 at which a quorum of the directors/shareholders were present and voting.

Voted: That Jay Atkinson CEO (may list more than one person) is duly

authorized to enter into contracts or agreements on behalf of 35xty Holdings LLC dba NES

with the State of New Hampshire and any of its agencies and departments and further is authorized to execute any documents which may in his/her judgement to be desirable or necessary to affect 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 the date of the contract to which this certificate is attached. This authority shall remain valid for thirty (30) days from the date of this Corporate Resolution. I further certify that it is understood the State of New Hampshire will rely on this certificate as evidence 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 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: 08/23/2022

ATTEST: Laurie H. Atkinson

