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Frank Edelblut
Commissioner

Christine M. Brennan
Deputy Commissioner

STATE OF NEW HAMPSHIRE
DEPARTMENT OF
EDUCATION
25 Hall Street
Concord, NH 03301

May 22, 2023

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

REQUESTED ACTION

Authorize the New Hampshire Department of Education to exercise a renewal option to an existing **sole source** contract with MetaMetrics, Inc. (VC#334729) Durham, NC by increasing the price limitation by \$190,000 from \$170,000 to \$360,000 to provide the use of Lexile® reader measures and Quantile® measures for mathematics for the NH State Assessment System, effective upon Governor and Council approval through June 30, 2024. The original contract was approved by Governor and Council on June 1, 2022 (Item#109). 100% Federal Funds.

Funds to support this request are anticipated to be available in the account titled Assessment & Accountability for FY24 upon the availability and continued appropriation of funds in the future operating budget, as follows:

	<u>FY 24</u>
06-56-56-562010-30590000-102-500731 Contracts for Program Services	\$190,000

EXPLANATION

This request is **sole source** because MetaMetrics, Inc. is the exclusive provider of and owns the registered trademarks to the Lexile® reader measures and Quantile® measures for mathematics. These measurements and scores are derived from the New Hampshire Statewide Assessment System (NHSAS) results for interim and summative assessments. The scores are utilized to provide student reading level and mathematical level information in an easy to understand and accessible format for parents and teachers. Parents and teachers can use these scores to select

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
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appropriate books and individualized instructional materials that are available online and through their local town or school library.

In order for parents to better understand and support their child's education, the New Hampshire Department of Education (NHED) would like to continue to include Lexile® and Quantile® scores on the NHSAS Individual Student Reports that are available at the conclusion of an interim or summative assessment. Parents will continue to be able to access appropriately leveled reading and mathematics materials for their children. These materials are also available nation-wide through libraries and published book sources. In-person and online trainings for parents, teachers, librarians, and schools are also provided.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Frank Edelblut". The signature is fluid and cursive, with a large initial "F" and "E".

Frank Edelblut
Commissioner of Education

**AMENDMENT TO
PROFESSIONAL SERVICES CONTRACT**

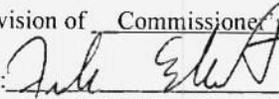
Now come the New Hampshire Department of Education (NHED), hereinafter "the Agency," and MetaMetrics, Inc. (VC#334729) Durham, NC, hereinafter "the Contractor", and pursuant to an agreement between the parties that was approved by Governor and Council on June 1, 2022 (Item#109), hereby agree to modify same as follows:

1. Amend Section 1.6 of form P-37 by removing June 30, 2023, and replacing with June 30, 2024.
2. Amend Section 1.7 of form P-37 by increasing the price limitation by \$190,000 from \$170,000 to \$360,000.
3. Remove Exhibit A (Special Provisions) and replace with Exhibit A-1 (Special Provisions).
4. Remove Exhibit B (Scope of Work) and replace with Exhibit B-1 (Scope of Work).
5. Remove Exhibit C (Method of Payment) and replace with Exhibit C-1 (Method of Payment).
6. All other provisions of this agreement shall remain in full force and effect as originally set forth; and
7. This amendment shall commence upon Governor and Council approval through June 30, 2024.

This modification of an existing agreement is hereby incorporated by reference to the existing agreement by the parties and must be attached to the said agreement.

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

THE STATE OF NEW HAMPSHIRE
Department of Education
(Agency)

Division of Commissioner's Office
By:  5/30/2023
Frank Edelblut, Commissioner of Education Date

MetaMetrics, Inc.
Contractor
By:  May 16, 2023
Todd Sandvik, COO Date

Approved as to form, substance and execution by the Attorney General this 30 day of May, 2023.


Elizabeth Brown, Division of Attorney General Office

Approved by the Governor and Council this _____ day of _____, 20____.

By: _____

**EXHIBIT A-1
Special Provisions**

Additional Exhibits D-G

Federal Certification 2 CFR 200.415

Required certifications include: (a) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows:

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

Confidential Information

In performing its obligations under this Agreement, the 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), Social Security Numbers (SSN), Family Educational Rights and Privacy Act (FERPA), 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. The contractor shall maintain the confidentiality of and protect from unauthorized use, disclosure, publication, and reproduction (collectively "release"), all Confidential Information.

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

Provision 9, Termination, is updated with the following addition:

9. TERMINATION – in addition to 9.1 and 9.2 of the P-37, add:

9.3 Term and Termination. This Agreement shall become effective on the Effective Date and shall remain in effect for an initial term ending June 30, 2024. It is understood and agreed between the parties that the payment of compensation specified in this agreement, its continuation or renewal or extension thereof, is dependent upon and subject to the appropriation of funds to, and allocation by, NHED for the purpose set forth in this Agreement. Should funds not be appropriated or allocated, this Agreement shall immediately be terminated. NHED shall not be liable to Contractor for damages of any kind as a result of such termination.

9.3.1 Return of Confidential Information. Upon the termination or expiration of this

EXHIBIT A-1
Special Provisions
Continued

Agreement, notwithstanding the provisions of subsection 1, the receiving party will return and or destroy all the Confidential Information delivered or disclosed to the receiving party, this shall include all copies whether electronic or physical in existence thereof at any time made by the receiving party.

9.3.2 Notwithstanding the above, Contractor will be permitted to retain one copy of any content or material that NHED provided to Contractor for the sole purposes of assigning a Lexile measure or Quantile measure to such content or material. Contractor agrees that such retained Confidential Information will not be disclosed or used in violation of this Agreement. For the avoidance of doubt, nothing in this Agreement requires the return or destruction of reports containing Lexile measures or Quantile measures generated by NHED (i) prior to expiration or termination of this Agreement; or (ii) as permitted under Section 10.1.

9.3.3 Lexile and Quantile Marks. Upon the expiration or termination of this Agreement, NHED shall, notwithstanding the provisions of subsection 9.3, promptly discontinue all use of the Lexile and Quantile Marks and cease all distributions of materials and papers upon which the Lexile and Quantile Marks appear; provided, however, that subject to the terms and conditions of this Agreement, NHED shall have the right to retain such materials as are necessary to fulfill any obligations for accountability purposes.

9.3.4 The Lexile Framework for Reading; LEXILE. Upon the expiration or termination of this Agreement, NHED shall, notwithstanding the provisions of subsection 9.3, cease to convert scale scores to LEXILE measures or otherwise report scale scores in using the LEXILE scale that matches students to instructional content on the LEXILE scale in any direct or derivative application.

9.3.5 The Quantile Framework for Mathematics; QUANTILE. Upon the expiration or termination of this Agreement, NHED shall, notwithstanding the provisions of subsection 9.3, cease to convert scale scores to QUANTILE measures or otherwise report scale scores in using the QUANTILE scale that matches students to instructional content of the QUANTILE scale in any direct or derivative application.

METAMETRICS TERMS AND CONDITIONS

OWNERSHIP

Lexile Marks: The term "Lexile Marks" shall mean the following registered trademarks owned by MetaMetrics: LEXILE® (U.S. Reg. No. 3,969,306), LEXILE® (and design) (U.S. Reg. No. 2,706,910), and LEXILE FRAMEWORK® (U.S. Reg. Nos. 2,180,729 and 2,180,702). NHED acknowledges and agrees that MetaMetrics retains all rights in and to the Lexile Marks and that all goodwill arising from NHED's use thereof as permitted hereunder will inure to the benefit of MetaMetrics.

Quantile Marks: The term "Quantile Marks" shall mean the following registered trademarks owned by MetaMetrics: QUANTILE® (U.S. Reg. No. 3,066,329), QUANTILE® (and design) (U.S. Reg. No. 3, 074,413), and QUANTILE FRAMEWORK® (U.S. Reg. No. 2,605,046).

EXHIBIT A-1
Special Provisions
Continued

NHED acknowledges and agrees that MetaMetrics retains all rights in and to the Quantile Marks and that all goodwill arising from NHED's use thereof as permitted hereunder will inure to the benefit of MetaMetrics.

PROPERTY RIGHTS

Use of Lexile and Quantile Marks/Measures

MetaMetrics hereby grants to NHED a limited, non-exclusive, non-transferable license, without the right to sublicense, to use Lexile reading measures and Quantile measures, including displaying said measures

on individual reports, as well as on any aggregated reports for each student in grades 3-8 and 11. NHED

agrees to display Lexile and Quantile Marks on said reports and shall clearly indicate MetaMetrics' ownership of the Lexile and Quantile Marks according to the terms and conditions of MetaMetrics' Branding Guidelines which are available on MetaMetrics' website and updated from time to time: <http://www.metametricsinc.com/branding-guidelines/>. MetaMetrics reserves the right to request samples of literature, packages, labels, and advertising using the Lexile and Quantile Marks prepared by or for NHED and intended to be used by NHED. NHED undertakes, when using the Lexile and Quantile Marks hereunder, to comply with all applicable laws pertaining to such use.

Use of MetaMetrics Intellectual Property

MetaMetrics hereby grants to NHED a limited, non-exclusive, non-transferable license, without the right to sublicense, and right to use the MetaMetrics Intellectual Property listed in **Attachment A ("List of MetaMetrics Intellectual Property")**, during the term of this contract. Regarding the conversion tables which convert a scale score to a Lexile reading measure or Quantile measure, the following uses are specifically prohibited during and after the term of this contract: a) NHED shall not make publicly available the conversion tables; b) NHED shall not create new or derivative scales using the conversion tables, and for which said new scales are marketed and used as an equivalent substitute for a Lexile reading measure or Quantile measure; and c) NHED shall not use the conversion tables to rebrand and relabel the Lexile reading measure or Quantile Measure as a different measure. Nothing contained herein shall be construed as granting NHED any right, title, or interest in or to MetaMetrics' Intellectual Property. Further, the following uses are approved for the Interims: a) given that the Independent College and Career Ready (ICCR) English language arts (ELA)/mathematics interim assessments are on the same scales as the ICCR ELA/mathematics summative assessments, NHED may add the use of Lexile reader measures and Quantile measures from the ICCR interim assessments; and b) the interpretation of Lexile reader and Quantile mathematics measures should be relative to the ICCR ELA/mathematics interim administration protocols. Please refer to the ICCR Lexile and Quantile linking study reports for appropriate uses and caveats of the measures. NHED acknowledges and agrees that it shall have no right, either during the term of this contract or at any time thereafter, to acquire MetaMetrics' Intellectual Property from MetaMetrics by reason of the use of such intellectual property in any manner. NHED agrees that it will not attempt to patent, copyright, or register or use for its own benefit or that of a third party, or aid any third party in attempting to patent, copyright, or

EXHIBIT A-1
Special Provisions
Continued

register or use, any MetaMetrics Intellectual Property which may, in the reasonable opinion of MetaMetrics' counsel, be inconsistent with the terms of this contract. With regard to trademarks, the above prohibitions shall extend to any trademark that is, in the opinion of MetaMetrics, confusingly similar to any trademark that is part of MetaMetrics' Intellectual Property or the trade name of MetaMetrics. NHED acknowledges MetaMetrics' exclusive ownership of, and title to, MetaMetrics' Intellectual Property world-wide and the goodwill associated therewith will belong to and inure solely to the benefit of MetaMetrics. NHED obligations under this section shall survive any termination of the license granted hereunder.

Obligation to Provide Notice of Infringement

NHED is not responsible for identifying instances of unauthorized use of the Lexile and Quantile Marks by third parties; however, NHED agrees to take reasonable steps to notify MetaMetrics if any such unauthorized use comes to their attention. In no event shall NHED be liable for any damages for its failure to identify or report potential infringement by third parties. MetaMetrics shall have the sole right and discretion to bring an action for infringement, unfair competition, or any other appropriate proceeding, against any such third party, and any proceeds from such proceedings shall be the sole property of MetaMetrics.

In the event of a conflict between MetaMetrics Terms and Condition and Exhibit G, Exhibit G shall control.

**EXHIBIT B-1
Scope of Work**

MetaMetrics shall grant the use of Lexile reading and Quantile measures to the New Hampshire Department of Education (NHED) for students in grades 3 – 8 and 11. In addition, MetaMetrics offers the below Implementation Supports that NHED can elect to use at no cost. NHED must inform MetaMetrics of any implementation supports that NHED wishes to have MetaMetrics provide.

As part of New Hampshire’s annual licensing agreement to use Lexile® reading measures and Quantile® mathematics measures, the following implementation supports are available upon request at no cost and offered throughout the contracted school year.

Implementation Toolkit

These implementation supports are also meant to complement and serve as an extension of the Lexile & Quantile State Implementation Toolkit. To access the toolkit, the following website can be used: metametricsinc.com/state-toolkit.

Professional Learning Opportunities

MetaMetrics® offers a variety of on-going professional learning opportunities for educators and other stakeholders to expand their knowledge of Lexile reading measures and Quantile mathematics measures and their understanding of how these measures can be utilized to fuel student learning and growth both in the classroom and at home. A listing of possible topics and content that can be customized for NH is available at metametricsinc.com/professional-learning. This listing is not exhaustive.

Content can be delivered in the following formats:

FORMAT	DESCRIPTION	NUMBER PER YEAR
Web Conference for State Education Agency (SEA) Staff	Web conferences delivered online for agency staff. These sessions can also be recorded.	Unlimited
Face-to-Face Informational Sessions	In-person sessions created and delivered for the specific audience and setting you desire (e.g. regional service centers, co-sponsored conferences, etc.).	Two visits per year (Each visit may include multiple sessions.)
Webinars for Educators Statewide	Webinars scheduled and delivered for the specific audience of your choosing. These sessions can also be recorded.	Unlimited (Maximum of 300 attendees per webinar. Sessions can be repeated as desired.)
Roundtable Discussions	Web-based, cross-state conversations on new advances and emerging opportunities.	TBA (Scheduled as topics and need arise.)

**EXHIBIT B-1
Scope of Work
Continued**

Lexile & Quantile Tools and Resources

MetaMetrics provides access to the following tools and resources so that educators, parents, and students can utilize Lexile reading measures and Quantile mathematics measures.

- ***A Variety of Lexile & Quantile Tools Available***
Many online tools for Lexile reading measures and Quantile mathematics measures are available through the Lexile® & Quantile® Hub. As part of the licensing agreement to use Lexile reading measures and Quantile mathematics measures, educators in the partner state receive Premium access to the Hub and the full functionality of each of its tools at no cost. Visit the Hub at Hub.Lexile.com.

Communications and Outreach Support

- ***Draft Language for State Specific Lexile & Quantile Web Content***
MetaMetrics provides a draft of text content for your SEA website to explain Lexile reading measures and Quantile mathematics measures, free tools and resources, and their use both in the classroom and at home. Once the content is finalized and approved, MetaMetrics also works with the webmaster or designee to post the content to the SEA's website. An example of finished web content can be viewed at portal.ct.gov/SDE/Student-Assessment/Main-Assessment/Lexiles-and-Quantiles.
- ***Draft Suggested Language for Outreach Messaging***
MetaMetrics provides a variety of draft messaging for email/newsletter campaigns and social media to help you communicate with educators and parents about the value and utility of Lexile reading measures and Quantile mathematics measures. See draft messages at metametricsinc.com/state-communications.
- ***Draft Lexile/Quantile Information for State Score Reports***
MetaMetrics collaborates with states and their contractors to provide language and/ or individualized, student instructional information on state score reports. See suggested example language at docs.google.com/document/d/1fRhnhHPL3Co3xGg8qFceBRP4swoXSw946pPekT9x4Cg/.
- ***Draft Language for State Assessment RFPs***
MetaMetrics is a sole source to states that choose to use and report Lexile reading measures and Quantile mathematics measures from their state assessment systems. To ensure continuity in use and reporting, MetaMetrics makes available a collection of state RFPs that have mandated Lexile reading measures and Quantile mathematics measures through this procurement process.
- ***Draft Language for Outreach to Publishers of Textbooks and Instructional Materials***
MetaMetrics offers example language that states and/or local districts can use to request that publisher materials be encouraged or required to submit Lexile reading measures and Quantile mathematics measures for books and materials being considered for adoption. See suggested example language at: docs.google.com/document/d/1bv3BMbMey9tkfSAvXtMVepu54muNWewJdVWI-n42yE/

**EXHIBIT B-1
Scope of Work
Continued**

Family Engagement

- ***Informational Sessions for Parents & Families***
MetaMetrics works with the SEA to offer informational sessions for parents, families, and communities at large. These sessions focus on providing families some basic understanding of the *Lexile*[®] **Framework for Reading** and *Quantile*[®] **Framework for Mathematics** and an introduction to the tools that help families utilize these measures for reinforcing learning at home.

Additional Lexile & Quantile Resources

- ***Lexile by Chapter Guides***
The peaks and valleys of text complexity have been identified by chapter of frequently taught books in order to help guide instructional planning. This resource is suggested for educators. Visit: lexile.com/lexile-by-chapter.
- **Additional Fact Sheets and Resources**
A collection of additional informational resources for parents and educators (including Guides, Infographics and Maps). Visit: metametricsinc.com/state-communications/#resources.
- **Join Us for Office Hours!**
We're online to answer your questions. Come and go as you please. Visit: <https://sites.google.com/lexile.com/office-hours-resources/home>

**EXHIBIT C-1
Method of Payment**

(Budget through June 30, 2024)

License Fee for the use of Lexile & Quantile Measures for Grades 3-8 and 11 including support services elected by New Hampshire Department of Education pursuant to Exhibit B	\$190,000
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Limitation on Price: In no case shall the total budget exceed the price limitation of \$360,000.

Funding Source: Funds to support this request are anticipated to be available in the account titled Assessment & Accountability for FY24 upon the availability and continued appropriation of funds in the future operating budget, as follows:

06-56-56-562010-30590000-102-500731 Contracts for Program Services	<u>FY 24</u> \$190,000
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Method of Payment: The New Hampshire Department of Education shall pay to Contractor an annual license fee of \$190,000 in one installment. The payment shall be invoiced July 1, 2023, upon approval of this contract by the New Hampshire Governor and Executive Council and paid within thirty (30) day of receipt of the invoice. The invoices shall be submitted electronically to:

DEAR@doe.nh.gov

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 METAMETRICS, INC. is a North Carolina Profit Corporation registered to transact business in New Hampshire on September 25, 2020. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: **852201**

Certificate Number: **0006216375**



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 25th day of April A.D. 2023.

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

David M. Scanlan
Secretary of State

CERTIFICATE OF ATTESTION

Corporation

I, Malbert Smith III, hereby certify that I am the duly appointed Secretary of
(Name of Clerk of Corporation)

MetaMetrics, Inc., I hereby certify that Todd Sandvik,
(Corporation Name) (Name of Contract Signatory)

C.O.O., is duly authorized to execute contracts on behalf of
(Title of Contract Signatory)

MetaMetrics, Inc. and may bind the company thereby.
(Corporation Name)

I hereby certify that said authority has not been amended or repealed and remains in full force and effect as of the date of the contract to which this certificate is attached. This authority **remains valid for thirty (30) days**. I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that the person(s) listed above currently occupy the position(s) indicated and that they have full authority to bind the corporation. To the extent that there are any limits on the authority of any listed individual to bind the corporation in contracts with the State of New Hampshire, all such limitations are expressly stated herein.

DATED: 5/16/23 ATTEST: Malbert Smith, C.E.O.
(Signature of Clerk of Corporation) (Title of Clerk of Corporation)

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Frank Edelblut
Commissioner

Christine M. Brennan
Deputy Commissioner

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

May 4, 2022

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

REQUESTED ACTION

Authorize the Department of Education, Bureau of Instructional Support, to enter into a **sole source** contract with MetaMetrics, Inc., Durham, NC (vendor code 334729), in an amount not to exceed \$170,000.00, to provide the use of Lexile® reader measures and Quantile® measures for mathematics for the NH State Assessment System. This contract, with an option to renew for one additional fiscal year, will be effective upon Governor and Council approval for the period of July 1, 2022 through June 30, 2023. 100% Federal Funds.

Funds to support this request are available in the account titled Assessment-Federal as follows:

	<u>FY 23</u>
06-56-56-562010-25340000-102-500731 Contracts for Program Services	\$170,000.00

EXPLANATION

The Department is requesting a **sole source** contract with MetaMetric, Inc. because they are the exclusive provider and owns the registered trademarks associated with the Lexile® reader measures and Quantile® measures for mathematics. These measurements and scores are derived using the NH Statewide Assessment System (NHSAS) results for interim and summative assessments. The scores are utilized to provide student reading level and mathematical level information in an easy to understand and accessible format for parents and teachers. Parents and teachers can use these scores to select appropriate books and individualized instructional materials that are available online and through their local town or school library.

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

In order for parents to better understand and support their child's education, the Department would like to include Lexile and Quantile scores on the (NH SAS) Individual Student Reports that are available at the conclusion of an interim or summative assessment. These levels will then allow parents to access reading and mathematics materials, at the appropriate levels, to match their learning needs. These materials are also available nationally, through libraries and published book sources. In addition, in person and online trainings for parents, teachers, librarians and schools are provided.

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

Respectfully submitted,



Frank Edelblut
Commissioner of Education

FE:mw:emr

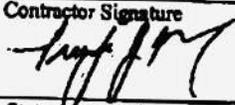
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name NH Department of Education		1.2 State Agency Address 25 Hall Street, Concord, NH 03301	
1.3 Contractor Name MetaMetrics, Inc.		1.4 Contractor Address 800 Taylor Street, Suite 102, Durham, NC 27701	
1.5 Contractor Phone Number 919-547-3400	1.5 Account Number See Exhibit C	1.6 Completion Date June 30, 2023	1.7 Price Limitation \$170,000.00
1.9 Contracting Officer for State Agency Melissa White, Administrator, Academics & Assessment		1.10 State Agency Telephone Number 603-271-3855	
1.11 Contractor Signature  Date: 4/28/22		1.12 Name and Title of Contractor Signatory Timothy J. Klasson COO	
1.13 State Agency Signature  Date: 05/12/2022		1.14 Name and Title of State Agency Signatory Frank Edelblut, Commissioner	
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: Christopher Bond, Attorney  On: 05/12/2022			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: _____			

Contractor Initials 
Date 4/28/22

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

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

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

4. CONDITIONAL NATURE OF AGREEMENT.

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

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

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

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete

compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

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

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

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

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

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

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

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

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

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

8. EVENT OF DEFAULT/REMEDIES.

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

8.1.1 failure to perform the Services satisfactorily or on schedule;

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

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

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

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

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

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

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

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

9. TERMINATION.

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

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

submit to the State a Transition Plan for services under the Agreement.

10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

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

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

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

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

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

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

13. **INDEMNIFICATION.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the

Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

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

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

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

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

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

15. WORKERS' COMPENSATION.

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

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

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

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

18. **CHOICE OF LAW AND FORUM.** This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

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

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

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

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

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

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

EXHIBIT A

Special Provisions

Additional Exhibits D-G

Federal Certification 2 CFR 200.415

Required certifications include: (a) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows:

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

Attachment A List of Contractor Intellectual Property

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

9. TERMINATION – In addition to 9.1 and 9.2 of the P-37, add:

Term and Termination

1. **Term:** This Agreement shall become effective on the Effective Date and shall remain in effect for an initial term ending June 30, 2023. It is understood and agreed between the parties that the payment of compensation specified in this agreement, its continuation or renewal or extension thereof, is dependent upon and subject to the appropriation of funds to, and allocation by, NHED for the purpose set forth in this Agreement. Should funds not be appropriated or allocated, this Agreement shall immediately be terminated. NHED shall not be liable to Contractor for damages of any kind as a result of such termination.

Return of Confidential Information: Upon the termination or expiration of this Agreement, notwithstanding the provisions of subsection 1, the receiving party will return and or destroy all the Confidential Information delivered or disclosed to the receiving party, this shall include all copies whether electronic or physical in existence thereof at any time made by the receiving party. Notwithstanding the above, Contractor will be permitted to retain one copy of any content or material that NHED provided to Contractor for the sole purposes of assigning a Lexile measure or Quantile measure to such content or material. Contractor agrees that such retained Confidential Information will not be disclosed or used in violation of this Agreement. For the avoidance of doubt, nothing in this Agreement requires the return or destruction of reports containing Lexile measures or Quantile measures generated by NHED (i) prior to expiration or termination of this Agreement; or (ii) as permitted under Section 10.1.

Obligations upon Termination:

Lexile and Quantile Marks: Upon the expiration or termination of this Agreement, NHED shall, notwithstanding the provisions of subsection 1, promptly discontinue all use of the Lexile and Quantile Marks and cease all distributions of materials and papers upon which the Lexile and Quantile Marks appear; provided, however, that subject to the terms and conditions of this Agreement, NHED shall have the right to retain such materials as are necessary to fulfill any obligations for accountability purposes.

The Lexile Framework for Reading; LEXILE: Upon the expiration or termination of this Agreement, NHED shall, notwithstanding the provisions of subsection 1, cease to convert scale scores to LEXILE measures or otherwise report scale scores in using the LEXILE scale that matches students to instructional content on the LEXILE scale in any direct or derivative application.

The Quantile Framework for Mathematics; QUANTILE: Upon the expiration or termination of this Agreement, NHED shall, notwithstanding the provisions of subsection 1, cease to convert scale scores to QUANTILE measures or otherwise report scale scores in using the QUANTILE scale that matches students to instructional content on the QUANTILE scale in any direct or derivative application.

EXHIBIT B

Scope of Services

SCOPE

MetaMetrics, Inc. shall grant the use of Lexile reading and Quantile measures to the New Hampshire Department of Education (NHED) for students in grades 3-8 and 11 for School Year 2022/23. In addition, Contractor offers the below Implementation Supports that NHED can elect to use at no cost. NHED must inform Contractor of any implementation supports that NHED wishes to have Contractor provide.

School Year 2022/2023

As part of your state's annual licensing agreement to use Lexile® reading measures and Quantile® mathematics measures, the following implementation supports are available upon request at no cost and offered throughout the contracted school year.

Implementation Toolkit

These implementation supports also are meant to complement and serve as an extension of the Lexile & Quantile State Implementation Toolkit. To access the toolkit, please visit: metametricsinc.com/state-toolkit.

Professional Learning Opportunities

MetaMetrics® offers a variety of on-going professional learning opportunities for educators and other stakeholders to expand their knowledge of Lexile reading measures and Quantile mathematics measures and their understanding of how these measures can be utilized to fuel student learning and growth both in the classroom and at home. A listing of possible topics and content that can be customized for your state is available at metametricsinc.com/professional-learning. This listing is not exhaustive.

Content can be delivered in the following formats:

FORMAT	DESCRIPTION	NUMBER PER YEAR
Web Conference for State Education Agency (SEA) staff	Web conferences delivered online for agency staff. These sessions can also be recorded.	Unlimited
Face-to-Face Informational Sessions	In-person sessions created and delivered for the specific audience and setting you desire (e.g. regional service centers, co-sponsored conferences, etc.).	Two visits per year (Each visit may include multiple sessions.)
Webinars for Educators Statewide	Webinars scheduled and delivered for the specific audience of your choosing. These sessions can also be recorded.	Unlimited (Maximum of 300 attendees per webinar. Sessions can be repeated as desired.)

Roundtable Discussions	Web-based, cross-state conversations on new advances and emerging opportunities.	TBA (Scheduled as topics and need arise.)
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Lexile & Quantile Tools and Resources

MetaMetrics provides access to the following tools and resources so that educators, parents and students can utilize Lexile reading measures and Quantile mathematics measures.

- A Variety of Lexile & Quantile Tools Available**
Many online tools for Lexile reading measures and Quantile mathematics measures are available through the Lexile® & Quantile® Hub. As part of the licensing agreement to use Lexile reading measures and Quantile mathematics measures, educators in the partner state receive Premium access to the Hub and the full functionality of each of its tools at no cost. Visit the Hub at Hub.Lexile.com.

Communications and Outreach Support

- Draft Language for State Specific Lexile & Quantile Web Content**
MetaMetrics provides a draft of text content for your SEA website to explain Lexile reading measures and Quantile mathematics measures, free tools and resources, and their use both in the classroom and at home. Once the content is finalized and approved, MetaMetrics also works with the webmaster or designee to post the content to the SEA's website. An example of finished web content can be viewed at portal.ct.gov/SDE/Student-Assessment/Main-Assessment/Lexiles-and-Quantiles.
- Draft Suggested Language for Outreach Messaging**
MetaMetrics provides a variety of draft messaging for email/newsletter campaigns and social media to help you communicate with educators and parents about the value and utility of Lexile reading measures and Quantile mathematics measures. See draft messages at metametricsinc.com/state-communications.
- Draft Lexile/Quantile Information for State Score Reports**
MetaMetrics collaborates with states and their contractors to provide language and/or individualized, student instructional information on state score reports. See suggested example language at docs.google.com/document/d/1IRhnhHPL3Co3xGq8qFceBRP4swoXSsw946pPekT9x4Cg/.
- Draft Language for State Assessment RFPs**
MetaMetrics is a sole source to states that choose to use and report Lexile reading measures and Quantile mathematics measures from their state assessment systems. To ensure continuity in use and reporting, MetaMetrics makes available a collection of state RFPs that have mandated Lexile reading measures and Quantile mathematics measures through this procurement process.

- **Draft Language for Outreach to Publishers of Textbooks and Instructional Materials**
MetaMetrics offers example language (docs.google.com/document/d/1by38MbMey9IIkFSavX1MYepu54mUNWewJdVWI-n42yE/) that states and/or local districts can use to request that publisher materials be encouraged or required to submit Lexile reading measures and Quantile mathematics measures for books and materials being considered for adoption.

Family Engagement

- **Informational Sessions for Parents & Families**
MetaMetrics works with the SEA to offer informational sessions for parents, families, and communities at large. These sessions focus on providing families some basic understanding of the **Lexile® Framework for Reading** and **Quantile® Framework for Mathematics** and an introduction to the tools that help families utilize these measures for reinforcing learning at home.

Additional Lexile & Quantile Resources

- **Lexile by Chapter Guides**
The peaks and valleys of text complexity have been identified by chapter of frequently taught books in order to help guide instructional planning. This resource is suggested for educators. Visit: lexile.com/lexile-by-chapter.
- **Additional Fact Sheets and Resources**
A collection of additional informational resources for parents and educators (including Guides, Infographics and Maps). Visit: metametricsinc.com/state-communications/#resources.

Join Us for Office Hours!

We're online to answer your questions. Come and go as you please.
Mondays 3:00-5:00 ET, 2:00-4:00 CT, 1:00-3:00 MT, 12:00-2:00 PT
Fridays 11:00-1:00 ET, 10:00-12:00 CT, 9:00-11:00 MT, 8:00-10:00 PT
Visit: <https://sites.google.com/lexile.com/office-hours-resources/home>

MetaMetrics TERMS AND CONDITIONS Ownership

Lexile Marks: The term "Lexile Marks" shall mean the following registered trademarks owned by MetaMetrics: LEXILE® (U.S. Reg. No. 3,969,306), LEXILE® (and design) (U.S. Reg. No. 2,706,910), and LEXILE FRAMEWORK® (U.S. Reg. Nos. 2,180,729 and 2,180,702). NHED acknowledges and agrees that MetaMetrics retains all rights in and to the Lexile Marks and that all goodwill arising from NHED's use thereof as permitted hereunder will inure to the benefit of MetaMetrics.

Quantile Marks: The term "Quantile Marks" shall mean the following registered trademarks owned by MetaMetrics: QUANTILE® (U.S. Reg. No. 3,066,329), QUANTILE® (and design) (U.S. Reg. No. 3,074,413), and QUANTILE FRAMEWORK® (U.S. Reg. No. 2,605,046). NHED acknowledges and agrees that MetaMetrics retains all rights in and to the Quantile Marks and that all goodwill arising from NHED's use thereof as permitted hereunder will inure to the benefit of MetaMetrics.

Proprietary Rights

Use of Lexile and Quantile Marks/Measures: MetaMetrics hereby grants to NHED a limited, non-exclusive, non-transferable license, without the right to sublicense, to use Lexile reading measures and Quantile measures, including displaying said measures on individual reports, as well as on any aggregated reports for each student in grades 3-8 and 11. NHED agrees to display Lexile and Quantile Marks on said reports and shall clearly indicate MetaMetrics' ownership of the Lexile and Quantile Marks according to the terms and conditions of MetaMetrics' Branding Guidelines which are available on MetaMetrics' website and updated from time to time: <http://www.metametricsinc.com/branding-guidelines/>. MetaMetrics reserves the right to request samples of literature, packages, labels and advertising using the Lexile and Quantile Marks prepared by or for NHED and intended to be used by NHED. NHED undertakes, when using the Lexile and Quantile Marks hereunder, to comply with all applicable laws pertaining to such use.

In the event of a conflict between Exhibit B (MetaMetrics Terms and Conditions) and Exhibit G, Exhibit G shall control.

Use of MetaMetrics Intellectual Property: MetaMetrics hereby grants to NHED a limited, non-exclusive, non-transferable license, without the right to sublicense, and right to use the MetaMetrics Intellectual Property listed in **Attachment A ("List of MetaMetrics Intellectual Property")**, during the term of this contract. Regarding the conversion tables which convert a scale score to a Lexile reading measure or Quantile measure, the following uses are specifically prohibited during and after the term of this contract: a) NHED shall not make publicly available the conversion tables; b) NHED shall not create new or derivative scales using the conversion tables, and for which said new scales are marketed and used as an equivalent substitute for a Lexile reading measure or Quantile measure; and c) NHED shall not use the conversion tables to rebrand and relabel the Lexile reading measure or Quantile Measure as a different measure. Nothing contained herein shall be construed as granting NHED any right, title, or interest in or to MetaMetrics' Intellectual Property. Further, the following uses are approved for the Interims: a) given that the Independent College and Career Ready (ICCR) English language arts (ELA)/mathematics interim assessments are on the same scales as the ICCR ELA/mathematics summative assessments, NHED may add the use of Lexile reader measures and Quantile measures from the ICCR interim assessments; and b) the interpretation of Lexile reader and Quantile mathematics measures should be relative to the ICCR ELA/mathematics interim administration protocols. Please refer to the ICCR Lexile and Quantile linking study reports for appropriate uses and caveats of the measures. NHED acknowledges and agrees that it shall have no right, either during the term of this contract or at any time thereafter, to acquire MetaMetrics' Intellectual Property from MetaMetrics by reason of the use of such intellectual property in any manner. NHED agrees that it will not attempt to patent, copyright, or register or use for its own benefit or that of a third party, or aid any third party in attempting to patent, copyright, or register or use any MetaMetrics Intellectual Property which may, in the reasonable opinion of MetaMetrics' counsel, be inconsistent with the terms of this contract. With regard to trademarks, the above prohibitions shall extend to any trademark that is, in the opinion of MetaMetrics, confusingly similar to any trademark that is part of MetaMetrics' Intellectual Property or the trade name of MetaMetrics. NHED acknowledges MetaMetrics' exclusive ownership of, and title to, MetaMetrics' Intellectual Property world-wide and the goodwill associated therewith will belong to and inure solely to the benefit of MetaMetrics. NHED obligations under this section shall survive any termination of the license granted hereunder.

Obligation to Provide Notice of Infringement

NHED agrees to promptly notify MetaMetrics of any unauthorized use of the Lexile and Quantile Marks by any third party which comes to the attention of NHED. MetaMetrics shall have the sole right and discretion to bring an action for infringement, unfair competition, or any other appropriate proceeding, against any such third party, and any proceeds from such proceedings shall be the sole property of MetaMetrics.

EXHIBIT C

Method of Payment

(Budget July 1, 2022 through June 30, 2023)

License Fee for the use of Lexile & Quantile Measures for Grades 3-8 and 11 including support services elected by NHED pursuant to Exhibit B	\$170,000.00
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Limitation on Price: In no case shall the total budget exceed the price limitation of \$170,000.00.

Funding Source: Funds to support this request are available in the account titled Assessment-Federal as follows:

06-56-56-562010-25340000-102-500731 Contracts for Program Services **FY 23** \$170,000.00

Method of Payment: The NH Department of Education shall pay to Contractor an annual license fee of \$170,000 in one installment. The payment shall be invoiced July 1, 2022, upon approval of this contract by the NH Governor and Executive Council and paid within thirty (30) days of receipt of the invoice. The invoice shall be submitted to:

Melissa White
Administrator
Academics and Assessment
NH Department of Education
101 Pleasant Street
Concord, NH 03301

EXHIBIT D

Contractor Obligations

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

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

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

Breach

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

Fraud and False Statements

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

Environmental Protection

(This clause is applicable if this Contract exceeds \$150,000. It applies to Federal-aid contracts only.)

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

Procurement of Recovered Materials

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

Contractor initials

Date 1/4/20/22

Exhibit E

Federal Debarment and Suspension

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

Contractor Initials *HL*
Date 1/4/23/22

Exhibit F

Anti-Lobbying

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

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

- a. No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence any officer or employee of any State or Federal Agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal amendment, or modification of any Federal contract grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any Federal Agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the "Disclosure of Lobbying Activities" form in accordance with its instructions

<https://www.gsa.gov/forms-library/disclosure-lobbying-activities>

- c. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making and entering into this transaction imposed by Section 1352, Title 31 and U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- d. The Contractor also agrees, by signing this contract that it shall require that the language of this certification be included in subcontracts with all Sub-Contractor(s) and lower-tier Sub-Contractors which exceed \$100,000 and that all such Sub-Contractors and lower-tier Sub-Contractors shall certify and disclose accordingly.
- e. The NHED shall keep the firm's certification on file as part of its original contract. The Contractor shall keep individual certifications from all Sub-Contractors and lower-tier Sub-Contractors on file. Certification shall be retained for three (3) years following completion and acceptance of any given project.

Contractor Initials *[Signature]*
Date 7/4/22

Exhibit G

Rights to Inventions Made Under a Contract, Copy Rights and Confidentiality

Rights to Inventions Made Under a Contract or Agreement

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

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

Confidentiality

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

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

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

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

Ownership of Intellectual Property

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

Contractor Initials *[Signature]*
Date 1/4/22

ATTACHMENT A
LIST OF CONTRACTOR INTELLECTUAL PROPERTY

Lexile Framework for Reading name
Lexile Framework for Reading logo
Lexile Framework for Reading tagline
Lexile Framework for Reading measure
Lexile Framework for Reading Map
Lexile Framework for Reading scale
Lexile Framework for Reading scoring conversion procedures
CAI ICCR to Lexile Conversion Table and Linking Equation
MetaMetrics, Inc. name
MetaMetrics, Inc. logo
MetaMetrics, Inc. tagline
Quantile Framework for Mathematics name
Quantile Framework for Mathematics logo
Quantile Framework for Mathematics tagline
Quantile Framework for Mathematics Map
Quantile Framework for Mathematics measure
Quantile Framework for Mathematics scale
Quantile Framework for Mathematics scoring conversion procedures
CAI ICCR to Quantile Conversion Table and Linking Equation
The Lexile and Quantile Hub (See Exhibit B)
Tools within the Lexile and Quantile Hub (See Exhibit B)
Lexile and Quantile Resources (See Exhibit B)

Contractor Initials JK
Date 4/28/22

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 METAMETRICS, INC. is a North Carolina Profit Corporation registered to transact business in New Hampshire on September 25, 2020. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 852201

Certificate Number: 0005754382



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 8th day of April A.D. 2022.

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

David M. Scanlan
Secretary of State

CERTIFICATE OF VOTE

(Corporation without a Seal)

I, Malbert Smith do hereby certify that:
(Name of the Clerk of the Corporation; cannot be signatory)

- (1) I am the duly elected clerk of MetaMetrics
(Corporation Name)
- (2) The following are true copies of the resolutions duly adopted at a meeting of the Board of Directors of the Corporation duly held on April 28, 2022.
(Date)

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

RESOLVED: That Tim Klasson, COO
(Name of Contract Signatory) (Title of Contract Signatory)
is hereby authorized on behalf of this Agency to enter into the said contract with the State and to execute any and all documents, agreements and other instruments, and any amendments, revisions, or modifications thereto, as he/she may deem necessary, desirable or appropriate.

- (3) The foregoing resolution(s) have not been amended or revoked, and remain in full force and effect as of the 28th day of April, 2022.
(Day) (Month) (Yr) (Must be same date as the contract date)

IN WITNESS WHEREOF, I have hereunto set my hand as the Business Representative of the Corporation this 28th day of April, 2022.
(Day) (Month) (Yr) (Must be same date as the contract date)


(Signature of Clerk of Corporation)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
09/23/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER AssuredPartners of Missouri, LLC 11975 Westline Industrial Dr St Louis MO 63148		CONTACT NAME: Pauline Warnecke PHONE (A/C, No, Ext): (314) 523-8800 FAX (A/C, No): (314) 453-7555 E-MAIL: pwarnecke@APMissouri.com ADDRESS:	
INSURED MetaMetrics, Inc.		INSURER(S) AFFORDING COVERAGE	
		INSURER A: Valley Forge Ins Co	NAIC # 20508
		INSURER B: Continental Casualty Company	20443
		INSURER C: Continental Insurance Co.	35289
		INSURER D: Coalition Insurance Solutions, Inc	
		INSURER E:	
		INSURER F:	

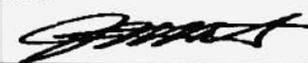
COVERAGES CERTIFICATE NUMBER: 21-22 All Lines REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INBR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:				09/10/2021	09/10/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/>				09/10/2021	09/10/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000				09/10/2021	09/10/2022	EACH OCCURRENCE \$ 8,000,000 AGGREGATE \$ 8,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A		09/10/2021	09/10/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Technology Professional Liability				09/10/2021	09/10/2022	Limit \$5,000,000 Retention \$25,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Please see 2nd page for coverage extensions.

CERTIFICATE HOLDER**CANCELLATION**

Department of Education 101 Pleasant Street Concord NH 03301	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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