61 38

Frank Edelblut
Commissioner

Christine M. Brennan
Deputy Commissioner

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
Bureau of Adult Education
25 Hall Street
Concord, NH 03301

July 16, 2024

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

REQUESTED ACTION

Authorize the New Hampshire Department of Education, Bureau of Adult Education to enter into a **sole source** contract with GED Testing Services, LLC (VC# 434791) of Bloomington, Minnesota, for an amount not-to-exceed, $50,000, to provide high school equivalency testing services and technical support to New Hampshire residents, effective upon Governor and Council approval through June 30, 2029 with an option to extend up to 4 years. **100% General Funds**.

Funds to support this request are available in the following account in FY 25 and are anticipated to be available in FY 26-29 upon the availability and continued appropriation of funds in future operating budget, with the authority to adjust budget line items within the price limitation and to adjust encumbrances between State Fiscal years through the Budget Office, if needed and justified.

06-56-56-562010-40390000 Adult Education - State

Fiscal Year	Class/Account	Class Title	Total Amount
2025	102-500731	Contracts For Program Services	$10,000
2026	102-500731	Contracts For Program Services	$10,000
2027	102-500731	Contracts For Program Services	$10,000
2028	102-500731	Contracts For Program Services	$10,000
2029	102-500731	Contracts For Program Services	$10,000
		Total	$50,000

EXPLANATION

This request is **sole source** because there are only two federally recognized high school equivalency tests, the GED and the HiSET exam. The Bureau of Adult Education is contracting with both vendors who provide the tests so we can continue to provide the high school equivalency exams to New Hampshire Residents without interruption.

RSA 186:61 and Ed 704 establish the High School Equivalency Program requires the use of a test based on uniform educational criteria for the issuance of a high school equivalency certificate from the New Hampshire Department of Education.

The GED exam, provided by GED Testing Services LLC, is one of only two nationally recognized high school equivalency exams. Both the GED and the HiSET exams have been offered in New Hampshire since 2023. The Department of Education allows individuals pursuing the high school equivalency certificate to choose which test to take. Both exams are equally rigorous, based on the College and Career Readiness Standard for Adult Education and assess reading, writing, mathematics, social studies and science. The test delivery and question format on the two tests are different. By offering both tests, NH residents may choose the test appropriate for their needs.

GED Testing Services, LLC has been providing high school equivalency testing services since 1942 and has helped more than 20 million students across the globe demonstrate high school equivalency. The high school equivalency certificate earned through passing the GED exam is recognized by postsecondary education and training institutions, employers and the military. Individuals who have passed the GED exam increase their opportunities for entering into college, getting promotions and advancing in their jobs and serving their country in the armed forces.

The high school equivalency certificate is an option for individuals who dropped out of school before completion or for current high school students as an alternative to a traditional diploma. Earning a high school equivalency certificate through passing the GED allows students to complete early in order to transition to postsecondary education or employment. For NH's large immigrant and refugee population, it can provide US documentation of high school academics in order to pursue education or gain employment if their education documents from their native countries are unavailable. For incarcerated individuals, national research shows that completing a high school equivalency certificate is correlated to reducing recidivism. Approximately 1,000 students take the high school equivalency exam in New Hampshire each year.

Respectfully submitted,

Frank Edelblut
Commissioner of Education

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

Denis Goulet
Commissioner

May 13, 2024

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

Dear Commissioner Edelblut:

This letter represents formal notification that the Department of Information Technology (DoIT) has approved your agency's request to enter into a contract with GED Testing Services LLC, as described below and referenced as DoIT No. 2024-097.

The purpose of this request is to provide high school equivalency testing services.

The Total Price Limitation shall be $50,000, effective upon Governor and Council approval through June 30, 2029.

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

Sincerely,

Denis Goulet

DG/jd
DoIT #2024-097

cc: Kathy Wood, IT Lead

STATE OF NEW HAMPSHIRE

Department of Education, Bureau of Adult Education:
High School Equivalency Testing Services:
BAE – 2024 - 097

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FORM NUMBER P-37 (version 2/23/2023)

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

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, Bureau of Adult Education		1.2 State Agency Address 25 Hall St, Concord NH 03301	
1.3 Contractor Name GED Testing Service LLC		1.4 Contractor Address 5601 Green Valley Drive Bloomington, MN 55437	
1.5 Contractor Phone Number (952) 681-3820	1.6 Account Unit and Class See Exhibit C	1.7 Completion Date June 30, 2029	1.8 Price Limitation $50,000
1.9 Contracting Officer for State Agency Sarah Wheeler		1.10 State Agency Telephone Number (603) 271-6701	
1.11 Contractor Signature Vicki Greene (Jun 26, 2024 08:40 CDT) Date: 06/26/2024		1.12 Name and Title of Contractor Signatory Vicki Greene, President and CEO	
1.13 State Agency Signature Date: 7/18/2024		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: Elizabeth A. Brown On: 7/18/2024			
1.17 Approval by the Governor and Executive Council *(if applicable)* G&C Item number: G&C Meeting Date:			

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement, 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.

3.3 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. 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 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, 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 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. 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.

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 The State's liability under this Agreement shall be limited to monetary damages not to exceed the total fees paid. 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.

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 and the Governor's order on Respect and Civility in the Workplace, Executive order 2020-01. 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 age, sex, sexual orientation, race, color, marital status, physical or mental disability, religious creed, national origin, gender identity, or gender expression, and will take affirmative action to prevent such discrimination, unless exempt by state or federal law. The Contractor shall ensure any subcontractors comply with these nondiscrimination requirements.

6.3 No payments or transfers of value by Contractor or its representatives in connection with this Agreement have or shall be made which have the purpose or effect of public or commercial

Contractor Initials VG
Date 06/26/2024

bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business.
6.4. 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 this Agreement and all rules, regulations and orders pertaining to 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 The Contracting Officer specified in block 1.9, or any successor, shall be the State's point of contact pertaining to this Agreement.

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) calendar days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) calendar 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.

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) calendar 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) calendar 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. In addition, at the State's discretion, the Contractor shall, within fifteen (15) calendar days of notice of early termination, develop and submit to the State a transition plan for Services under the Agreement.

10. PROPERTY OWNERSHIP/DISCLOSURE.
10.1 As used in this Agreement, the word "Property" shall mean all data, 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 Disclosure of data, information and other records shall be governed by N.H. RSA chapter 91-A and/or other applicable law. Disclosure 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 Contractor shall provide the State written notice at least fifteen (15) calendar days before any proposed assignment, delegation, or other transfer of any interest in this Agreement. No such assignment, delegation, or other transfer shall be effective without the written consent of the State.
12.2 For purposes of paragraph 12, 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.

12.3 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State.

12.4 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. The Contractor shall indemnify, defend, and hold harmless the State, its officers, and employees from and against all actions, claims, damages, demands, judgments, fines, liabilities, losses, and other expenses, including, without limitation, reasonable attorneys' fees, arising out of or relating to this Agreement directly or indirectly arising from death, personal injury, property damage, intellectual property infringement, or other claims asserted against the State, its officers, or employees caused by the acts or omissions of negligence, reckless or willful misconduct, or fraud by the Contractor, its employees, agents, or subcontractors. 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 State's sovereign immunity, 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 any successor, a certificate(s) of insurance for all insurance required under this Agreement. At the request of the Contracting Officer, or any successor, the Contractor shall provide certificate(s) of insurance for all renewal(s) of insurance required under this Agreement. 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 any successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. A State's failure to enforce its rights with respect to any single or continuing breach of this Agreement shall not act as a waiver of the right of the State to later enforce any such rights or to enforce any other or any subsequent breach.

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

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

19. CHOICE OF LAW AND FORUM.

19.1 This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire except where the Federal supremacy clause requires otherwise. 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.

19.2 Any actions arising out of this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be brought and maintained in the Merrimack County Superior Court of New Hampshire which shall have exclusive jurisdiction thereof.

20. CONFLICTING TERMS. In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and any other portion of this Agreement including any attachments thereto, the terms of the P-37 (as modified in EXHIBIT A) shall control.

21. THIRD PARTIES. This Agreement is being entered into for the sole benefit of the parties hereto, and nothing herein, express or implied, is intended to or will confer any legal or equitable right, benefit, or remedy of any nature upon any other person.

22. 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.

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

24. FURTHER ASSURANCES. The Contractor, along with its agents and affiliates, shall, at its own cost and expense, execute any additional documents and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby.

25. 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.

26. 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.

Contractor Initials VG
Date 06/26/2024

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:

3.4 The Term may be extended up to four (4) 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 under the same terms and conditions, subject to approval of the Governor and Executive Council.

A.2 Provision 9, Termination, Section 9.2 is deleted and replaced with the following:

9.2 In the event of the termination pursuant to subparagraph 9.1, 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 will pay for cost of all Services and Deliverables for which Acceptance has been given by the State, provided through the date of termination but will not be liable for any costs for incomplete Services or winding down the Contract activities. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

9.3 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. 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 destroyed 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 destroyed all State data.

9.4 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 the orderly transfer of such Services to the State or its designees ("Transition Services").

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

A.3 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. 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 Chief 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 law or an order of a court of competent jurisdiction. Any disclosure of the Confidential Information shall require the prior written approval of

the State. Contractor shall immediately notify the State if any request, subpoena or other legal process is served upon Contractor regarding the Confidential Information, and Contractor shall cooperate with the State in any effort the State undertakes to contest the request, subpoena or other legal process, at no additional cost to the State.

10.7 Contractor Confidential Information. Contractor shall clearly identify in writing all information it claims to be confidential or proprietary upon providing such information to the State. For the purposes of complying with its legal obligations, the State is under no obligation to accept the Contractor's designation of material as confidential. Contractor acknowledges that the State is subject to State and federal laws governing disclosure of information including, but not limited to, RSA Chapter 91-A. In the event the State receives a request for the information identified by Contractor as confidential, the State shall notify Contractor and specify the date the State will be releasing the requested information. At the request of the State, Contractor shall cooperate and assist the State with the collection and review of Contractor's information, at no additional expense to the State. Any effort to prohibit or enjoin the release of the information shall be Contractor's sole responsibility and at Contractor's sole expense. If Contractor fails to obtain a court order enjoining the disclosure, the State shall release the information on the date specified in the State's notice to Contractor, without any liability to the State.

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

A.4 Provision 12, Assignment/Delegation/Subcontracts, is updated with the following addition:

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

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

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

A.5 The following Provisions are added and made part of the P37:

27. FORCE MAJEURE

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

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

28. 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.

29. 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.

30. 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:

1. State of New Hampshire, Department of Education, Bureau of Adult Education Contract Agreement BAE – 2024 – 097
2. P-37 as amended by Exhibit A.
3. State of New Hampshire, Department of Education, Bureau of Adult Education Contract Exhibits in order of precedence:
    a. Exhibits B and C;
    b. Exhibit D ;
    c. Exhibit E;
    d. Exhibit F:
    e. Exhibit G.
4. Additional Contractor Provided Documents (Exhibit H).

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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:

STATEMENT OF WORK

1.1 Executive Summary

1.1.1 Introduction

The Bureau of Adult Education provides support to various programs and services to help people gain academic and English language skills that will help them advance and grow personally and professionally.

There are three different types of programs that the Bureau of Adult Education oversees:

- Adult Basic Education – A program for those 16 or older who are not enrolled In high school that provides classes to improve basic skills in reading, writing, and math. Classes can also help students with goals such as improving digital literacy or preparing for high school equivalency testing.
- Adult Diploma Programs – A program which provides classes for students to earn credits to complete adult high school requirements and earn a diploma. Classes are available to adult learners or students who are dually enrolled in high school.
- High School Equivalency – This program assists high schools and local education centers with providing both the GED® test and HiSET testing to students, including test preparation materials and the issuing of the official high school equivalency certificate.

Currently, there are 21 HiSET testing centers and 5 GED® testing centers in New Hampshire. In the 2022-2023 School year, 48% of Early Exit Non-Graduates in New Hampshire were those who earned an HSE certificate, which has increased by 10% since the 2021-2022 school year.

1.1.2 Goals and Objectives

The Bureau of Adult Education is seeking to provide both current high schoolers and adult learners the opportunity to complete high school through high school equivalency testing, which will allow them to access post-secondary education and work opportunities.

- Partner with GED Testing Service LLC to provide an accessible, comprehensive high school equivalency test that allows students of all backgrounds

- The test will fill in the gaps for students who cannot access traditional education or adult education courses due to lack of access to childcare, issues with affordability, and/or a limited schedule.
- The test will allow students to complete their high school education and meet their academic and career goals.
- The test will meet the College and Career Readiness Standards for Adult Education that are used in adult education programs.
- The test will meet the provisions outlined in Ed Rule 704.

1.2 **Scope of Work**

In partnership with GED Testing Service LLC, the following services will be provided:

Test Content and Formats

The vendor will provide a nationally recognized high school equivalency test aligned to the College & Career Readiness Standards for Adult Education in a variety of formats including but not limited to paper and computer formats; in-person and remote proctored delivery; multiple versions to allow for retesting; in English, Spanish, large print and Braille; and with accommodations for individuals with disabilities.

The vendor will provide an annual, restricted access practice test, aligned with the current year's test, to be used to meet the requirements of NH Ed 704. Additional free practice tests shall be available to the general public in both paper-pencil and computer-based formats.

The vendor must provide appropriate test formats for test candidates with disabilities and an approval process for accommodation requests. The vendor is responsible for providing any accommodations requiring additional resources not available in the test center such as a scribe/reader or Braille.

Test Candidate Experience & Registration

The vendor will provide an online registration system that supports scheduling for eligible test-takers including verification of eligibility and residency requirements. The vendor's website will provide NH specific testing policies and registration information; test preparation materials; test registration information; accommodations request and application instructions; how to schedule tests and retests; test day tips; samples of score reports; and transition to college & careers information. The vendor shall provide assistance to test taker through phone, email and live chat support.

Test taker demographic, educational/work history, reasons for taking the test and preparation activities information will be collected during the registration process and available for data analysis by the State in the online reporting portal.

The vendor's registration system shall restrict access for test takers under the age of 18. The State office shall have the ability to apply or approve a waiver process to allow eligible test candidates under 18 to schedule and take the test.

Payments Options

Testing fees are set forth as follows:

	YEAR 1 FY25 07/01/2024 – 06/30/2025	YEAR 2 FY26 07/01/2025 – 06/30/2026	YEAR 3 FY27 07/01/2026 – 06/30/2027	YEAR 4 FY28 07/01/2027 – 06/30/2028	YEAR 5 FY29 07/01/2028 - 06/30/2029
Paper Based Test Fee Per Subtest	$46	$46	$46	$50	$50
Computer Based Test Fee Subtest	$26	$26	$26	$30	$30
Remote Proctored Test Fee	$36	$36	$36	$40	$40

Vendor's standard channel compensation adds $10 test center compensation to the CBT price per subject

There are four subtests and the State has the option to add a Test Center fee to cover the cost of administering the test. Test Center fees will be collected by the vendor and remitted to the State or the Test Center on a monthly basis accompanied by a report containing the number of test takers, the number of test administered lister by testing center and test date.

The vendor will collect all testing fees directly from test-takers during the registration process. Acceptable forms of payment include credit card, debit card and vouchers. Testing vouchers may be purchased by third parties interested in paying for the exam on behalf of the test taker.

Correctional and other restricted access facilities will be invoiced for testing and other applicable fees. In accordance with current policies, test takers residing in the NH State Prison system will not be charged Test Center fees.

All costs associated with test development, the registration and administration systems, training, materials, scoring (including mailing answer sheets). Reporting and any other program activities including retests, must be covered by fees collected from test candidates.

Reporting, Test Scoring and Transcripts

The vendor shall collect test candidate demographics and provide a comprehensive score report that specifies any academic remediation needed and when cut scores have been achieved. The score report shall be in an appropriate format for the State to use an as official transcript.

Test scores shall be available to the test candidate within five business days.

The vendor shall provide an annual statistical report that shows how New Hampshire test takers compare to other states.

The vendor shall provide access to a comprehensive reporting system that allows the Bureau to produce on-demand, ad hoc reports based on test taker data including volume; performance, individual test taker information, geographic and demographic elements, and other key metrics.

The vendor shall provide an annual report of test takers under the age of 20 who have passed the entire exam to be used for calculating the state and local dropout rate by the first week of September.

The vendor will upload testing results into the State's Secure File Transfer Protocol in a CSV file with the file name in the following template: NH_GED_Report_MMDDYYYY. The first column of the report must be the report date.

Test Centers and Proctors

The State reserves the right to approve testing centers and examiners for physical test centers in New Hampshire. The vendor is responsible for providing training on the system and technical support at all levels: State Office, test center and test candidate.

The vendor will provide a test center administrator certification course.

The vendor will provide support and technical assistance for test proctors during testing in the event of technical problems during administration. Vendor customer service representatives will be trained on New Hampshire specific policies.

GED® Policy Manual

NH acknowledges and agrees that approved test centers will administer the GED® test and GED Testing Program in accordance with the GED Policy Manual, with the exception of Section 3, part A, paragraph 1 which conflicts with the State's policy to allow test takers to remain enrolled in secondary education. If there is a specific contractual provision or regulation that overrides the GED Policy Manual, then GEDTS shall follow the State's rules and regulations.

Remote Proctoring

The vendor will provide remote proctoring of the test as an option for test candidates. The vendor will adhere to the following protocols and will notify test candidates of the following prior to engagement:

- Online testing is prohibited in NH for all test takers under the age of 18.
- Any test taker who is not a New Hampshire resident at the time of testing shall have their test scores voided.
- Digital images, including the test taker's image, photo identification and testing environment, will be collected and stored temporarily.
- There will be a live proctor watching the test taker during the entire test to ensure the security of the test.
- Remote technical assistance may be provided through chat or phone, but under no circumstances shall any of the vendor personnel remotely access the test taker's system.

All candidate data, test session data and recordings will be stored within the continental United States, at a secure location in adherence with strict data privacy laws. Recordings and screenshots will be permanently deleted within 90 days in accordance with National Institute of Standards and Technology Special Publication 800-88 Rev 1 "Guidelines for Media Sanitization".

Instructional Support

The vendor will support the development of instructional materials aligned to the test as well as professional development materials that support instructor training on the content covered on the test,

The vendor will provide financial support for up to two State staff and two additional local providers to attend an annual conference for professional development.

Data Sharing

The vendor shall provide a daily data feed of all New Hampshire based test taker activity and submit the data through a secure file transfer to the state's secure file transfer portal and the adult education student management system. The state currently uses the LiteracyPro's LACES system as their student management system. Vendor shall have no liability in the event of a Data Breach which is caused by LiteracyPro's LACES system.

All user information shall be kept strictly confidential and shall not be divulged to any party not covered by this contract.

Marketing & Communication

The vendor shall be responsible for marketing the high school equivalency exam and ensuring that it is recognized as a high school equivalent for schools, employers, post-secondary institutions, and the military.

Customizable marketing materials shall be provided to the State and local adult education centers to promote the use of the test.

Business Requirements

Data Location:	The vendor shall provide its services solely from data centers within the continental United States. All storage of State data shall be restricted to information technology systems within the Continental United States.
System Security:	The vendor shall implement a comprehensive data security policy based on global standards and guidelines related to security, data privacy and test delivery. The vendor shall use data encryption protocols that include a secure File Transfer Protocol, HTTPS (hypertext transfer protocol secure), encrypted backup tapes, virtual private networks, and database encryption. The vendor must maintain a security management audit trail of testing events and reviewed on a regular basis.
Backup and Recovery:	The vendor must have a backup method and a disaster recovery plan that ensure business continuity.
Data Center:	Vendor shall provide an American National Standards Institute (ANSI)/Telecommunications Industry Association (TIA) Tier 3 Data Center or equivalent. The center shall be physically secured, and access only granted to those with a need to perform tasks in the Data center.
Maintenance:	The vendor shall install, and update all served patches, updates, and other utilities within 60 days of release from the manufacturer. The vendor shall monitor system, security, and application logs.
Security Breach:	The vendor must notify the State of a security breach within 24 – 48 hours in conformance with the State of NH RSA 359-C:20.

User Friendliness, Usability Features and Training

The Vendor will provide training for the Bureau staff and local test administrators in virtual group trainings or one on one trainings and be available to answer questions as needed. A written or online accessible handbook and on-demand video training will be available.

Implementation

Within 30 days of an approved contract, the vendor will submit a final implementation plan including a detailed outline of the activities.

Contractor agrees to utilize maximum effort in completing services in the most expeditious and economical manner consistent with the best interest of the State of New Hampshire and the United States, and that the above price is no higher than that currently charged to other users for like quality and quantity.

This agreement may be terminated without cause by either party with thirty days written notice.

BUSINESS / TECHNICAL REQUIREMENTS

The Business and Technical Requirements are attached under Exhibit G, section 1.
B-2.1. Service Level Agreement (SLA)

Vendor agrees to the following Service Level Requirements

State Requirements		
Req #	**Requirement Description**	**Criticality**
SLA -1	The Vendor's System support and maintenance shall commence upon the Effective Date and extend through the end of the Contract term, and any extensions thereof.	M
SLA -2	The vendor 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
SLA -3	The vendor 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
SLA -4	All hardware and software components of the Vendor hosting infrastructure shall be fully supported by their respective manufacturers at all times. All critical patches for operating systems, databases, web services, etc., shall be applied within sixty (60) days of release by their respective manufacturers. (RA-5)	M
SLA -5	The State shall have unlimited access, via phone or Email, to the Vendor technical support staff between the hours of 8:30am to 5:00pm- Monday through Friday EST.	M

SLA -6	The Vendor shall conform to the specific deficiency class as described below or as agreed to by the parties: o Class A Deficiency - Software - Critical, does not allow System to operate, no work around, demands immediate action; Written Documentation - missing significant portions of information or unintelligible to State; Non Software - Services were inadequate and require re-performance of the Service. o Class B Deficiency - Software - important, does not stop operation and/or there is a work around and user can perform tasks; Written Documentation - portions of information are missing but not enough to make the document unintelligible; Non Software - Services were deficient, require reworking, but do not require re-performance of the Service. o Class C Deficiency - Software - minimal, cosmetic in nature, minimal effect on System, low priority and/or user can use System; Written Documentation - minimal changes required and of minor editing nature; Non Software - Services require only minor reworking and do not require re-performance of the Service.	M
SLA -7	As part of the maintenance agreement, ongoing support issues shall be responded to according to the following: a. Class A Deficiency- The Vendor shall have available to the State on-call telephone assistance, with issue tracking available to the State, eight (8) hours per day and five (5) days a week with an email / telephone response within two (2) hours of request; or the Vendor shall provide support on-site or with remote diagnostic Services, within four (4) business hours of a request; b. Class B & C Deficiency–The State shall notify the Vendor of such Deficiencies during regular business hours and the Vendor shall respond back within four (4) hours of notification of planned corrective action; The Vendor shall repair or replace Software, and provide maintenance of the Software in accordance with the Specifications, Terms and Requirements of the Contract.	M
SLA -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
SLA -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
SLA -10	If The Vendor is unable to meet the uptime requirement, The Vendor shall credit State's account in an amount based upon the following formula: (Total Contract Item Price/365) x Number of Days Contract Item Not Provided. The State must request this credit in writing.	M
SLA -11	The Vendor shall use a change management policy for notification and tracking of change requests as well as critical outages.	M
SLA -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

SLA -13	The Vendor shall maintain a record of the activities related to repair or maintenance activities performed for the State and shall report quarterly on the following: Server up-time; All change requests implemented, including operating system patches; All critical outages reported including actual issue and resolution; Number of deficiencies reported by class with initial response time as well as time to close.	M
SLA -14	The Vendor will give two-business days prior notification to the State Project Manager of all changes/updates and provide the State with training due to the upgrades and changes.	M
SLA -15	The Vendor shall make available to the State the latest program updates, general maintenance releases, selected functionality releases, patches, and Documentation that are generally offered to its customers, at no additional cost.	M
SLA -16	For all maintenance Services calls, The Vendor shall ensure the following information will be collected and maintained: 1) nature of the Deficiency; 2) current status of the Deficiency; 3) action plans, dates, and times; 4) expected and actual completion time; 5) Deficiency resolution information, 6) Resolved by, 7) Identifying number i.e. work order number, 8) Issue identified by;	P
SLA -17	The Vendor must work with the State to identify and troubleshoot potentially large-scale System failures or Deficiencies by collecting the following information: 1) mean time between reported Deficiencies with the Software; 2) diagnosis of the root cause of the problem; and 3) identification of repeat calls or repeat Software problems.	P

2.2 Compliance Requirements

Agency Compliance Documents are not required as this contract does not use any federal funding.

ACTIVITY, DELIVERABLE, AND MILESTONE

The Activity, Deliverables, and Milestone chart is attached under Exhibit G, Section 1.

DELIVERABLE REVIEW AND ACCEPTANCE

4.1 Non-Software and Written Deliverables Review and Acceptance

The Contractor shall provide a written Certification that a non-software, written deliverable (such as the Test Plan) is final, complete, and ready for Review. After receiving such Certification from the Contractor, the State will Review the Deliverable to determine whether it meets the requirements outlined in this Exhibit. The State will notify the Contractor in writing of its Acceptance or rejection of the Deliverable, or its partial or conditional Acceptance of the Deliverable, within five (5) business days of the State's receipt of the Contractor's written Certification; provided that if the State determines that

the State needs more than five (5) days, then the State shall be entitled to an extension of up to an additional ten (10) business days. If the State rejects the Deliverable or any portion of the Deliverable, or if any Acceptance by the State is conditioned upon completion of any related matter, then the State shall notify the Contractor of the nature and class of the Deficiency, or the terms of the conditional Acceptance, and the Contractor shall correct the Deficiency or resolve the condition to Acceptance within the period identified in the Work Plan. If no period for the Contractor's correction of the Deliverable or resolution of condition is identified, the Contractor shall correct the Deficiency in the Deliverable or resolve the condition within five (5) business days or such longer period as the State (in its sole discretion) may agree. Upon receipt of the corrected Deliverable, the State shall have five (5) business days to review the Deliverable and notify the Contractor of its Acceptance, Acceptance in part, conditional Acceptance, or rejection thereof, with the option to extend the Review Period up to five (5) additional business days, or mutually agreed upon timeframe. If the Contractor fails to correct the Deficiency within the allotted period, the State may, at its option, continue reviewing the Deliverable and require the Contractor to continue until the Deficiency is corrected, or immediately terminate the Contract, declare the Contractor in default, and or pursue its remedies at law and in equity.

4.2 Software Deliverables Review and Acceptance

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

4.3 Number of Deliverables

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

4.4 Conditional and Unconditional Acceptance

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

5. CHANGE ORDER

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

Contractor may propose a change within the scope of the Contract by written Change Order, identifying any impact on cost, the Schedule, and the Work Plan. The State shall acknowledge

receipt of Contractor's requested Change Order within five (5) business days. The State Agency, as well as the Department of Information Technology, must review and approve all Change Orders in writing. The State shall be deemed to have rejected the Change Order if the Parties are unable to reach an agreement in writing within 30 days of receipt of the Change Order.

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

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

6. IMPLEMENTATION SERVICES

This is a continuation of services that are already in place. The system to access testing already exists and is accessible through the internet.

7. PROJECT MANAGEMENT

a. The Contractor shall provide project tracking tools and templates to record and manage Issues, Risks, Change Requests, Requirements, and other documents used in the management and tracking of the project. The State believes that effective communication and Reporting are essential to Project success. The Contractor shall employ effective communication and Reporting strategies to ensure Project success. The Contractor Key Project Staff shall participate in meetings as requested by the State, in accordance with the requirements and terms of this Contract.

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

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

d. The State may, at its sole expense, conduct reference and background screening of the Contractor's Project Manager and Key Project Staff. The State shall maintain the confidentiality of background screening results in accordance with the Contract Agreement.

e. The Contractor shall be responsible for knowledge transfer between all Contractor project teams for all deliverables defined in this Project Agreement.

7.1 The Contractor Key Project Staff

7.1.1. The Contractor's Contract Manager

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

Robert Rutscher
VP, Senior Counsel
Robert.Rutscher@ged.com

7.1.2. The Contractor's Project Manager

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

Jonna Forsyth
State Relationship Manager
Jonna.Mcdonough@ged.com

Contractor's selection of the Project Manager shall be subject to the prior written approval of the State. The State's approval process may include, without limitation, at the State's discretion, review of the proposed Project Manager's resume, qualifications, references, and background checks, and an interview. The State may require removal or reassignment of Project Manager who, in the sole judgment of the State, is found unacceptable or is not performing to the State's satisfaction.

Project Manager must be qualified to perform the obligations required of the position under the Contract, shall have full authority to make binding decisions under the Contract, and shall function as Contractor's representative for all administrative and management matters. Project Manager must be available to promptly respond during normal Business Hours within eight (8) hour(s) of inquiries from the State, and be at the site as needed. Project Manager must work diligently and use his/ her best efforts on the Project.

7.1.3. Change of Project Manager

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

(10) business day period to provide competent project management Services through a qualified interim Project Manager.

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.

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

7.2 The State Key Project Staff

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

Sarah Wheeler
(603) 271 – 6701
Sarah.L.Wheeler@doe.nh.gov

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

Lily Pearsall
(603) 406 - 1072
Lily.E.Pearsall@doe.nh.gov

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

a. Leading the Project;
b. Engaging and managing all Contractors working on the Project;

c. Managing significant issues and risks;
d. Reviewing and accepting Contract Deliverables;
e. Invoice sign-offs;
f. Review and approval of Change Orders;
g. Managing stakeholders' concerns.

WORK PLAN

There is no work plan as this is a continuation of an existing contract.

MAINTENANCE, OPERATIONS AND SUPPORT

9.1. 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.

9.2 System Support

a. 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.
b. 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:
c. **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 four (4) hours of request; or the Contractor shall provide support on-site or with remote diagnostic Services, within twenty four (24) business hours of a request;
d. **Class B & C Deficiencies** – The State shall notify the Contractor of such Deficiencies during regular Business Hours and the Contractor shall respond back within twenty four (24) hours of notification of planned corrective action.

9.3 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.

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

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

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.

9.4 Contract Warranties and Representations

9.4.1 System

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

9.4.2 Software

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

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

a. provide the correction of program errors that cause breach of the warranty, or if Contractor cannot substantially correct such breach in a commercially reasonable manner, the State may end its program license if any and recover the fees paid to Contractor for the program license and any unused, prepaid technical support fees the State has paid for the program license; or
b. the re-performance of the deficient Services, or
c. if Contractor cannot substantially correct a breach in a commercially reasonable manner, the State may end the relevant Services and recover the fees paid to Contractor for the deficient Services.

9.4.3 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.

9.4.4 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.

10. 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.

10.1 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.

10.2 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.

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.

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.

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) immediately notify the appropriate State identified contact and (2) take commercially reasonable and consistent with industry best practices measures to address the data breach in a timely manner.

10.3 Breach Responsibilities

10.3.1 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.

10.3.2 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.

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

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

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

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

11. 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

12. 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

13. TRAINING

This is a continuation of an existing service. The training plan is outlined in the Scope of Work (Exhibit B)

14. MERCHANT CARD SERVICES

Not Applicable

15. TERMS AND DEFINTIONS

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

16. CONTRACTOR'S CERTIFICATES

Required Contractor Certificates are attached in Exhibit G.

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EXHIBIT C – PRICE AND PAYMENT SCHEDULE

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

1. CONTRACT PRICE

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

2. TRAVEL EXPENSES

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

3. SHIPPING FEES

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

4. INVOICING

The Contractor shall submit correct invoices to the State for all amounts to be paid by the State. All invoices submitted shall be subject to the State's prior written approval, which shall not be unreasonably withheld. The Contractor shall only submit invoices for Services or Deliverables as permitted by the Contract and identified in the Payment Schedule below. 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:

Sarah Wheeler
NH Department of Education
Bureau of Adult Education
25 Hall St,
Concord, NH 03301

6. PAYMENT ADDRESS

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

7. OVERPAYMENTS TO THE CONTRACTOR

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

8. CREDITS

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

9. PAYMENT SCHEDULE

9.1 Contract Type

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

Activities / Deliverables / Milestones Pricing

COST DESCRIPTION	YEAR 1 FY25 07/01/2024- 06/30-2025	YEAR 2 FY26 07/01/2025- 06/30/026	YEAR 3 FY27 07/01/2026- 06/30-2027	YEAR 4 FY28 07/01/2027- 06/30-2028	YEAR 5 FY29 07/01/2028- 06/30/2029
National Training/Conference 4 staff	$7,000	$7,200	$7,200	$7,400	$7,400
Testing Vouchers including GED Ready	$3,000	$2,800	$2,800	$2,600	$2,600
Total	$10,000	$10,000	$10,000	$10,000	$10,000

Limitation on Price: Upon mutual agreement between the State and the vendor, line items in this budget may be adjusted one to another without further Governor and Council approval, but in no case shall the total budget exceed the price limitation of $ 50,000.

Source of Funding: Funds to support this request are available in the following account in FY 25 and are anticipated to be available in FY 26-29 upon the availability and continued appropriate of funds in future operating budget, with the authority to adjust budget line items

within the price limitation and to adjust encumbrances between State and Fiscal years through the Budget Office, if needed and justified.

06-56-56-562010-40390000 Adult Education - State

Fiscal Year	Class/Account	Class Title	Total Amount
2025	102-500731	Contracts For Program Services	$10,000
2026	102-500731	Contracts For Program Services	$10,000
2027	102-500731	Contracts For Program Services	$10,000
2028	102-500731	Contracts For Program Services	$10,000
2029	102-500731	Contracts For Program Services	$10,000
		Total	$50,000

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EXHIBIT D – SOFTWARE LICENSE AGREEMENT

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

1. License Grant. *For Subscription and for SaaS (Case 3)*

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.

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

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

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

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

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

6. Audit. Upon forty-five (45) days written notice, 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.

7. Software Non-Infringement. Contractor warrants that it has good title to, or the right to allow the State to use all Services, equipment, and Software, including any 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:

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.

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

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EXHIBIT E – ADMINISTRATIVE SERVICES

1. DISPUTE RESOLUTION

a. 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.

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

Table E-1.			
DISPUTE RESOLUTION RESPONSIBILITY AND SCHEDULE TABLE			
LEVEL	**CONTRACTOR POINT OF CONTACT**	**STATE POINT OF CONTACT**	**CUMULATIVE ALLOTED TIME**
Primary	Jonna Forsyth	Lily Pearsall	5 Days
First	Brian Smith	Sarah Wheeler	10 Days
Second	C.T. Turner	Melissa White	10 Days
Third	Vicki Greene	Frank Edelblut	15 Days

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

2. ACCESS AND COOPERATION

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

3. RECORD RETENTION

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

Upon prior notice and subject to reasonable time frames, all such records shall be subject to inspection, examination, audit and copying by personnel so authorized by the State and federal officials so authorized by law, rule, regulation or Contract, as applicable. Access to these items shall be provided within Merrimack County of the State of New Hampshire, unless otherwise agreed by the State. Delivery of and access to such records shall be at 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

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.
Confidential Information	Information required to be kept Confidential and restricted from unauthorized disclosure under the Contract. "Confidential Information" or "Confidential Data" means all private/restricted confidential information disclosed by one party to the other. Confidential Information includes any and all information owned or managed by the State of NH 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.

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.
Data Breach	Data Breach means the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic. With regard to Protected Health Information, "Data Breach" shall have the same meaning as the term "Breach" in section 164.402 of Title 45, Code of Federal Regulations.
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	Any written, software, or non-software item (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.
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 Vendor 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 Software 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.
Solution	A proposed set of Software and Services addressing the requirements and terms of the RFP or sole source project.
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.
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: *Business/Technical Requirements and Deliverables*. 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.

EXHIBIT G – ATTACHMENTS AND CONTRACTOR CERTIFICATES

ATTACHMENTS

a. Attachment 1 - Business and Technical Requirements

CONTRACTOR CERTIFICATES

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

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EXHIBIT G, Section 1 for **Sole Source Contracts**

B-2.1 Business Requirements

Table B-2.1 Business Requirements

BUSINESS REQUIREMENTS					
State Requirements			Vendor		
Req #	Requirement Description	Criticality	Vendor Response	Delivery Method	Comments
Testing Requirements					
B1.1	Test format is available in paper-based, computer-based and in a securely online.	M	YES	Standard	
B1.2	Test is available in English and Spanish, other language(s) optional.	M	YES	Standard	
B1.3	Test must allow for demonstration of competencies equivalent to a high school graduate in the areas of Mathematics, Science, Social Studies, English Language Art including Reading and Writing	M	YES	Standard	
B1.4	Test must be substantially aligned to the College & Career Readiness Standards for Adult Education	M	YES	Standard	
B1.5	Test results must be recognized and accepted by postsecondary institutions, employers and the military.	M	YES	Standard	
B1.6	The Vendor must be able to provide reasonable accommodations for examinees with documented disabilities.	M	YES	Standard	
B1.7	The Cost Proposal must include the cost of testing and scoring services (even if provided by a sub-contractor).	M	YES	Standard	
B1.8	Test must have a minimum of three forms each year to allow for re-testing.	M	YES	Standard	
B1.9	The Vendor must provide, endorse, or encourage supplemental resources such as instructional materials.	M	YES	Standard	
B1.10	The Vendor must provide multiple, restricted access, official practice tests that are aligned with the test that can be used to demonstrate that a test candidate has the skills to pass the test.	M	YES	Standard	

B1.11	The Vendor must provide test administrator training.	M	YES	Standard	
B1.12	Provide online and downloadable reporting of student demographic & assessment results, accessible through role-based security levels and/or a secure site in .csv, .xlsx and PDF.	M	YES	Standard	
B1.13	Provide role-based administration tools for the management of users, groups, and roles.	M	YES	Standard	
B1.14	Test candidates should be able to view test scores online and print an unofficial transcript as needed in pdf format.	M	YES	Standard	
B1.15	All costs associated with test development, registration, administration, training, materials, scoring, reporting and any other program activities including retests, must be covered by fees collected from examinees.	M	YES	Standard	
B1.16	Convene a start-up meeting of the Contractor's staff, NHDOE staff and representatives of the current high school equivalency Contractor within 30 days of the award of the Contract. Such a meeting may be conducted virtually (web or teleconference).	M	YES	Standard	
B1.17	Establish and maintain a system of ongoing communication directly between the Contractor's program manager and the NHDOE Project Manager for status and update reports.	M	YES	Standard	
B1.18	In consultation with the NHDOE, establish and maintain a system for ensuring the security of all test processes and materials (including student responses), while secure materials are under the control of the Contractor and subcontractors each year of the Contract and any extensions thereof.	M	YES	Standard	
B1.19	Establish and maintain a system for assuring quality of products and services each year of the Contract and any extensions thereof.	M	YES	Standard	
B1.20	The Vendor must provide a secure data file transfer of test scores	M	YES	Standard	

	into the State-contracted student management system.				
B1.21	Data must remain in the US	M	YES	Standard	
B1.22	Data disposal, including all electronic data, facial images and video recordings made, shall be done in accordance with NIST SP 800-88 Rev 1, "Guidelines for Media Sanitization." within five years.	M	YES	Standard	
B1.23	Vendor shall upload testing results to the State SFTP in a CSV format. The file name shall make follow the template: NH_GED_MMDDYYYY. The first column of the report must be the report date.	M	NO	Custom	Will work to scope out development costs for possible future development
Technical Requirements					
B2.1	All elements of the high school equivalency testing service shall be entirely hosted by the Vendor.	M	YES	Standard	
B2.2	The testing system shall be entirely web-based and accessible through standard web browsers.	M	YES	Standard	
B2.3	Use of the testing system shall not require the purchase of additional software or hardware.	M	YES	standard	
B2.4	The Vendor must ensure that test-takers under the age of 18 do not have access to scheduling and payment prior to receiving waiver approval from the Bureau of Adult Education.	M	YES	Standard	
B2.5	The Vendor must ensure that test-takers under the age of 18 do not have access to online testing due to privacy for minors.	M	YES	standard	
B2.6	The Vendor must have a system to ensure that test takers meet NH residency requirements for online test takers. Local staff are responsible for checking residency requirements at physical test centers.	M	YES	standard	
Security Requirements					
B3.1	All user information shall be kept strictly confidential and shall not be divulged to any third party or other party not covered by this contract.	M	YES	Standard	
B3.2	Data access shall be role-based, with security levels appropriate	M	YES	Standard	

	for test candidate, test administrator, registration staff and State users.				
B3.3	Access to personally identifiable data of all users shall be strictly limited based on user role, and shall be eliminated completely where possible.	M	YES	standard	
B3.4	State access will be via secure Internet Browser	M	YES	Standard	
B3.5	At the end of the contract, the vendor is responsible to transfer all of the States data to the State.	M	Yes	Standard	GEDTS will retain test taker data in the event that the test taker needs access to it in the future.
B3.6	The State shall provide the Vendor with a personal secure FTP site to be used by the State for uploading and downloading files if applicable.	M	Yes	Standard	
Communication and Training Requirements					
B4.1	The Vendor shall develop and maintain ancillary test materials that inform users of exam registration and administration procedures, user registration and administration procedures, and the interpretation of exam score reports.	M	YES	Standard	
B4.2	The Vendor shall be the primary provider of technical assistance to all users (ie, the "Help Desk"), and shall be available no less than during regular business hours and "peak" testing times as outlined in Section 1.1.	M	YES	standard	

B-2.2 Technical Requirements

Table B-2.2 Technical Requirements

TECHNICAL REQUIREMENTS					
State Requirements			**Vendor**		
Req #	**Requirement Description**	**Criticality**	**Vendor Response**	**Delivery Method**	**Comments**
Security Compliance Requirements					

VG

06/26/2024

T1.1	Comply with controls required by NIST Special Publication 800-171 R2, Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations to achieve the Baseline SP 800-171 Rev. 2, Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations | CSRC (nist.gov)	M	No	Future	Strategy for NIST, ISO, RAMP and others with timeframes completed by 12/31/2024
T1.2	Comply With Moderate level controls as defined by NIST Special Publication 800-53 Revision 5, Security and Privacy Controls for Information Systems and Organizations - BaseLine Plus SP 800-53 Rev. 5, Security and Privacy Controls for Information Systems and Organizations | CSRC (nist.gov)	P	No	Future	Strategy for NIST, ISO, RAMP and others with timeframes completed by 12/31/2024
StateRAMP Authorization					
T2.1	StateRAMP Ready/Authorized Certification Home - StateRAMP	P	No	Not available/not proposing	Seeking FedRAMP approval in lieu of StateRAMP
T2.2	If StateRAMP Ready, you agree to attain StateRAMP Authorized within 12 months of the effective date of a resulting contract.	M	No	Not available/not proposing	
T2.3	If StateRAMP Active, you agree to attain StateRAMP Authorized within 24 months of the effective date of a resulting contract.	M	No	Not available/not proposing	
T2.4	If StateRAMP In Process, you agree to attain StateRAMP Authorized within 24 months of the effective date of a resulting contract.	M	No	Not available/not proposing	
T2.5	If StateRAMP Pending (Under review with StateRAMP PMO awaiting a determination for a verified status), you agree to attain StateRAMP Authorized within 24 months of the effective date of a resulting contract or prior to contract renewal.	M	No	Not available/not proposing	
T2.6	If Not StateRAMP Progressing, Not StateRAMP Ready, or Not StateRAMP Authorized the vendor shall initiate and provide a StateRAMP Security Snapshot with their response. You agree to attain StateRAMP Authorized within	M	No	Not available/not proposing	

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	24 months of the effective date of a resulting contract.				
T2.7	Continuous Monitoring – For any resulting award(s) and subsequent contract(s), the awarded contractor(s) will grant access to continuous monitoring and reporting upon receiving award for StateRAMP Security Snapshot, Ready status and Authorization status through the life of the contract. The State reserves the right to request and review all Third-Party Assessment Organization (3PAO) audits, risk assessments, vulnerability assessments, and penetration tests of the contractor's environment. The contractor shall respond to all flaws discovered by providing a mutually agreed upon timeframe to resolve the issue and/or implement a compensating control.	M	No	Not available/not proposing	
Other Certifications in lieu of StateRAMP					
T3.1	FedRAMP Authorized https://www.fedramp.gov/ How to Become FedRAMP Authorized | FedRAMP.gov	P	No	Custom	Scope to include for delivery of test only
T3.2	HITRUST (HITRUST is common for Health Care related products and services.) HITRUST Alliance | Information Risk Management and Compliance	P			
Hosted Platform					
T4.1	The following Hosting Platforms are FedRAMP/StateRAMP Authorized and are pre-approved to host any SaaS or other Software Product. If your platform is included in the list below identify the platform in the Vendor Comments. • AWS US East/West • AWS GOVCLOUD • AZURE Commercial Cloud • AZURE Government (Includes Dynamics 365) • GOOGLE Services (Cloud Platform Products and Underlying Infrastructure)	P	YES	Standard	Azure Commercial Cloud

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	• ORACLE Government Cloud – Common Controls • ORACLE Federal Managed Cloud Services				
Individual Agency Compliance Requirements (examples listed below)					
T5.1	FTI Pub 1075	M	Yes	Standard	We do not collect any federal tax information
T5.2	HIPAA	M	Yes	Standard	The GED Accommodations Services system is HIPAA compliant For individuals with approved accommodation requests only the accommodation services system has access to the data.
T5.4	CIJS	M	No	Not applicable	Not applicable, as we do not collect or access any information covered under CIJS.

B-3 Activity, Deliverable, or Milestone

Vendor shall be responsible for meeting the Deliverables, Activities and/or Milestones identified in Table B-3: Deliverables.

Table B-3 DELIVERABLES

	ACTIVITY, DELIVERABLE, OR MILESTONE	DELIVERABLE TYPE	DELIVERY DATE

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PLANNING AND PROJECT MANAGEMENT			
1	Conduct Project Kickoff Meeting	Non-Software	Within 30 days
3	Project Status Reports	Written	TBD
4	Infrastructure Plan, including Desktop and Network Configuration Requirements	Written	TBD
5	Security Plan	Written	TBD
6	Communications and Change Management Plan	Written	TBD
7	Software Configuration Plan	Written	TBD
8	Systems Interface Plan and Design/Capability	Written	TBD
14	Business Continuity Plan	Written	TBD
15	Documentation of Operational Procedures	Written	TBD
INSTALLATION			
16	Provide Software Licenses if needed	Written	TBD
17	Provide Fully Tested Data Conversion Software	Software	TBD
18	Provide Software Installed, Configured, and Operational to Satisfy State Requirements	Software	TBD
TESTING			
24	Certification of 3rd Party Pen Testing and Application Vulnerability Scanning.	Non-Software	TBD
SYSTEM DEPLOYMENT			
26	Provide Tools for Backup and Recovery of all Applications and Data	Software	TBD
29	Provide Documentation	Written	TBD
30	Execute Security Plan	Non-Software	TBD
OPERATIONS			
31	Ongoing Hosting Support	Non-Software	TBD
32	Ongoing Support & Maintenance	Software	TBD
33	Conduct Project Exit Meeting	Non-Software	TBD

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For Use by Limited Liability Company (LLC)

CERTIFICATION OF REPRESENTATIVE'S AUTHORITY TO SIGN

I, Cordell L. Jung, General Counsel and Secretary GED Testing Service LLC, a limited liability company organized and existing under the laws of the State of Delaware, hereby certify that:

1. GED Testing Service LLC is run by members/managers;
2. Vicki Greene is the President and Chief Executive Officer of GED Testing Service LLC; and
3. As such, Vicki Greene is authorized to execute contracts on behalf of GED Testing Service LLC.

The undersigned has affixed his signature this 26th day of June, 2024.

I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that the person listed above currently occupies the position indicated and that they have full authority to bind the corporation. This authority **shall remain valid for thirty (30)** days from the date of this certificate.

Signature: cordell jung 06/26/2024

Cordell L. Jung, General Counsel Date

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 GED TESTING SERVICE LLC is a Delaware Limited Liability Company registered to transact business in New Hampshire on December 29, 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.

Business ID: **919574**

Certificate Number: **0006691173**

IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 17th day of May A.D. 2024.

David M. Scanlan

Secretary of State

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/23/2024

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
MARSH USA, LLC.
1166 Avenue of the Americas
New York, NY 10036

CN101443684--GAWUS-23-24

CONTACT NAME:
PHONE (A/C, No, Ext):
FAX (A/C, No):
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : N/A	N/A
INSURER B : Safety National Casualty Corp.	15105
INSURER C : N/A	N/A
INSURER D : Chubb Insurance Company of New Jersey	41386
INSURER E :	
INSURER F :	

INSURED
GED TESTING SERVICE LLC
5601 GREEN VALLEY DR
MINNEAPOLIS, MN 55401

COVERAGES CERTIFICATE NUMBER: NYC-011960314-03 REVISION NUMBER: 1

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
D	X COMMERCIAL GENERAL LIABILITY				11/01/2023	11/01/2024	EACH OCCURRENCE	$ 2,000,000
	CLAIMS-MADE / X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 2,000,000
							MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	X POLICY / PROJECT / LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	OTHER:							$
B	AUTOMOBILE LIABILITY				11/01/2023	11/01/2024	COMBINED SINGLE LIMIT (Ea accident)	$ 2,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
							PHYSICAL DAMAGE	$ SELF INSURED
	UMBRELLA LIAB / OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$
	DED / RETENTION $							$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				11/01/2023	11/01/2024	X PER STATUTE / OTHER	
B	ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A			11/01/2023	11/01/2024	E.L. EACH ACCIDENT	$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
NH Department of Education is included as an Additional Insured (except for Workers' Compensation) as required by written contract or lease agreement.

CERTIFICATE HOLDER

NH Department of Education
25 Hall Street
Concord, NH 03301

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Marsh USA LLC

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