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New Hampshire Liquor Commission

50 Storrs Street
Concord, NH 03301
(603) 230-7015

Joseph W. Mollica
Chairman

Nicole Brassard Jordan
Deputy Commissioner

Kelly A. Ayotte
Governor

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August 7, 2025

Her Excellency, Governor Kelly A. Ayotte,
and the Honorable Council
State House
Concord, NH 03301

REQUESTED ACTION

Authorize the New Hampshire Liquor Commission (NHLC) to enter into a **Retroactive Sole Source** contract with Berry, Dunn, McNeil & Parker, LLC (VC#254300), Manchester, NH, in the amount of $160,000.00 for financial, audit, and accounting services, effective upon Governor and Executive Council approval for the period July 1, 2025, through June 30, 2026. 100% Liquor Funds.

Funding is available in account Liquor Commission, Marketing and Merchandising, Store Operations as follows:

		FY 2026
02-77-77-771512-10300000-103-502507	Program Contract	$160,000.00

EXPLANATION

This request is **Retroactive** and **Sole Source** due to the immediacy of the need for services provided under this contract to begin in order to avoid delays in delivering the New Hampshire Liquor Commission's Annual Comprehensive Financial Report.

Each year, the NHLC compiles its Annual Comprehensive Financial Report (ACFR), which is audited and reviewed by the Legislative Budget Assistant (LBA) before submission to the Department of Administrative Services (DAS). In order for DAS to submit the ACFR by its deadline of December 31, 2025, the NHLC's report must be prepared in advance of that deadline. The NHLC's first draft of its ACFR is due on September 15, 2025.

In April of 2024, the NHLC implemented a new Enterprise Resource Planning (ERP) solution that replaced its 40-year-old legacy system. The new ERP solution replaced all financial components of NHLC operations. The nuances of this new solution required the NHLC's Finance Department to commit significant time and resources to providing additional assistance to the LBA on the Fiscal Year 2024 ACFR while also completing their assigned duties and dealing with staffing shortages.

The Fiscal Year 2024 ACFR was completed in March of 2025. The additional time commitment to the FY2024 ACFR by NHLC staff, coupled with personnel turnover, inhibited the ability to effectively position the NHLC Finance Department for success as work progresses with the Fiscal Year 2025 ACFR. Efforts by the LBA to continue to adapt to the new ERP solution have also resulted in additional requests on an earlier timeline to accommodate the upcoming ACFR. Further, the NHLC Finance Department is planning for restructuring as the NHLC's new Director of Finance position is filled. Due to these challenges, assistance is needed to complete the audit requirements within the necessary timeframe.

Berry, Dunn, McNeil & Parker, LLC (BerryDunn) is an accounting and consulting firm that provides audit and consulting services to, among other sectors, state government agencies, including alcohol control agencies. The NHLC has worked with BerryDunn previously, giving BerryDunn knowledge and insight into the NHLC's processes and procedures. This additional experience with the NHLC, NH FIRST, and the ACFR meant that BerryDunn was able to begin the necessary work and find the right resources immediately, thereby helping to ensure that the deadlines to keep the ACFR on schedule are met.

Once the ACFR is complete, BerryDunn will continue to assist the NHLC with documenting procedures and process flows in preparation for the 2026 Fiscal Year end. As the NHLC continues to adapt to the new ERP solution, it is anticipated that BerryDunn's expertise will help identify more streamlined processes and automations, ensuring success for future fiscal years.

The NHLC has determined that the vendor is in good standing with the Secretary of State's Office, has secured the required levels of insurance, and has provided evidence of authority to execute and be bound by the contract. Documents supporting these assertions are available at the agency, for review upon request.

Based on the foregoing, I respectfully request approval of the contract with Berry, Dunn, McNeil & Parker, LLC.

Respectfully submitted,

Joseph W. Mollica
Chairman, Liquor Commission

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 the contract.

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name **New Hampshire Liquor Commission**		1.2 State Agency Address **50 Storrs Street, Concord, NH 03301**	
1.3 Contractor Name **Berry, Dunn, McNeil & Parker, LLC**		1.4 Contractor Address **1000 Elm Street, 4th Floor, Manchester, NH 03101**	
1.5 Contractor Phone Number **(603)518-2600**	1.6 Account Unit and Class **02-77-77-771512-10300000-502507**	1.7 Completion Date **June 30, 2026**	1.8 Price Limitation **$160,000.00**
1.9 Contracting Officer for State Agency **Christina Demers, Chief Financial Officer**		1.10 State Agency Telephone Number **(603)230-7024**	
1.11 Contractor Signature Date: 8/6/25		1.12 Name and Title of Contractor Signatory **Robert Smalley, CPA, Principal**	
1.13 State Agency Signature Date: 8/6/2025		1.14 Name and Title of State Agency Signatory **Joseph W. Mollica, Chairman**	
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: Michael Grandy		On: August 6, 2025	
1.17 Approval by the Governor and Executive Council *(if applicable)* G&C Item number:		G&C Meeting Date:	

Contractor Initials
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 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.

Contractor Initials _____

Date _____

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.

Contractor Initials _____

Date 3/4/2

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 _____

Date 3/14/25

Exhibit A: Special Provisions

1. **Provision 3, Effective Date/Completion of Services, is updated with the following addition:**
   3.4 Force Majeure: Neither the Contractor nor the State shall be responsible for delays or failures in performance resulting from events beyond the control of such party and without fault or negligence of such party. Such events shall include, but not be limited to, acts of God, strikes, lock outs, riots, acts of War, epidemics, acts of Government, fire, power failures, nuclear accidents, earthquakes, and unusually severe weather.
   3.4.1 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.
   3.4.2 In the event a party cannot timely perform an obligation due to a Force Majeure event, that party shall provide the other party with an explanation of the event and any additional information the other party reasonably requires to substantiate the claim, and shall provide updates as to the status of such Force Majeure event in such detail and upon such frequency as the other party may reasonably require.
   3.4.3 In the event that the Contractor's performance is delayed for more than ninety (90) days due to a Force Majeure event, the State may terminate the Contract.

2. **Provision 5, Contract Price/Price Limitation/ Payment, is updated with the following addition:**
   5.5 Subject to applicable laws and regulations, in no event shall the State be liable for any consequential, special, indirect, incidental, punitive, or exemplary damages. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State.

3. **Provision 8, Event of Default/Remedies, is updated with the following addition:**
   8.2.5 give the Contractor a written notice specifying the Event of Default, terminate the Agreement as breached, and procure Services that are the subject of the Contract from another source and Contractor shall be liable for reimbursing the State for the replacement Services, and all administrative costs directly related to the replacement of the Contract and procuring the Services from another source, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, and staff time costs; all of which shall be subject to the limitations of liability set forth in the Contract.

4. **Provision 9, Termination, is deleted and replaced with the following:**
   9. TERMINATION
   9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, and with thirty (30) calendar days written notice to Contractor, terminate the Agreement for any reason, in whole or in part. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. The State shall be liable for cost of all Services and Deliverables for which Acceptance has been given by the State, provided through the date of termination but will not be liable for any costs for incomplete Services or winding down the Contract activities. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.
   9.2 Termination Procedure
   9.2.1 Upon termination of the Contract, the State, in addition to any other rights provided in the Contract, may require Contractor to deliver to the State any property, including without limitation, Software and Written Deliverables, for such part of the Contract as has been terminated.
   9.2.2 After receipt of a notice of termination, and except as otherwise directed by the State, Contractor shall:
   a. Stop work under the Contract on the date, and to the extent specified, in the notice;

Contractor Initials _____
Date _____

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 of all requested data in all of its forms, such as disk, CD / DVD, backup tape and paper, when requested by the State. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-Special Publication (SP) 800-88 approved methods. Certificates of destruction shall be provided to the State; and

h. Provide written Certification to the State that Contractor has surrendered to the State all said property and after 180 days has erased all State data.

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

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

5. **Provision 10, Property Ownership/Disclosure, is updated with the following addition:**

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

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

10.6 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;

Contractor Initials [illegible]
Date 3/4/15

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.

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

10.8 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.

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

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

12.2.1 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.

7. **Provision 20, Conflicting Terms, is deleted and replaced with the following:**

20. CONFLICTING TERMS AND 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:

a. State of New Hampshire, Liquor Commission and Contractor Agreement
   i. Form P-37, General Provisions, as modified by Exhibit A, Special Provisions
   ii. Exhibit C, Payment Terms and Pricing
   iii. Exhibit B, Scope of Services
   iv. Executed Change Orders

b. Contractor Project Plan and Price Proposal dated July 8, 2025

The following Provisions are added and made part of the P-37 General Provisions:

1. **Provision 27. EXHIBITS/ATTACHMENTS**

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

Contractor Initials _____
Date 8/6/25

2. **Provision 28. 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.

3. **Provision 29. GOVERNMENT APPROVALS**
Contractor shall obtain all necessary and applicable regulatory or other governmental approvals necessary to perform its obligations under the Agreement.

Contractor Initials KSS
Date 8/6/25

Exhibit B: Scope of Services

1. **INTRODUCTION:**
Berry, Dunn, McNeil & Parker (hereinafter "BerryDunn" or "Contractor") hereby agrees to provide the New Hampshire Liquor Commission ("NHLC" or the "State") with financial, audit, and accounting services as described herein.

2. **TERM OF CONTRACT:**
Upon approval by the New Hampshire Governor and Executive Council, this Agreement shall commence on July 1, 2025, and shall terminate on June 30, 2026.

3. **DELIVERABLES AND SCOPE OF WORK:**

A. Contractor shall perform the work in accordance with the American Institute of Certified Public Accountants' Statement on Standars for Consulting Services.

B. Contractor shall provide on-site support and assistance to the NHLC as requested by the NHLC.

C. Contractor shall assist the NHLC's finance, auditing, and accounting staff as requested by the NHLC with the following activities:

1. Support for finanacial statement preparation including the cash flow statement
2. Support for disclosure of any new accounting pronouncents
3. Preparation of roll-forwards of balance sheet accounts
4. Preparation of audit workpaper support
5. Support for investigating reconciling differences between NH First and Dynamics 365
6. Validation of audit supporting schedules
7. Preparing transaction cycle walk-throughs
8. Prepare transaction cycle documentation
9. Support for preparation account reconciliations
10. Account review to support financial statement audit
11. Preparation and validation of the capital lease support (GASB 87) workpaper
12. SBITA (GASB 96) review
13. Capital asset accounting and reporting support
14. Debt validation and preparation of audit support
15. Support for accounts receivable team needs
16. Review of accounts receivable aging/schedule
17. Review of accounts payable aging/schedule
18. Work directly with the State audit team to facilitate their understanding of the support and the transaction cycles

D. Contractor shall furnish all materials, tools, equipment, labor, and transportation necessary to provide the services described in this Agreement. If necessary to complete NHLC related task, the NHLC may provide laptops for temporary use by Contractor personnel during the Agreement.

E. Contractor staff assigned to work under this Agreement shall possess the qualifications, skills, and experience in the areas of government finance and accounting necessary for satisfactory completion of the work. The NHLC reserves the right to require removal or reassignment of Contractor staff found unacceptable to the State.

Contractor Initials _____
Date 3/6/25

4. **ADDITIONAL REQUIREMENTS**

A. Contractor shall complete the work to the satisfaction of the NHLC and in accordance with the specifications herein.

B. Contractor shall take all responsibility for its work under this Agreement. Contractor shall in no way be relieved of its responsibility by any right of the NHLC to give permission or issue orders relating to any part of the work, or by any such permission given or orders issued, or by failure of the NHLC to give such permission or issue such orders.

C. Contractor and its employees shall not represent themselves as employees or agents of the State or NHLC.

D. Contractor and its employees shall perform all work in such a manner as not to inconvenience building occupants. Contractor shall determine the NHLC's normal working conditions and activities in progress and shall conduct the work in the least disruptive manner.

E. Contractor and its employees shall be allowed only in areas approved by the assigned NHLC project manager. The NHLC may require that Contractor employees carry credentials indicating that they are employees of Contractor.

F. 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 greater than one (1) year is an authorized penalty.

G. Contractor shall promote and maintain an awareness of the importance of securing the State's information among the Contractor's employees and agents.

5. **CHANGE ORDERS**

The NHLC may make changes, revisions or request enhancements to the Deliverables and Scope of Work at any time by written Change Order. Within five (5) business days of Contractor's receipt of a Change Order, Contractor shall advise the State, in detail, of any impact the requested changes, revisions, or enhancements will have on the terms of this Agreement, including but not limited to, on the cost.

Contractor may propose a change to the Deliverables and Scope of Work by written Change Order, identifying any impact the requested changes, revisions, or enhancements will have on the terms of this Agreement, including but not limited to, on the cost. The State shall acknowledge receipt of Contractor's requested Change Order within five (5) business days. The State Agency 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 thirty (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 Executive 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.

Contractor Initials 1CS

Date 5/6/25

6. RECORDS RETENTION AND RECORDS ACCESS REQUIREMENTS

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

The Contractor and its Subcontractors shall maintain, in accordance with generally accepted accounting principles and other procedures specified by the State, all pertinent financial and accounting 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. The Contractor and its Subcontractors shall make all such records available upon request to the NHLC, the State, or its designees at all times during the contract period and 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 appeals 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 will be provided within Merrimack County of the State of New Hampshire, unless otherwise agreed by the State. Delivery of and access to such records shall be at no cost to the State during the three (3) year period following termination of the Contract and one (1) year term following litigation relating to the Contract, including all appeals or the expiration of the appeal period. The Contractor shall include the record retention and Review requirements of this section in any of its subcontracts.

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

7. CONTRACT MANAGEMENT

A. 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. The Contractor Contract Manager shall be Robert Smalley, Principal.

B. The State's 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 the NHLC's Chief Financial Officer.

8. DISPUTE RESOLUTION

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

Contractor Initials RCS
Date 8/6/13

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

DISPUTE RESOLUTION RESPONSIBILITY AND SCHEDULE TABLE			
LEVEL	**CONTRACTOR POINT OF CONTACT**	**STATE POINT OF CONTACT**	**CUMULATIVE ALLOTED TIME**
First	Chief Financial Officer	Chief Financial Officer	5 Days
Second	Chief Executive Officer	Chairman	10 Days

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

9. DATA PROTECTION

A. 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:

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.

B. Data Location

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.

Contractor Initials KLC
Date 3/6/25

C. **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.

D. **Breach Responsibilities**

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.
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.
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.
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

Contractor Initials KS
Date 8/6/15

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.

E. State-Owned Documents and Copyright Privileges

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

Contractor Initials RSS
Date 8/6/25

Exhibit C: Payment Terms and Pricing

1. CONTRACT PRICE

Pursuant to the P-37: General Provisions, Section 5, this is a Not-to-Exceed Contract. The total value of the Agreement is indicated in the P-37: General Provisions, Section 1.8: Price Limitation for the period between the Effective Date through the date indicated in the P-37 General Provisions, Section 1.7: Completion Date. The use of the phrase "Not-To-Exceed" in this context means that Contractor agrees to the price limitation as a not-to-exceed cap on the total value of the contract. The price limitation is thus the maximum amount payable to Contractor over the life of the contract. That a total, not-to-exceed price limitation exists does not cap pricing on the individual services or deliverables that occur within the contract term, except that the total services rendered (*i.e.* price of all services or deliverables combined) within the contract term cannot exceed the price limitation. Thus, the actual amount payable to Contractor over the life of the contract may be less than, but not more than, the price limitation, unless the contract is amended by the parties to reflect an increased price limitation.

The Contractor shall be responsible for performing its obligations in accordance with this Agreement. This Agreement will allow the Contractor to invoice the State for the Services at the rates appearing Section 3: Contract Costs and Rates of this Exhibit C.

2. INVOICING AND TERMS OF PAYMENT

A. Invoices

The Contractor shall submit correct invoices to the NHLC for all amounts to be paid by the NHLC. All invoices submitted shall be subject to the NHLC's written approval, which shall not be unreasonably withheld. The Contractor shall only submit invoices for Services as permitted by the Contract. Invoices must be in a format as determined by the State and contain detailed information, including without limitation: itemization of each Service and identification of the Service for which payment is sought.

Contractor shall submit invoices to the NHLC on a monthly basis. Invoices must be in a format as determined by the State and contain detailed information, including but not limited to the number of hours by Contractor resource for which payment is sought, the hourly rate for each Contractor resource, itemization of each Service and identification of the Service for which payment is sought.

B. Invoice Address

Invoices sent via electronic mail shall be scanned and emailed to:
APDept@liquor.nh.gov

Invoices sent via U.S. mail shall include an original plus one copy and be mailed to:
New Hampshire Liquor Commission
Accounts Payable Department
50 Storrs Street
Concord, NH 03301

C. Terms of Payment

Upon acceptance of a properly documented invoice, the NHLC will pay the invoice within thirty (30) days of invoice receipt. Invoices will not be backdated and shall be promptly dispatched. Payment is issued through the State Treasurer and forwarded to Contractor within fourteen (14) days after processing begins at the NHLC.

Contractor Initials KBS
Date 2/6/25

The State of New Hampshire does not pay late charges or interest.

If the NHLC receives an invoice and the amount on the invoice is calculated incorrectly, the NHLC shall notify the Contractor of the alleged error prior to the due date of such payment. The NHLC and the Contractor agree to use commercially reasonable efforts to resolve the invoicing error within fifteen (15) days from such notification to the Contractor. The NHLC shall promptly pay upon resolution of such dispute or within such fifteen (15) day period of an agreed-upon amount, whichever is later, and no late charges shall apply to that amount or the originally invoiced amount.

Invoices for all work completed during any fiscal year must be submitted within thirty (30) days after the end of that fiscal year (June 30th). Invoices not submitted within the aforementioned timeframe will require approval from the State of New Hampshire prior to processing, which may delay the payment process.

D. Payment Address
All payments will be made via direct deposit through ACH. The Contractor shall complete enrollment with the New Hampshire State Treasury for vendor direct deposit at: https://www.nh.gov/treasury/state-vendors/index.htm prior to submission of the first invoice.

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

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

G. Shipping and Delivery Fee Exemption
The NHLC will not pay for any shipping or delivery fee unless specifically itemize in the Contract.

3. CONTRACT COSTS AND RATES

Contractor resources shall be provided to the NHLC at the following hourly rates. Resource hours shall only be provided as requested and approved by the NHLC.

CONTRACTOR HOURLY RATES	
Position	**Standard Rate**
Principal	$535
Manager	$350
Senior	$310
Staff	$250

For purposes of determining Contractor resource hourly rates, Contractor shall disclose its employees' Positions to the NHLC five (5) days prior to an employee beginning work on any NHLC account project. Contractor shall disclose to the NHLC any change to its employees' Positions if such employee is working on any NHLC account project at least five (5) days prior to such change in Position taking effect.

Contractor Initials _____
Date 8/6/25