



Frank Edelblut
Commissioner

Christine M. Brennan
Deputy Commissioner

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

October 13, 2021

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

REQUESTED ACTION

Authorize the Department of Education, to enter into a **sole source** contract with WestEd (vendor code 177860), San Francisco, California, in the amount not to exceed \$389,500, to update training materials, provide Technical Assistance, and oversee the administration of the Desired Results Developmental Profile (DRDP) Online data system, effective upon Governor & Council approval through June 30, 2023, with an option to renew for an additional three (3), two (2) year terms based on identified ongoing need. 100% Federal Funds.

Funds to support this request are available in FY22 and FY23 in the accounts titled IDEA Special Education Ed-Elm/Sec., Preschool Development Grant, and IDEA Special Ed Preschool, and with the ability to adjust encumbrances between Fiscal Years through the Budget Office without further Governor and Council approval, if needed and justified.

		<u>FY'22</u>	<u>FY'23</u>
06-56-56-562010-25040000-102-500731	Contracts for Program Services	\$236,500	\$23,000
06-56-56-562010-25050000-102-500731	Contracts for Program Services	\$60,000	\$0
06-56-56-562010-30650000-102-500731	Contracts for Program Services	\$58,000	\$12,000

EXPLANATION

The New Hampshire Department of Education wishes to enter into a **sole source** contract with WestEd because the DRDP Online data system was created to support collection, management, and reporting of assessment data gathered through the implementation of the Desired Results Developmental Profile (DRDP) assessment tool. This is a proprietary software and WestEd is the only vendor with access to the intellectual software.

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
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The DRDP System, including the DRDP assessment and DRDP Online data system, was developed by California Department of Education, Early Learning and Care Division (CDE/ELCD) and is proprietary to that department and its selected contractor, WestEd. WestEd is also the sole contractor for the CDE/ELCD authorized to offer training and technical assistance on the Desired Results system. WestEd's trainers have worked with the DRDP System since its inception and are recognized as experts by the state, often providing information and resources to other state-sponsored projects.

The services under this contract will modify the existing system to accommodate NH specific data elements and program structures, link data with other systems, as well as build system capacity to manage the complex statistical calculations and analysis required for federal reporting to the Office of Special Education Programs at the US Department of Education. The services will also support fidelity administration of the DRDP assessment tool and related data system to ensure accurate and timely data collection, analysis and reporting as required for state and federal reporting. WestEd will oversee the data system, monitoring and rectifying any system issues; collaborate with the Department of Education on any upgrades or updates needed to align with NH laws, administrative rules, and reporting requirements; and provide ongoing support for NH-based DRDP trainers.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Frank Edelblut', written over a horizontal line.

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

October 10, 2021

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 sole source contract with WestEd, of San Francisco, CA, as described below and referenced as DoIT No. 2022-011.

The purpose of this contract with WestEd is to modify the DRDP Online data system, update training materials, provide Technical Assistance, and oversee the administration of the DRDP Online data system in collaboration with representatives of the NH DOE to ensure fidelity administration of the Desired Results Developmental Profile (DRDP) assessment tool and the DRDP Online data system. The DRDP Online data system was created to support collection, management, and reporting of assessment data gathered through the implementation of the Desired Results Developmental Profile (DRDP) assessment tool. This is a proprietary software and no other vendor has access to the intellectual software

The price limitation is not to exceed \$389,500 and shall be effective upon Governor and Council approval through June 30, 2023.

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

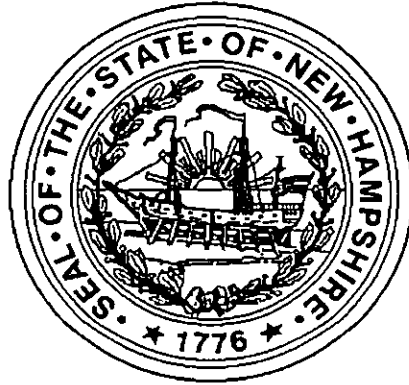
Sincerely,

A handwritten signature in black ink that reads "Denis Goulet".

Denis Goulet

DG/ik
DoIT #2022-011

cc: Doug Schelb, IT Lead



STATE OF NEW HAMPSHIRE

Department of Education
DRDP Training & Customization:
DOE 2022-011

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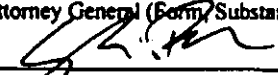
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

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

GENERAL PROVISIONS

I. IDENTIFICATION

1.1 State Agency Name New Hampshire Department of Education Bureau of Student Support		1.2 State Agency Address 101 Pleasant Street Concord, New Hampshire 03301	
1.3 Contractor Name WestEd		1.4 Contractor Address 730 Harrison Street San Francisco, California 94107	
1.5 Contractor Phone Number 415-565-3000	1.6 Account Number 25040000-102-500731 25050000-102-500731 30650000-102-500731	1.7 Completion Date June 30, 2023	1.8 Price Limitation \$389,500.00
1.9 Contracting Officer for State Agency Rebecca Fredette, Administrator Bureau of Student Support		1.10 State Agency Telephone Number 603-271-6693	
1.11 Contractor Signature  Date: Oct 7, 2021		1.12 Name and Title of Contractor Signatory Lauren Wrotniak, Interim Director, Contracts & Grants	
1.13 State Agency Signature  Date:		1.14 Name and Title of State Agency Signatory Frank Edelblut, Commissioner of Education	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: <i>Lorrie A Rudis</i> Director, On: 10/25/2021			
1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By: Christopher Bond  On: 10/14/21			
1.17 Approval by the Governor and Executive Council (if applicable)			
G&C Item number:		G&C Meeting Date:	

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 Contractor Initials: *LW*
 Date: Oct 7, 2021

STATE OF NEW HAMPSHIRE

Department of Education

DOE 2022-11 DRDP Training and Customization STATE OF NEW HAMPSHIRE GENERAL PROVISIONS - P37

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

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

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

4. CONDITIONAL NATURE OF AGREEMENT.

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

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

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

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

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

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

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

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

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

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

7. PERSONNEL.

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

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

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

8. EVENT OF DEFAULT/REMEDIES.

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

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

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

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

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

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

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

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

9. TERMINATION.

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

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

10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

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

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

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

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the

STATE OF NEW HAMPSHIRE

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DOE 2022-11 DRDP Training and Customization STATE OF NEW HAMPSHIRE GENERAL PROVISIONS - P37

assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

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

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

14. INSURANCE.

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

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

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

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

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for

all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

15. WORKERS' COMPENSATION.

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

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

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

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

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

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

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

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

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

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

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

STATE OF NEW HAMPSHIRE
Department of Education

DOE 2022-11 DRDP Training and Customization EXHIBIT A – SPECIAL PROVISIONS

EXHIBIT A - SPECIAL PROVISIONS

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

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

3.3 The Term may be extended up to 3 times for 2 years each, (“Extended Term”) at the sole option of the State, subject to the parties prior written Agreement on applicable fees for each extended Term, up to but not beyond June 30, 2029 under the same terms and conditions, subject to approval of the Governor and Executive Council.

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

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

A.3 Provision 9, Termination, is deleted and replaced with the following:

9. TERMINATION

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, and with written notice, terminate the Agreement for any reason, in whole or in part by five (5) days’ prior written notice to the Contractor that the State is exercising its option to terminate this Agreement. In the event of such termination, the Contractor shall immediately stop all work hereunder as of the termination date, 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, provided that full compensation shall be paid to the Contractor in accordance with 9.1

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DOE 2022-11 DRDP Training and Customization EXHIBIT A – SPECIAL PROVISIONS

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

- a. Stop work under the Contract on the date, and to the extent specified, in the notice;
- b. Promptly, but in no event longer than ten (10) days after termination, terminate its orders and subcontracts related to the work which has been terminated, and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the State to the extent required, which approval or ratification shall be final for the purpose of this Section;
- c. Take such action as the State directs, or as necessary to preserve and protect the property related to the Contract which is in the possession of Contractor and in which the State has an interest;
- d. Take no action to intentionally erase any State data until directed by the State;
- e. Transfer title to the State and deliver in the manner, at the times, and to the extent directed by the State, any property which is required to be furnished to the State and which has been accepted or requested by the State;
- f. Implement an orderly return of State data in a CSV or another mutually agreeable format at a time agreed to by the parties;
- g. Securely dispose 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, and reasonably required 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"). If the Contract is terminated prior to the Completion Date for any reason other than Contractor's Default, the State shall fully compensate Contractor for such transition services at the rate specified in Exhibit C..

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

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DOE 2022-11 DRDP Training and Customization EXHIBIT A – SPECIAL PROVISIONS

A.4 Provision 10, Data/Access/Confidentiality/Preservation, is updated with the following addition:

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

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

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

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

10.6 A receiving Party also may disclose the disclosing Party's Confidential Information to the extent required by an order of a regulatory or administrative agency or court of competent jurisdiction. Any other disclosure of the Confidential Information shall require the prior written approval of the disclosing Party. The receiving Party shall immediately notify the disclosing Party if any request, subpoena or other legal process is served upon the receiving Party regarding the Confidential Information, and the receiving Party shall cooperate with the disclosing Party 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 ("Contractor's CI") upon providing such information to the State. For the purposes of complying with its legal

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obligations, the State is under no obligation to accept the Contractor's designation of material as confidential. Subject to the terms of this provision 10.7, the State shall not use the Contractor's CI, except as directly connected to and necessary for the performance of the Agreement. Subject to applicable law, the State shall maintain the confidentiality of and protect from unauthorized use, disclosure, publication, and reproduction, all Contractor CI. 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 covenants in provision 10 shall survive the termination of this Contract.

A.5 **Provision 12, Assignment/Delegation/Subcontracts, is updated with the following addition:**

- 12.3** 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.6 **The following Provisions are added and made part of the P37:**

25. FORCE MAJEURE

25.1 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.

25.2 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.

26. EXHIBITS/ATTACHMENTS

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

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27. NON-EXCLUSIVE CONTRACT

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

28. GOVERNMENT APPROVALS

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

29. ORDER OF PRECEDENCE

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

- i. State of New Hampshire, Department of Education Contract Agreement DOE 2022-011.

30. FEDERAL CERTIFICATION 2 CFR 200.415

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

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

A.7 The following Provision is updated as follows:

Provision 7, PERSONNEL is updated as follows: Delete Section 7.2.

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BUSINESS / TECHNICAL REQUIREMENTS AND DELIVERABLES**

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

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

1. STATEMENT OF WORK

The Department of Education Bureau of Student Support requires school districts to provide data regarding early childhood outcomes for preschoolers with disabilities in compliance with federal reporting requirements in the State Performance Plan and Annual Performance Report. The Desired Results Developmental Profile (DRDP) assessment tool is a psychometrically valid and reliable tool for measuring these outcomes and will be implemented by districts to capture this data.

The Desired Results data system was created to support collection, management, and reporting of assessment data gathered through the implementation of the DRDP assessment tool. This is a proprietary software and no other vendor has access to the intellectual software.

The DRDP system, including the DRDP assessment and DRDP Online data system, was developed by the California Department of Education, Early Learning and Care Division (CDE/ELCD) and is proprietary to that department and its selected contractor, WestEd. WestEd is also the sole contractor for the CDE/ELCD authorized to offer training and technical assistance on the Desired Results system.

The services under this contract will modify the existing system to accommodate NH specific data elements and program structures, link data with other systems, as well as build system capacity to manage the complex statistical calculations and analysis required for federal reporting to the Office of Special Education Programs at the US Department of Education.

2. BUSINESS / TECHNICAL REQUIREMENTS

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

2.1 Compliance Requirements

Agency Compliance Documents are identified in Exhibit G: Attachment 2

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3. ACTIVITY, DELIVERABLE, AND MILESTONE

ACTIVITY / DELIVERABLES / MILESTONES			
	ACTIVITY, DELIVERABLE, OR MILESTONE	DELIVERABLE TYPE	PROJECTED DELIVERY DATE
PLANNING AND PROJECT MANAGEMENT			
1	Scheduled Meetings	Non-Software	Ongoing
2	Work Plan	Written	Ongoing
3	Project Status Reports	Written	Ongoing
OPERATIONS			
4	Training Modifications and Technical Assistance Customization of training videos and professional development resources for Desired Results data system and DRDP assessment	Non-Software	Ongoing
5	Desired Results Data Profile (DRDP) Online Customization DRDP Online Customization of User Interface and data fields, API, the Pyramid Model, rolling enrollment, and Upload/Download files	Software	6 months following G&C Approval
6	Reports Customization Customize general reports and adding OSEP reporting and the Pyramid Model to NH reports	Software	9 months following G&C Approval
7	State Level Collaboration and Administration, ongoing meetings, communications with New Hampshire, oversight of work, and training supports	Non-Software	upon G&C Approval – June 30, 2022
8	State Level Collaboration and Administration Ongoing meetings, communications with New Hampshire, oversight of work, and training supports \	Non-Software	July 1, 2022 – June 30, 2023

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4. DELIVERABLE REVIEW AND ACCEPTANCE

4.1 Non-Software and Written Deliverables Review and Acceptance

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

4.2 Software Deliverables Review and Acceptance

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

4.3 Number of Deliverables

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

4.4 Conditional and Unconditional Acceptance

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

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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

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

The Contractor shall manage Project execution and provide the tools needed to create and manage the Project's Work Plan and tasks, manage and schedule Project staff, track and manage issues, manage changing requirements, maintain communication within the Project Team, and Report status.

The Contractor and the State shall adopt a Change Management approach to identify and plan key strategies, communication initiatives, and training plans.

7. PROJECT MANAGEMENT

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.

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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.

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:

Lauren Wrotniak
(415) 615-3168
lWrotni@wested.org

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:

Melinda Brookshire
(805) 465-4412
MBrooks@WestEd.org

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 twenty-four (24) hours 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

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

7.1.4. The Contractors Additional Key Project Staff

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

Tamarra Osborne, DRDP Program Manager
(510) 302-4252
tosborn@wested.org

Jenae Leahy, Program Coordinator
(805) 465-4438
jleahy@wested.org

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

7.1.5. Background Checks

The State may require, and, at its sole expense, conduct reference and background screening of the Contractor's staff assigned to this Contract.

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

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

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7.2 The State Key Project Staff

7.2.1. The State Contract Manager

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

Christina MacDonald
(603) 271-4680
Christina.A.MacDonald@doe.nh.gov

7.2.2. The State Project Manager

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

Krishna Dubreuil
(603) 271-3301
Krisha.A.Dubreuil@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.

8. WORK PLAN

The Contractor's Project Manager and the State Project manager shall finalize the Work Plan within Fourteen (14) days of the Effective Date and further refine the tasks required to implement the Project. Continued development and management of the Work Plan is a joint effort on the part of the Contractor and State Project Managers.

The preliminary Work Plan created by the Contractor and the State is set forth in this Section.

Task 1: Scheduled Meetings:

- WestEd will establish a regular meeting schedule within 2 weeks of G&C approval.

Task 2: Work Plan

- WestEd will develop a draft work plan for the project within 2 weeks of G&C approval, and a final approved workplan within 4 weeks of G&C approval.

Task 3: Project Status Reports

- WestEd will provide monthly project status updates at the established meetings.

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Task 4: Training Modifications and Technical Assistance

- WestEd will provide a plan to review existing materials, provide recommendations to address any gaps, and make customizations to establish training materials.
- WestEd will review materials and make recommendations within 3 months, of G&C approval.
- NH will review recommendations and provide feedback to WestEd.
- Make customizations within 3 months of receiving NH approval of the recommendations.

Task 5: Desired Results Data Profile (DRDP) Online Customization

- Update user interface and data fields to align with NH requirements, laws and administrative rules. Timelines will be determined by the work plan developed in task 2. Milestones include:
 - Approved plan in place for user interface and data fields
 - Staging site available for testing and review
 - Update pushed to production and available for use
- Build out the scoring API to connect DRDP Online to the calculation engine to support statistical calculations for federal reporting Timelines will be determined by the work plan developed in task 2. Milestones include:
 - Approved plan in place for building out the scoring API
 - Functionality tested between scoring engine API and single score API
 - Staging site available for testing and review
 - Update pushed to production and available for use
- Adjust system functionality to accommodate rolling enrollment. Timelines will be determined by the work plan developed in task 2. Milestones include:
 - Approved plan in place for rolling enrollment
 - Staging site available for testing and review
 - Update pushed to production and available for use
- Create the capacity to Upload/Download NH Specific files within the system. Timelines will be determined by the work plan developed in task 2. Milestones include:
 - Approved plan in place for Upload/Download NH specific files
 - Staging site available for testing and review
 - Update pushed to production and available for use

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- Develop additional system permissions and roles and generate as appropriate. Timelines will be determined by the work plan developed in task 2. Milestones include:
 - Approved plan in place for system permissions and roles
 - Staging site available for testing and review
 - Update pushed to production and available for use

Task 6: Reports Customization

- Customize existing reports to incorporate new data and meet NH reporting requirements and needs. Timelines will be determined by the work plan developed in task 2. Milestones include:
 - Approved plan in place for customization of existing reports
 - Obtain design approval of customized reports
 - Report Development
 - Staging site available for testing and review
 - Update pushed to production and available for use
- Create new reports incorporating to the federal Office of Special Education (OSEP) reporting calculations. Timelines will be determined by the work plan developed in task 2. Milestones include:
 - Approved plan in place for creating new reports for OSEP reporting
 - Obtain design approval of new reports
 - Report Development
 - Staging site available for testing and review
 - Update pushed to production and available for use
- Create new reports to support data analysis related to intervention outcomes. Timelines will be determined by the work plan developed in task 2. Milestones include:
 - Approved plan in place for creating new reports for data analysis
 - Obtain design approval of new reports
 - Report Development
 - Staging site available for testing and review
 - Update pushed to production and available for use

Task 7: State Level Collaboration (upon G&C Approval – June 30, 2022)

- Collaborate with Department of Education regarding any upgrades or updates or OSEP reporting needs
- WestEd will establish a regular meeting schedule and establish lines of communication within 2 weeks of G&C approval.
- Oversee the DRDP Online data system and collaborate with agencies
- Support New Hampshire DRDP certified trainers with quarterly update meetings and an online conference center to maintain current training materials

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Task 8: State Level Collaboration (July 1, 2022 – June 30, 2023)

- Collaborate with Department of Education regarding any upgrades or updates or OSEP reporting needs
- WestEd will maintain a regular meeting schedule and follow the established lines of communication.
- Oversee the DRDP Online data system and collaborate with agencies
- Support New Hampshire DRDP certified trainers with quarterly update meetings and an online conference center to maintain current training materials

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

9. ACCEPTANCE & TESTING SERVICES

The Contractor shall provide end-to-end planning and preparation for testing and Acceptance of enhancements throughout the Project using an industry standard methodology. This shall include a detailed testing methodology which covers all areas of testing, security, required staffing with clear roles and responsibilities, training, test cases and scripting with associated Data, status and results Reporting. The Test Plan defined shall ensure designed and implemented Solutions are fully supported, tested, and documented.

In addition, IT Security involves all functions pertaining to the securing of State Data and Systems through the creation and definition of security policies, procedures and controls covering such areas as Identification, Authentication and non-repudiation. All components of the Software shall be Reviewed and tested to ensure they protect the State's hardware and Software and its related Data assets.

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Service Component	Defines the set of capabilities that:
Identification and Authentication	Supports obtaining information about those parties attempting to log onto a system or application for security purposes and the validation of users.
Access Control	Supports the management of permissions for logging onto a computer or network.
Encryption	Supports the encoding of Data for security purposes
Intrusion Detection	Supports the detection of illegal entrance into a computer system.
Verification	Supports the confirmation of authority to enter a computer system, application or network.
Digital Signature	Guarantees the unaltered state of a file.
User Management	Supports the administration of computer, application and network accounts within an organization.
Role/Privilege Management	Supports the granting of abilities to users or groups of users of a computer, application or network.
Audit Trail Capture and Analysis	Supports the identification and monitoring of activities within an application or system.
Input Validation	Ensures the application is protected from buffer overflow, cross-site scripting, SQL injection, and unauthorized access of files and/or directories on the server.

10. MAINTENANCE, OPERATIONS AND SUPPORT

10.1 System Maintenance

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

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10.2 System Support

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

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

Class A Deficiencies – The Contractor shall have available to the State on-call telephone assistance, with issue tracking available to the State, eight (8) hours per day and five (5) days a week with an email / telephone response within two (2) hours of request; or the Contractor shall provide support on-site or with remote diagnostic Services, within twenty four (24) business hours of a request;

Class B & C Deficiencies – The State shall notify the Contractor of such Deficiencies during regular Business Hours and the Contractor shall respond back within twenty four (24) hours of notification of planned corrective action.

10.3 Support Obligations

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

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

- a. For all maintenance Services calls, the Contractor shall ensure the following information will be collected and maintained:
 - i. nature of the Deficiency;
 - ii. current status of the Deficiency;
 - iii. action plans, dates, and times;
 - iv. expected and actual completion time;
 - v. Deficiency resolution information;
 - vi. resolved by;
 - vii. identifying number i.e. work order number; and
 - viii. issue identified by; and

- b. The Contractor must work with the State to identify and troubleshoot potentially large-scale System failures or Deficiencies by collecting the following information:
 - i. mean time between Reported Deficiencies with the Software;
 - ii. diagnosis of the root cause of the problem; and
 - iii. identification of repeat calls or repeat Software problems.

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

10.4 Contract Warranties and Representations

10.4.1. System

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

10.4.2. Software

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

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

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

10.4.3. Compatibility

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

10.4.4. Services

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

11. DATA PROTECTION

Protection of personal privacy and data shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State information at

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BUSINESS / TECHNICAL REQUIREMENTS AND DELIVERABLES

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.

11.1 Data Location

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

11.2 Security Incident Or Data Breach

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

- a. Incident Response: the Contractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. Discussing security incidents with the State should be handled on an urgent as-needed basis, as part of the Contractor communication and mitigation processes as mutually agreed upon, defined by law or contained in the contract.

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- b. Security Incident Reporting Requirements: the Contractor shall report a security incident to the State identified contact immediately if it reasonably believes there has been a security incident.
- c. Breach Reporting Requirements: If the Contractor has actual knowledge of a confirmed data breach that affects the security of any State content that is subject to applicable data breach notification law, the Contractor shall (1) promptly notify the appropriate State identified contact within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.

11.3 Breach Responsibilities

- 11.3.1. This section only applies when a Data Breach occurs with respect to State data within the possession or control of the Contractor and/or the third party designee hosting the data as agreed upon by the Contractor and the State.
- 11.3.2. The Contractor, unless stipulated otherwise, shall immediately notify the appropriate State identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.
- 11.3.3. The Contractor, unless stipulated otherwise, shall promptly notify the appropriate State identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a Data Breach the Contractor shall:
 - a. cooperate with the State as reasonably requested by the State to investigate and resolve the Data Breach;
 - b. promptly implement necessary remedial measures, if necessary; and
 - c. document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- 11.3.4. Unless otherwise stipulated, if a Data Breach is a direct result of the Contractor's breach of its contract obligation or the 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.

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BUSINESS / TECHNICAL REQUIREMENTS AND DELIVERABLES

12. **SOFTWARE AGREEMENT**

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

13. **ADMINISTRATIVE SERVICES**

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

14. **TRAINING**

The Contractor shall provide the following Training Services:
Training and Technical Assistance requirements have been defined in the Business and Technical Requirements – Attachment I

15. **MERCHANT CARD SERVICES**

Not Applicable to this contract.

16. **TERMS AND DEFINITIONS**

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

17. **CONTRACTOR'S CERTIFICATES**

Required Contractor Certificates are attached in Exhibit G.

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DOE 2022-11 DRDP Training and Customization EXHIBIT C – PRICE AND PAYMENT SCHEDULE

EXHIBIT C – PRICE AND PAYMENT SCHEDULE

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

1. CONTRACT PRICE

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

2. TRAVEL EXPENSES

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

3. SHIPPING FEES

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

4. INVOICING

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

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

5. INVOICE ADDRESS

Invoices may be sent to:

Krishna Dubreuil
New Hampshire Department of Education
101 Pleasant Street, Concord, New Hampshire 03301

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DOE 2022-11 DRDP Training and Customization EXHIBIT C – PRICE AND PAYMENT SCHEDULE

6. PAYMENT ADDRESS

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

7. OVERPAYMENTS TO THE CONTRACTOR

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

8. CREDITS

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

9. PROJECT HOLDBACK

The State shall withhold ten percent (10%) of the price for each Deliverable, except Software License fees, as set forth in the Payment Table, until successful conclusion of the Warranty Period.

10. PAYMENT SCHEDULE

10.1 Contract Type

10.1.1 Activities / Deliverables / Milestones Pricing

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

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ACTIVITY / DELIVERABLES / MILESTONES				
	ACTIVITY, DELIVERABLE, OR MILESTONE	DELIVERABLE TYPE	PROJECTED DELIVERY DATE	Milestone Payment upon Acceptance
PLANNING AND PROJECT MANAGEMENT				
1	Scheduled Meetings	Non-Software	Ongoing	
2	Work Plan	Written	Ongoing	
3	Project Status Reports	Written	Ongoing	
OPERATIONS				
4	Training Modifications and Technical Assistance Customization of training videos and professional development resources for Desired Results data system and DRDP assessment	Non-Software	Ongoing	\$49,500.00
5	Desired Results Data Profile (DRDP) Online Customization DRDP Online Customization of User Interface and data fields, API, the Pyramid Model, rolling enrollment, and Upload/Download files	Software	6 months following G&C Approval	\$100,000.00
6	Reports Customization Customize general reports and adding OSEP reporting and the Pyramid Model to NH reports	Software	9 months following G&C Approval	\$170,000.00
7	State Level Collaboration and Administration Ongoing meetings, communications with New Hampshire, oversight of work, and training supports (upon	Non-Software	Quarterly Payments	\$35,000

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 Contractor Initials: LW
 Date: Oct 7, 2021

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	G&C Approval – June 30, 2022)			
8	State Level Collaboration and Administration Ongoing meetings, communications with New Hampshire, oversight of work, and training supports (July 1, 2022 – June 30, 2023)	Non-Software	Quarterly Payments	\$35,000

10.2 Future Contractor Rates Worksheet

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

Position Title	SFY 2022	SFY 2023	SFY 2024	SFY 2025
Project Manager	\$125.00/hr	\$128.75	\$132.61	\$136.59
Web Developer	\$96.60/hr	\$99.50/hr	\$102.49/hr	\$105.56/hr
Database Developer	\$91.35/hr	\$94.10/hr	\$96.92/hr	\$99.83/hr
Data Project Manager	\$143.85/hr	\$148.17/hr	\$152.62/hr	\$157.20/hr
Quality Assurance	\$67.20/hr	\$69.22/hr	\$71.30/hr	\$73.44/hr

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DOE 2022-11 DRDP Training and Customization EXHIBIT D – SOFTWARE AGREEMENT

EXHIBIT D – SOFTWARE AGREEMENT

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

1. LICENSE GRANT

1.1 SUBSCRIPTION – Subject to the payment of all applicable license fees:

The contractor hereby grants to the State a non-transferable, non -sub licensable, non-exclusive license to use Software and its associated documentation during the applicable subscription term, subject to the terms of the Contract. The State may allow its agents and Contractors to access and use the Software, and in such event, the State shall first obtain written agreement from such agents and Contractors that each shall abide by the terms and conditions set forth herein.

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

The State shall be entitled to copies of any work product upon request to Contractor. At the conclusion of this Agreement, Contractor agrees to provide all copies of the Software for all versions, including related documentation, to the State. Contractor shall not retain any work product associated with this Agreement unless authorized by the State in writing.

Contractor shall provide the State with a sufficient number of hard copy versions of the Software's associated Documentation and one (1) electronic version in Microsoft Word and PDF format. 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 reasonable number of copies 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 the 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.

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DOE 2022-11 DRDP Training and Customization EXHIBIT D – SOFTWARE AGREEMENT

5. VIRUSES

The 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, the Contractor may audit the State's use of the programs at the Contractor's sole expense. The State agrees to cooperate with the Contractor's audit and provide reasonable assistance and access to information. The State agrees that the Contractor shall not be responsible for any of the State's reasonable costs incurred in cooperating with the audit. Notwithstanding the foregoing, the 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 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, the Contractor shall defend and indemnify the State against the claim provided that the State:

- a. Promptly notifies the Contractor in writing, not later than 30 days after the State receives actual written notice of such claim;
- b. Gives the Contractor control of the defense and any settlement negotiations; and
- c. Gives the 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 the Contractor believes or it is determined that any of the Contracted Resources may have violated someone else's intellectual property rights, the 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, the Contractor may end the License, and require return of the applicable Contracted Resources and refund all fees the State has paid the Contractor under the Contract. The Contractor will not indemnify the State if the State alters the Contracted Resources without the Contractor's consent or uses it outside the scope of use identified in the Contractor's User Documentation or if the State uses a version of the Contracted Resources which has been superseded, if the infringement claim

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could have been avoided by using an unaltered current version of the Contracted Resources which was provided to the State at no additional cost. The Contractor will not indemnify the State to the extent that an infringement claim is based upon any information design, Specification, instruction, Software, Data, or material not furnished by the Contractor. The Contractor will not indemnify the State to the extent that an infringement claim is based upon the combination of any Contracted Resources with any products or Services not provided by the Contractor without the Contractor's consent.

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.

9. CUSTOM SOURCE CODE

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

10. SOFTWARE ESCROW

Contractor agrees to provide to the State the currently existing source code and any other tools and requirements necessary to create executable or interpretive programs. This information may be provided to the State either directly, with any such protections as required by the Contractor or through a mutually agreed upon Escrow Agreement. Contractor shall be responsible for all costs associated with the Escrow Agreement and the State shall not assume any liability to the Company or Escrow Agent as a result of the Agreement.

Contractor agrees that the State shall be entitled to utilize the source code in its possession and/or demand a release of the source code from the Escrow Agent upon the occurrence of any of the following events ("Release Events"):

- a. The Contractor has made an assignment for the benefit of creditors;
- b. The Contractor institutes or becomes subject to a liquidation or bankruptcy proceeding of any kind;
- c. A receiver or similar officer has been appointed to take charge of all or part of the Contractor's assets;
- d. The Contractor terminates its maintenance, operations, and support services for the State for the Software or has ceased supporting and maintaining the Software for the State whether due to its ceasing to conduct business generally or otherwise, except in cases where the termination or cessation is a result of the non-payment or other fault of the State;
- e. The Contractor defaults under the Contract; or

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DOE 2022-11 DRDP Training and Customization EXHIBIT D – SOFTWARE AGREEMENT

- f. The Contractor ceases its on-going business operations or that portion of its business operations relating to the licensing and maintenance of the Software.

Upon the occurrence of a Release Event, the Contractor hereby grants the State the right to use, copy, modify, display, distribute, and prepare derivative works of the source code, and to authorize others to do the same on behalf of the State (Contractors, agents, etc.), solely for the purpose of completing the performance of the Contractor's obligations under the Contract, including, but not limited to, providing maintenance and support for the Software and subject to the rights granted in this Contract.

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STATE OF NEW HAMPSHIRE

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DOE 2022-11 DRDP Training and Customization EXHIBIT E – ADMINSTRATIVE SERVICES

EXHIBIT E – ADMINISTRATIVE SERVICES

1. DISPUTE RESOLUTION

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

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

Table E-1.			
DISPUTE RESOLUTION RESPONSIBILITY AND SCHEDULE TABLE			
LEVEL	CONTRACTOR POINT OF CONTACT	STATE POINT OF CONTACT	CUMULATIVE ALLOTTED TIME
Primary	Melinda Brookshire, Project Director	Krishna Dubreuil, Education Consultant	Five (5) Business Days
First	Catherine Goins, Division Director	Rebecca Fredette, Special Education Director	Five (5) Business Days
Second	Mike Neuenfeldt, Deputy Chief Financial Officer	McKenzie Snow, Director, Division of Learner Support	Ten (10) Business Days
Third	Deb Cooksey, General Counsel, Legal	Frank Edelblut, Commissioner of Education	Ten (10) Business Days

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

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,

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DOE 2022-11 DRDP Training and Customization EXHIBIT E – ADMINSTRATIVE SERVICES

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.

6. MISCELLANEOUS WORK REQUIREMENTS

6.1 Access to State Systems

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

6.1.1. Computer Use

- a. Every Authorized User has the responsibility to assure the protection of information from unauthorized access, misuse, theft, damage, destruction, modification, or disclosure.
- b. That information shall be used solely for conducting official State business, and all other use or access is strictly forbidden including, but not limited to, personal, or other private and non-State use and that at no time shall Contractor access or attempt to access any information without having the express authority to do so.
- c. That at no time shall Contractor access or attempt to access any information in a manner inconsistent with the approved policies, procedures, and /or agreements relating to system entry/access.

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DOE 2022-11 DRDP Training and Customization EXHIBIT E – ADMINSTRATIVE SERVICES

- d. That all software licensed, developed, or being evaluated by the State cannot be copied, shared, distributed, sub-licensed, modified, reverse engineered, rented, or sold, and that at all times Contractor must use utmost care to protect and keep such software strictly confidential in accordance with the license or any other agreement executed by the State. Only equipment or software owned, licensed, or being evaluated by the State, can be used by Contractor Personal software (including but not limited to palmtop sync software) shall not be installed on any equipment.
- e. That if Contractor is found to be in violation of any of the above-stated rules, the Contractor may face default and termination under the Agreement and the individual may face removal from the State Contract, and/or criminal or civil prosecution, if the act constitutes a violation of law.
- f. That computer use shall follow the State standard policy (Statewide Computer Use Policy is available upon request)

6.1.2. Email Use

Email and other electronic communication messaging systems are State of New Hampshire property and are to be used for business purposes only. Email is defined as “internal email systems” or “State-funded email systems.” Contractor understands and agrees that use of email shall follow State standard policy (Statewide Computer Use Policy is available upon request).

6.1.3. Internet/Intranet Use

The Internet/Intranet is to be used for access to and distribution of information in direct support of the business of the State of New Hampshire according to State standard policy (Statewide Computer Use Policy is available upon request).

6.2 State Website Copyright

All right, title and interest in the State WWW site, including copyright to all Data and information, shall remain with the State. The State shall also retain all right, title and interest in any user interfaces and computer instructions embedded within the WWW pages. All WWW pages and any other Data or information shall, where applicable, display the State's copyright.

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DOE 2022-11 DRDP Training and Customization EXHIBIT F – TERMS AND DEFINITIONS

EXHIBIT F – TERMS AND DEFINITIONS

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

TERM	DEFINITION
Acceptance	Notice from the State that a Deliverable has satisfied Acceptance Test or Review.
Agreement	A Contract duly executed and legally binding.
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.
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.

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DOE 2022-11 DRDP Training and Customization EXHIBIT F – TERMS AND DEFINITIONS

Confidential Information	<p>Information required to be kept Confidential and restricted from unauthorized disclosure under the Contract. “Confidential Information” or “Confidential Data” means all private/restricted confidential information disclosed by one party to the other such as all medical, health, financial, public assistance benefits and personal information including without limitation, Protected Health Information and Personally Identifiable Information.</p> <p>Confidential Information also includes any and all information owned or managed by the State of NH - created, received from or on behalf of any state agency or accessed in the course of performing contracted services - of which collection, disclosure, protection, and disposition is governed by state or federal law or regulation. This information includes, but is not limited to Personal Health Information (PHI), Personally Identifiable Information (PII), Federal Tax Information (FTI), Social Security Numbers (SSN), Payment Card Industry (PCI), and or other sensitive and confidential information.</p>
Contract	An Agreement between the State of New Hampshire and a Vendor, which creates binding obligations for each party to perform as specified in the Contract Documents.
Deficiency (-ies)/Defects	A failure, shortcoming or error in a Deliverable resulting in a Deliverable, the Software, or the System, not conforming to its Specifications.
Deliverable	A Deliverable is any Written, Software, or Non-Software Deliverable (letter, report, manual, book, code, or other), provided by the Contractor to the State or under the terms of a Contract requirement.
Documentation	All information that describes the installation, operation, and use of the Software, either in printed or electronic format.
Enhancements	Updates, additions, modifications to, and new releases for the Software or System, and all changes to the Documentation as a result of improvement in quality, value, or extent.
Hosted Services	Applications, IT infrastructure components or functions that organizations access from external service providers, typically through an internet connection.

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DOE 2022-11 DRDP Training and Customization EXHIBIT F – TERMS AND DEFINITIONS

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.
Proposal	The submission from a Vendor in response to the Request for a Proposal.
Software	All Custom, SAAS and COTS computer programs and applications provided by the Contractor under the Contract.
Software Deliverables	All Custom, SAAS and COTS Software and Enhancements.
Software License	Licenses provided to the State under this Contract.

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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.
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.

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Verification	Supports the confirmation of authority to enter a computer system application or network.
Warranty	The conditions under, and period during, which the Contractor will repair, replace, or other compensate for, the defective item without cost to the buyer or user. It also delineates the rights and obligations of both parties in case of a claim or dispute.
Warranty Period	A period of coverage during which the Contractor is responsible for providing a guarantee for products and Services delivered as defined in the Contract.

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STATE OF NEW HAMPSHIRE
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DOE 2022-11 DRDP Training and Customization EXHIBIT G – ATTACHMENTS AND
CONTRACTOR CERTIFICATES

EXHIBIT G – ATTACHMENTS AND CONTRACTOR CERTIFICATES

1. ATTACHMENTS

- a. Business and Technical Requirements – Attachment 1
- b. Agency Compliance Documents – Attachment 2 Exhibits 1 - 4
 - 1. Contractor Obligations
 - 2. Federal Debarment and Suspension
 - 3. Anti Lobbying
 - 4. Rights to Inventions Made Under a Contract, Copyrights and Confidentiality

2. 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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BUSINESS REQUIREMENTS					
Requirements					
Req #	Requirement Description	Criticality	Vendor Response	Delivery Method	Comments
<i>Training and Technical Assistance</i>					
B1.1	Review existing training materials related to the DRDP	M	Yes	Standard	
B1.2	Provide recommendations and technical assistance in the development of training system supporting initial use of the tool and data system as well as sustained fidelity of implementation over time	M	Yes	Standard	
B1.3	Identify potential gaps in available training resources and make recommendations and/or develop training materials (including written, video, and curriculum) to address these gaps;	M	Yes	Standard	
B1.4	Rrecommend and make customizations to established training materials at the discretion of the Department to meet New Hampshire needs.	M	No	Future	This is part of the scope of work. Delivery is no later than 12 months after G&C approval
<i>Desired Results Data Profile (DRDP) Online Customization</i>					
B2.1	Update user interface and data fields to align with NH requirements, laws and administrative rules.	M	No	Future	This is part of the scope of work. Delivery is no later than 6 months after G&C approval
B2.2	Build out the scoring API to connect DRDP online to the calculation engine to support statistical calculations for federal reporting.	M	No	Future	This is part of the scope of work. Delivery is no later than 6 months after G&C approval
B2.3	Adjust system functionality to accommodate rolling enrollment.	M	No	Future	This is part of the scope of work. Delivery is no later than 6 months after G&C approval
B2.4	Create the capacity to Upload/Download New Hampshire Specific files within the system.	M	No	Future	This is part of the scope of work. Delivery is no later than 6 months after G&C approval
B2.5	Develop additional system permissions and roles and generate as appropriate.	M	No	Future	This is part of the scope of work. Delivery is no later than 6 months after G&C approval
<i>Desired Results Data Profile (DRDP) Online Reports Customization</i>					
B3.1	Customize existing reports to incorporate new data and meet New Hampshire reporting requirements and needs.	M	No	Future	This is part of the scope of work. Delivery is no later than 9 months after G&C approval
B3.2	Create new reports incorporating to the federal Office of Special Education (OSEP) reporting calculations.	M	No	Future	This is part of the scope of work. Delivery is no later than 9 months after G&C approval
B3.3	Create new reports to support data analysis related to intervention outcomes.	M	No	Future	This is part of the scope of work. Delivery is no later than 9 months after G&C approval
<i>State-level Collaboration and Administration</i>					
B4.1	Oversee the DRDP Online data system	M	Yes	Standard	

B4.2	Monitor, identify and rectify data system issues	M	Yes	Standard	
B4.3	Establish regular meeting schedule to coordinate with Department of Education	M	Yes	Standard	
B4.4	Collaborate with the Department of Education regarding any upgrades or updates needed to align with NH laws, administrative rules, and reporting requirements	M	Yes	Standard	
B4.5	Collaborate with agencies on DRDP Upload/Download requests	M	Yes	Standard	
B4.6	Collaborate with the Department of Education regarding DRDP OSEP reporting needs regarding any adjustments needed	M	Yes	Standard	
B4.7	Support New Hampshire DRDP certified trainers with quarterly update meetings and an online conference center to maintain current training materials	M	Yes	Standard	

APPLICATION REQUIREMENTS					
Requirements			Vendor		
Req #	Requirement Description	Criticality	Vendor Response	Delivery Method	Comments
GENERAL SPECIFICATIONS					
A1.1	Ability to access data using open standards access protocol (please specify supported versions in the comments field).	M	Yes	Standard	The DRDP Systems offers downloads of customer data that may be stored and used by the customer with any data analysis tool. Reports are provided as a viewable HTML document and PDF
A1.2	Data is available in commonly used format over which no entity has exclusive control, with the exception of National or International standards. Data is not subject to any copyright, patent, trademark or other trade secret regulation.	M	Yes	Standard	Supported in current release of software
A1.3	Web-based compatible and in conformance with the following W3C standards: HTML5, CSS 2.1, XML 1.1	M	Yes	Standard	Supported in current release of software
APPLICATION SECURITY					
A2.1	Verify the identity or authenticate all of the system client applications before allowing use of the system to prevent access to inappropriate or confidential data or services.	M	Yes	Standard	Supported in current release of software
A2.2	Verify the identity and authenticate all of the system's human users before allowing them to use its capabilities to prevent access to inappropriate or confidential data or services.	M	Yes	Standard	Supported in current release of software
A2.3	Enforce unique user names.	M	Yes	Standard	Supported in current release of software
A2.4	Enforce complex passwords for Administrator Accounts in accordance with DoIT's statewide User Account and Password Policy.	M	Yes	Custom	System Currently Supports The Following Password Requirements: Number, Special character (@#\$\$%^&*~), 8 characters required. System can be modified to accept 10 character password.

A2.5	Enforce the use of complex passwords for general users using capital letters, numbers and special characters in accordance with DoIT's statewide User Account and Password Policy.	M	Yes	Custom	System Currently Supports The Following Password Requirements: Number, Special character (!@#\$%^&*~), 8 characters required. System can be modified to accept 10 character password.
A2.6	Encrypt passwords in transmission and at rest within the database.	M	Yes	Standard	Supported in current release of software
A2.7	Establish ability to expire passwords after a definite period of time in accordance with DoIT's statewide User Account and Password Policy.	M	Yes	Custom	Software expires passwords every (90 days).
A2.8	Provide the ability to limit the number of people that can grant or change authorizations.	M	Yes	Standard	Supported in current release of software
A2.9	Establish ability to enforce session timeouts during periods of inactivity.	M	Yes	Standard	Supported in current release of software
A2.10	The application shall not store authentication credentials or sensitive data in its code.	M	Yes	Standard	Supported in current release of software
A2.11	Log all attempted accesses that fail identification, authentication and authorization requirements.	M			The rails app, IIRC, only runs as a single user and does not have any user logging available to it. There is nothing to log, as every request must take place with the single authorization code
A2.12	The application shall log all activities to a central server to prevent parties to application transactions from denying that they have taken place.	M	No	Standard	System access abides by standard Ubuntu logging. The system is behind a firewall and not publicly accessible.
A2.13	All logs must be kept for (XX- days, weeks, or months).	M	Yes	Standard	Logs are kept for 6 months
A2.14	The application must allow a human user to explicitly terminate a session. No remnants of the prior session should then remain.	M	Yes	Standard	Supported in current release of software
A2.15	Do not use Software and System Services for anything other than they are designed for.	M	Yes	Standard	Supported in current release of software
A2.16	The application Data shall be protected from unauthorized use when at rest.	M	Yes	Standard	Supported in current release of software
A2.17	The application shall keep any sensitive Data or communications private from unauthorized individuals and programs.	M	Yes	Standard	Supported in current release of software

A2.18	Subsequent application enhancements or upgrades shall not remove or degrade security requirements.	M	Yes	Standard	Supported in current release of software
A2.19	Utilize change management documentation and procedures.	M	Yes	Standard	Supported in current release of software
A2.20	Web Services : The service provider shall use Web services exclusively to interface with the State's data in near real time when possible.	M	Yes	Standard	Supported in current release of software

TESTING REQUIREMENTS						
Requirements					Vendor	
Req #	Requirement Description	Criticality	Vendor Response	Delivery Method	Comments	
APPLICATION SECURITY TESTING						
T1.1	All components of the Software shall be reviewed and tested to ensure they protect the State's web site and its related Data assets.	M	Yes	Standard	Supported in current release of software	
T1.2	The Vendor shall be responsible for providing documentation of security testing, as appropriate. Tests shall focus on the technical, administrative and physical security controls that have been designed into the System architecture in order to provide the necessary confidentiality, integrity and availability.	M	Yes	Standard	An external pen-test was performed recently to validate application. From an infrastructure perspective Microsoft Azure has strict controls in place as well with details available https://www.microsoft.com/en-us/trust-center/product-overview	
T1.3	Provide evidence that supports the fact that Identification and Authentication testing has been recently accomplished; supports obtaining information about those parties attempting to log onto a system or application for security purposes and the validation of users.	M	Yes	Standard	An external pen-test was performed recently to validate application.	
T1.4	Test for Access Control; supports the management of permissions for logging onto a computer or network.	M	Yes	Standard	Microsoft Azure has strict controls in place as well with details available https://www.microsoft.com/en-us/trust-center/product-overview	
T1.5	Test for encryption; supports the encoding of data for security purposes, and for the ability to access the data in a decrypted format from required tools.	M	Yes	Standard	DRDP uses SSL/TLS security to protect data in transit. Data at rest is protected with Bitlocker or Azure SQL TDE.	
T1.6	Test the Intrusion Detection; supports the detection of illegal entrance into a computer system.	M	Yes	Standard	An external pen-test was performed recently to validate application.	
T1.7	Test the Verification feature; supports the confirmation of authority to enter a computer system, application or network.	M	Yes	Standard	Microsoft Azure has strict controls in place as well with details available https://www.microsoft.com/en-us/trust-center/product-overview	
T1.8	Test the User Management feature; supports the administration of computer, application and network accounts within an organization.	M	Yes	Standard	Supported in current release of software	

T1.9	Test Role/Privilege Management; supports the granting of abilities to users or groups of users of a computer, application or network.	M	Yes	Standard	Supported in current release of software
T1.10	Test Audit Trail Capture and Analysis; supports the identification and monitoring of activities within an application or system.	M	No	Future	We do not currently support this. It is a planned update.
T1.11	Test Input Validation; ensures the application is protected from buffer overflow, cross-site scripting, SQL injection, and unauthorized access of files and/or directories on the server.	M	Yes	Standard	Supported in current release of software
T.1.12	For web applications, ensure the application has been tested and hardened to prevent critical application security flaws. (At a minimum, the application shall be tested against all flaws outlined in the Open Web Application Security Project (OWASP) Top Ten (http://www.owasp.org/index.php/OWASP_Top_Ten_Project).	M	Yes	Standard	An external pen-test was performed recently to validate application. In addition the application runs behind a Azure Web Application Filter that uses OWASP 3.1 rules to block potentially malicious traffic
T1.13	Provide the State with validation of 3rd party security reviews -performed on the application and system environment. The review may include a combination of vulnerability scanning, penetration testing, static analysis of the source code, and expert code review (please specify proposed methodology in the comments field).	M	Yes	Standard	A penetration test was recently performed against the DRDP Online project and both of the findings were remediated. In addition the DRDP team will engage a vendor for future security screenings.
T1.14	Prior to the System being moved into production, the Vendor shall provide results of all security testing to the Department of Information Technology for review and acceptance.	M	Yes	Standard	System is multi tennant. Results of security testing will be provided for deliverables
T1.15	Vendor shall provide documented procedure for migrating application modifications from the User Acceptance Test Environment to the Production Environment.	M	Yes	Standard	Multi pass testing completed in development environment prior to release. Upon release to production, multi pass testing performed again. All tests completed by multiple testers in multiple environments/web browsers.
STANDARD TESTING					
T2.1	The Vendor must test the software and the system using an industry standard and State approved testing methodology.	M	Yes	Standard	Supported in current release of software
T2.2	The Vendor must perform application stress testing and tuning.	M	Yes	Standard	Supported in current release of software

T2.3	The Vendor must provide documented procedure for how to sync Production with a specific testing environment.	M	Yes	Standard	Synchronization of Production to Test Environment is done through the database restoration mechanism. Should report files be needed they can also be moved between environments using Azure Tools.
T2.4	The vendor must define and test disaster recovery procedures.	M	Yes	Standard	Database recoveries are periodically tested during the production->testing environment data updates. Virtual machines can be recovered from long-term backups.

HOSTING-CLOUD REQUIREMENTS					
Requirements					Vendor
Req #	Requirement Description	Criticality	Vendor Response	Delivery Method	Comments
OPERATIONS					
H1.1	Vendor shall provide an ANSI/TIA-942 Tier 3 Data Center or equivalent. A tier 3 data center requires 1) Multiple independent distribution paths serving the IT equipment, 2) All IT equipment must be dual-powered and fully compatible with the topology of a site's architecture and 3) Concurrently maintainable site infrastructure with expected availability of 99.982%.	M	Yes	Standard	All of the information is hosted in the Microsoft Azure Cloud (West US2 Region Washington)
H1.2	Vendor shall maintain a secure hosting environment providing all necessary hardware, software, and Internet bandwidth to manage the application and support users with permission based logins.	M	Yes	Standard	Supported in current release of software
H1.3	The Data Center must be physically secured – restricted access to the site to personnel with controls such as biometric, badge, and others security solutions. Policies for granting access must be in place and followed. Access shall only be granted to those with a need to perform tasks in the Data Center.	M	Yes	Standard	Supported in current release of software
H1.4	Vendor shall install and update all server patches, updates, and other utilities within 60 days of release from the manufacturer.	M	Yes	Standard	Supported in current release of software
H1.5	Vendor shall monitor System, security, and application logs.	M	Yes	Standard	Supported in current release of software
H1.6	Vendor shall manage the sharing of data resources.	M	Yes	Standard	Supported in current release of software
H1.7	Vendor shall manage daily backups, off-site data storage, and restore operations.	M	Yes	Standard	Supported in current release of software
H1.8	The Vendor shall monitor physical hardware.	M	Yes	Standard	Supported in current release of software
H1.9	Remote access shall be customized to the State's business application. In instances where the State requires access to the application or server resources not in the DMZ, the Vendor shall provide remote desktop connection to the server through secure protocols such as a Virtual Private Network (VPN).	M	Yes	Standard	Supported in current release of software

H1.10	The Vendor shall report any breach in security in conformance with State of NH RSA 359-C:20. Any person engaged in trade or commerce that is subject to RSA 358-A:3, I shall also notify the regulator which has primary regulatory authority over such trade or commerce. All other persons shall notify the New Hampshire attorney general's office.	M	Yes	Standard	Supported in current release of software
DISASTER RECOVERY					
H2.1	Vendor shall have documented disaster recovery plans that address the recovery of lost State data as well as their own. Systems shall be architected to meet the defined recovery needs.	M	Yes	Standard	By using the Microsoft Azure platform the DRDP project has multiple layers of durability built into the environment. Redundancies are built into the various IaaS & PaaS components used to operate the project to provide durability. In addition, backups are stored in 2 geographically separate regions for up to 1 year. Database recoveries are periodically tested during the production->testing environment data updates.
H2.2	The disaster recovery plan shall identify appropriate methods for procuring additional hardware in the event of a component failure. In most instances, systems shall offer a level of redundancy so the loss of a drive or power supply will not be sufficient to terminate services however, these failed components will have to be replaced.	M	Yes	Standard	Additional hardware procurement is not required as DRDP operates within the Microsoft Azure platform where the minimum SLA is 99.9% at the infrastructure level for components used. However, should a major failure happen recovery is available through backups and synchronized storage.
H2.3	Vendor shall adhere to a defined and documented back-up schedule and procedure.	M	Yes	Standard	Supported in current release of software
H2.4	Back-up copies of data are made for the purpose of facilitating a restore of the data in the event of data loss or System failure.	M	Yes	Standard	Supported in current release of software
H2.5	Scheduled backups of all servers must be completed regularly. The minimum acceptable frequency is differential backup daily, and complete backup weekly.	M	Yes	Standard	Supported in current release of software
H2.6	Tapes or other back-up media tapes must be securely transferred from the site to another secure location to avoid complete data loss with the loss of a facility.	M	Yes	Standard	Supported in current release of software

H2.7	Data recovery – In the event that recovery back to the last backup is not sufficient to recover State Data, the Vendor shall employ the use of database logs in addition to backup media in the restoration of the database(s) to afford a much closer to real-time recovery. To do this, logs must be moved off the volume containing the database with a frequency to match the business needs.	M	Yes	Standard	Supported in current release of software
HOSTING SECURITY					
H3.1	The Vendor shall employ security measures ensure that the State’s application and data is protected.	M	Yes	Standard	Supported in current release of software
H3.2	If State data is hosted on multiple servers, data exchanges between and among servers must be encrypted.	M	Yes	Standard	Supported in current release of software
H3.3	All servers and devices must have currently-supported and hardened operating systems, the latest anti-viral, anti-hacker, anti-spam, anti-spyware, and anti-malware utilities. The environment, as a whole, shall have aggressive intrusion-detection and firewall protection.	M	Yes	Standard	Supported in current release of software
H3.4	All components of the infrastructure shall be reviewed and tested to ensure they protect the State’s hardware, software, and its related data assets. Tests shall focus on the technical, administrative and physical security controls that have been designed into the System architecture in order to provide confidentiality, integrity and availability.	M	Yes	Standard	Supported in current release of software
H3.5	The Vendor shall ensure its complete cooperation with the State’s Chief Information Officer in the detection of any security vulnerability of the hosting infrastructure.	M	Yes	Standard	Supported in current release of software
H3.6	The Vendor shall authorize the State to perform scheduled and random security audits, including vulnerability assessments, of the Vendor’ hosting infrastructure and/or the application upon request.	M	Yes	Standard	Supported in current release of software
H3.7	All servers and devices must have event logging enabled. Logs must be protected with access limited to only authorized administrators. Logs shall include System, Application, Web and Database logs.	M	Yes	Standard	Servers all use standard event logging. Rails and apache logs are stored on the server with a log rotation schedule. They are NOT currently sent to a centralized log storage. Rails logs appear to be weekly for a year retention. Apache logs appear to be 14 days of daily rotation.

H3.8	Operating Systems (OS) and Databases (DB) shall be built and hardened in accordance with guidelines set forth by CIS, NIST or NSA.	M	Yes	Standard	Supported in current release of software
H3.9	The Vendor shall notify the State's Project Manager of any security breaches within two (2) hours of the time that the Vendor learns of their occurrence.	M	Yes	Standard	Supported in current release of software
H3.10	The Vendor shall be solely liable for costs associated with any breach of State data housed at their location(s) including but not limited to notification and any damages assessed by the courts.	M	Yes	Standard	Supported in current release of software
<i>SERVICE LEVEL AGREEMENT</i>					
H4.1	The Vendor's System support and maintenance shall commence upon the Effective Date and extend through the end of the Contract term, and any extensions thereof.	M	Yes	Standard	Supported in current release of software
H4.2	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	Yes	Standard	Supported in current release of software
H4.3	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	Yes	Standard	Supported in current release of software
H4.4	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.	M	Yes	Standard	Supported in current release of software
H4.5	The State shall have unlimited access, via phone or Email, to the Vendor technical support staff between the hours of 8:30am to 5:00pm- Monday through Friday EST.	M	Yes	Standard	Supported in current release of software

H4.6	<p>The Vendor shall conform to the specific deficiency class as described:</p> <ul style="list-style-type: none"> 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	Yes		Supported in current release of software
H4.7	<p>As part of the maintenance agreement, ongoing support issues shall be responded to according to the following:</p> <ul style="list-style-type: none"> a. Class A Deficiencies - The Vendor shall have available to the State on-call telephone assistance, with issue tracking available to the State, eight (8) hours per day and five (5) days a week with an email / telephone response within two (2) hours of request; or the Vendor shall provide support on-site or with remote diagnostic Services, within four (4) business hours of a request; b. Class B & C Deficiencies –The State shall notify the Vendor of such Deficiencies during regular business hours and the Vendor shall respond back within four (4) hours of notification of planned corrective action; The Vendor shall repair or replace Software, and provide maintenance of the Software in accordance with the Specifications, Terms and Requirements of the Contract. 	M	Yes	Standard	Supported in current release of software
H4.8	<p>The hosting server for the State shall be available twenty-four (24) hours a day, 7 days a week except for during scheduled maintenance.</p>	M	Yes	Standard	Supported in current release of software
H4.9	<p>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.</p>	M	Yes	Standard	Supported in current release of software
H4.10	<p>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.</p>	M			Not Applicable

H4.11	The Vendor shall use a change management policy for notification and tracking of change requests as well as critical outages.	M	Yes	Standard	Supported in current release of software
H4.12	A critical outage will be designated when a business function cannot be met by a nonperforming application and there is no work around to the problem.	M	Yes	Standard	Supported in current release of software
H4.13	The Vendor shall maintain a record of the activities related to repair or maintenance activities performed for the State and shall report quarterly on the following: Server up-time; All change requests implemented, including operating system patches; All critical outages reported including actual issue and resolution; Number of deficiencies reported by class with initial response time as well as time to close.	M	Yes	Standard	Supported in current release of software
H4.14	The Vendor will give two-business days prior notification to the State Project Manager of all changes/updates and provide the State with training due to the upgrades and changes.	M	Yes	Standard	Supported in current release of software

SUPPORT & MAINTENANCE REQUIREMENTS					
Requirements			Vendor		
Req #	Requirement Description	Criticality	Vendor Response	Delivery Method	Comments
SUPPORT & MAINTENANCE REQUIREMENTS					
S1.1	The Vendor's System support and maintenance shall commence upon the Effective Date and extend through the end of the Contract term, and any extensions thereof.	M	Yes	Standard	Supported in current release of software
S1.2	Maintain the hardware and Software in accordance with the Specifications, terms, and requirements of the Contract, including providing, upgrades and fixes as required.	M	Yes	Standard	Supported in current release of software
S1.3	Repair Software, or any portion thereof, so that the System operates in accordance with the Specifications, terms, and requirements of the Contract.	M	Yes	Standard	Supported in current release of software
S1.4	The State shall have unlimited access, via phone or Email, to the Vendor technical support staff between the hours of 8:30am to 5:00pm- Monday through Friday EST.	M	Yes	Standard	Supported in current release of software
S1.5	The Vendor response time for support shall conform to the specific deficiency class as described below or as agreed to by the parties: <ul style="list-style-type: none"> 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	Yes	Standard	Supported in current release of software
S1.6	The Vendor shall make available to the State the latest program updates, general maintenance releases, selected functionality releases, patches, and Documentation that are generally offered to its customers, at no additional cost.	M	Yes	Standard	Supported in current release of software

S1.7	For all maintenance Services calls, The Vendor shall ensure the following information will be collected and maintained: 1) nature of the Deficiency; 2) current status of the Deficiency; 3) action plans, dates, and times; 4) expected and actual completion time; 5) Deficiency resolution information, 6) Resolved by, 7) Identifying number i.e. work order number, 8) Issue identified by;	P	Yes	Standard	Supported in current release of software
S1.8	The Vendor must work with the State to identify and troubleshoot potentially large-scale System failures or Deficiencies by collecting the following information: 1) mean time between reported Deficiencies with the Software; 2) diagnosis of the root cause of the problem; and 3) identification of repeat calls or repeat Software problems.	P	Yes	Standard	Supported in current release of software
S1.9	As part of the Software maintenance agreement, ongoing software maintenance and support issues, shall be responded to according to the following or as agreed to by the parties: a. Class A Deficiencies - The Vendor shall have available to the State on-call telephone assistance, with issue tracking available to the State, eight (8) hours per day and five (5) days a week with an email / telephone response within two (2) hours of request; or the Vendor shall provide support on-site or with remote diagnostic Services, within four (4) business hours of a request; b. Class B & C Deficiencies –The State shall notify the Vendor of such Deficiencies during regular business hours and the Vendor shall respond back within four (4) hours of notification of planned corrective action; The Vendor shall repair or replace Software, and provide maintenance of the Software in accordance with the Specifications, Terms and Requirements of the Contract; or as agreed between the parties.	M	Yes	Standard	Supported in current release of software
S1.10	The Vendor shall use a change management policy for notification and tracking of change requests as well as critical outages.	M	Yes	Standard	Supported in current release of software
S1.11	A critical outage will be designated when a business function cannot be met by a nonperforming application and there is no work around to the problem.	M	Yes	Standard	Supported in current release of software
S1.12	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: All change requests implemented; All critical outages reported including actual issue and resolution; Number of deficiencies reported by class with initial response time as well as time to close.	M	Yes	Standard	Supported in current release of software

S1.13	A regularly scheduled maintenance window shall be identified (such as weekly, monthly, or quarterly) at which time all relevant server patches and application upgrades shall be applied.	M	Yes	Standard	Supported in current release of software
S1.14	The Vendor shall give two-business days prior notification to the State Project Manager of all changes/updates and provide the State with training due to the upgrades and changes.	M	Yes	Standard	Supported in current release of software
S1.15	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	Supported in current release of software

PROJECT MANAGEMENT					
Requirements					
Req #	Requirement Description	Criticality	Vendor Response	Delivery Method	Comments
PROJECT MANAGEMENT					
P1.1	Vendor shall participate in an initial kick-off meeting to initiate the Project.	M	Yes	Standard	
P1.2	Vendor shall provide Project Staff as specified in the RFP.	M	Yes	Standard	
P1.3	Vendor shall submit a finalized Work Plan within ten (10) days after Contract award and approval by Governor and Council. The Work Plan shall include, without limitation, a detailed description of the Schedule, tasks, Deliverables, milestones/critical events, task dependencies, and payment Schedule. The plan shall be updated no less than every two weeks.	M	Yes	Standard	Supported in current release of software
P1.4	Vendor shall provide detailed bi-weekly status reports on the progress of the Project, which will include expenses incurred year to date.	M	Yes	Standard	Supported in current release of software
P1.5	All user, technical, and System Documentation as well as Project Schedules, plans, status reports, and correspondence must be maintained as project documentation. (Define how-WORD format- on-Line, in a common library or on paper).	M	Yes	Standard	Supported in current release of software

DOE
EXHIBIT 1
Contractor Obligations

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

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

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

Breach

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

Fraud and False Statements

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

Environmental Protection

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

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

Procurement of Recovered Materials

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

DOE
Exhibit 2
Federal Debarment and Suspension

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

DOE
Exhibit 3
Anti-Lobbying

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

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

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

DOE
Exhibit 4
Rights to Inventions Made Under a Contract, Copy Rights and Confidentiality

Rights to Inventions Made Under a Contract or Agreement

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

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

Confidentiality

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

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

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

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

Ownership of Intellectual Property

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

LAW OFFICES

WEINSTEIN, BOLDT, RACINE, HALFHIDE & CAMEL
PROFESSIONAL CORPORATION

1801 CENTURY PARK EAST, SUITE 2200
LOS ANGELES, CALIFORNIA 90067-2336

DAVID A. WEINSTEIN

TELEPHONE
(310) 203-8466
FAX (310) 652-7238

DIRECT DIAL 310.712.2114

May 6, 1997

BY TELECOPIER AND U.S. MAIL

John Cannon, C.P.A.
10850 Wilshire Boulevard
Suite 1200
Los Angeles, CA 90024

Re: WestEd

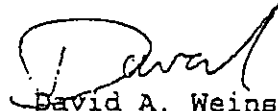
Dear John:

I have enclosed a copy of a favorable private letter ruling which was faxed to me this morning in connection with WestEd's I.R.C. \$115 exemption request. I was pleased that we were able to obtain a favorable result after all the agonizing!

Please call me with any questions you, Gary or Robert may have with respect to the ruling.

Best regards.

Very truly yours,



David A. Weinstein
of WEINSTEIN, BOLDT, RACINE,
HALFHIDE & CAMEL, P.C.

DAW:bd

Enclosure

cc: Mr. Gary Barnes (w/enclosure)
Mr. Robert Christensen (w/enclosure)

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202 622 6882 P.02/13

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Index Number: 0115.00-00

Mr. Gary Barnes, Chief Financial Officer
WestEd
4665 Lampson Avenue
Los Alamitos, CA 90720-5199

Person to Contact:

Adrian Michur
Telephone Number:
(202) 622-3089
Refer Reply to:

CC:DOM:FI&P:2 PLR-253942-96

Date: MAY 1 1997

- X = WestEd
EIN: 94-3233542
- Y = Far West Laboratory for Educational Research and Development
EIN: 94-1625540
- Z = Southwest Regional Laboratory for Educational Research and Development
EIN: 94-2428178
- Pact = Joint Powers Agreement
- Law 1 = Section 6500, Title 1, Division 7, Chapter 5, Article 1, California Government Code
- Law 2 = Section 6502, Title 1, Division 7, Chapter 5, Article 1, California Government Code
- Law 3 = Section 6507, Title 1, Division 7, Chapter 5, Article 1, California Government Code
- Law 4 = Section 6508, Title 1, Division 7, Chapter 5, Article 1, California Government Code
- Letter 1 = Determination letter dated August 16, 1966
- Letter 2 = Letter dated October 18, 1966
- District 1 = San Francisco District
- District 2 = Los Angeles District
- State 1 = California
- State 2 = Arizona
- State 3 = Nevada
- State 4 = Utah

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PLR-253942-96

Dear Mr. Barnes:

This is in reply to a letter dated November 25, 1996, and subsequent correspondence, requesting a ruling that the income of X is excludable under section 115 of the Internal Revenue Code. The information submitted for consideration is summarized below.

X, Y and Z are public agencies under Law 1 of State 1. The members of X are Y and Z. The members of Y and Z are agencies of State 1, State 2, State 3 and State 4.

Under Law 2 of State 1, public agencies may agree to jointly exercise any power common to the agencies, even though one or more of the contracting agencies may be located outside State 1. Such agreements are known as "Pacts" and establish an entity that is itself a public agency for purposes of Law 1.

Under Law 3 of State 1, a Pact is a public entity separate from the parties forming it.

Under Law 4 of State 1, a Pact that has the power to hire employees, make contracts, or to hold, receive, or dispose of property can sue or be sued in its own name. X, Y, and Z each have these powers.

In Letter 1, the District Director of District 1 informed Y that it was not subject to federal income tax. The letter states that it is a determination letter, and cites section 115(1) of the Code.

In Letter 2, the District Director of District 2 informed Z that it was not subject to federal income tax, stating that Z was an instrumentality of a state.

Y and Z formed X to combine or merge the educational research and related educational activities previously conducted separately by Y and Z. X's goal, as stated in the documents relating to its formation as a Pact, is to develop fundamental improvements in education and to conduct educational research to benefit the public and private schools, colleges, and universities of States 1, 2, 3, and 4 ("Schools"). X's activities include:

1. Participating in school reform by converging educational research into practical applications, providing knowledge and assistance to Schools.
2. Distributing educational knowledge to Schools through publications, conferences, seminars, and electronic networks.

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3. Helping to plan and execute long-term educational reform programs.
4. Implementing new curricula within school districts.
5. Conducting applied educational research on practical questions, such as how students learn and what is needed to implement schoolwide changes.
6. Providing strategic policy analysis, evaluating efforts to change, and developing educational products such as training modules, instructional videos, planning guides and casebooks.

The goals and activities of X are virtually identical to those of Y and Z.

X is funded by federal, state, and local government, as well as private foundations, which provide grants and research contracts. X conducts its activities throughout the United States, but concentrates them in States 1, 2, 3, and 4. X's activities are conducted exclusively by its own employees, who are hired and paid directly by X. X is controlled by a board of directors composed of all of the directors of Y and Z. The directors of Y and Z are appointed by the governing bodies or executive officer, as the case may be, of the public agencies that are the membership of Y and Z.

Section 115(1) of the Code provides that gross income does not include income derived from any public utility or the exercise of any essential governmental function and accruing to a state or any political subdivision of a state.

Rev. Rul. 71-589, 1971-2 C.B. 94, provides that the income from property held in trust by a city that was to be used by the city for certain charitable purposes is not subject to federal income tax. Although Rev. Rul. 71-589 does not explicitly so state, the holding in the revenue ruling means that a determination was made that the income in question was derived from the exercise of an essential governmental function and accrued to a political subdivision within the meaning of section 115(1) of the Code. Rev. Rul. 71-589 specifically mentions several types of functions that the trust might perform, such as support of a hospital, schools, maintenance of a park, or other purposes ordinarily recognized as municipal functions.

Rev. Rul. 90-74, 1990-2 C.B. 14, concerns an organization that is formed, operated and funded by political subdivisions to pool their casualty risks, or other risks arising from their obligations concerning public liability, workers' compensation, or employees' health. Rev. Rul. 90-74 states that the income of

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PLR-253942-96

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the organization is excluded from gross income under section 115(1) of the Code if private interests do not participate in the organization or benefit more than incidentally from the organization. In Rev. Rul. 90-74 the benefit to the employees of the political subdivisions was excepted as incidental.

Under Rev. Rul. 77-261, 1977-2 C.B. 45, the income from a fund, established under a written declaration of trust by a state for the temporary investment of cash balances of the state and its political subdivisions, which purchase units of participation and have an unrestricted right of withdrawal, is excludible from gross income. The fund, however, is classified as a corporation and must file a federal income tax return.

Providing the Schools of States 1, 2, 3, and 4 with X's services is an essential governmental function because it is of direct benefit to the agencies comprising the memberships of Y and Z. These agencies are engaged in providing educational services, independently of the activities of X, Y, and Z. The fact that the work-product of X may be shared with private schools within States 1, 2, 3, and 4 or the rest of the United States, or to nonprivate schools within the rest of the United States, is merely an incidental private benefit. There are no facts indicating that the work-product of X is not the proprietary material of X, Y, or Z.

Accordingly, the income of X is excludable from gross income under section 115 of the Code.

This ruling is directed only to the taxpayer that requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

PLR-251942-96

In accordance with the terms of a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours,

Acting Assistant Chief Counsel
(Financial Institutions & Products)

By: William E. Coppersmith
William E. Coppersmith
Chief, Branch 2

MAY-08-1997 08:40

IRS/CORP/TIC

202 222 2302 P. 07/13

Internal Revenue Service

Department of the Treasury

Index Number: 0115.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply to:

CC:DOM:FI&P:2 PLR-253942-96

Date: MAY 1 1997

X =

Y =

Z =

Pact =

Law 1 =

Law 2 =

Law 3 =

Law 4 =

Letter 1 =

Letter 2 =

District 1 =

District 2 =

State 1 =

State 2 =

State 3 =

State 4 =

This document may not be used or cited as precedent under Section 6110 (i) (3) of the Internal Revenue Code.

WestEd

JOINT POWERS AGREEMENT

December 1, 1995

JOINT POWERS AGREEMENT

Establishing Joint Powers Agency

WestEd

THIS AGREEMENT is entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article I of the California Government Code (the Joint Powers Act) and provides for the joint exercise of powers between Far West Laboratory for Educational Research and Development ("FWL") and Southwest Regional Laboratory for Educational Research and Development ("SWRL"):

WITNESSETH:

WHEREAS, the parties hereto, FWL and SWRL, find and determine that it is to the mutual benefit of the parties and in the best public interest that said parties, both defined as public entities under the Joint Powers Act, join together to establish a Joint Powers Act Agency to accomplish the purposes hereinafter set forth; and

WHEREAS,, the parties hereto, FWL and SWRL, find and determine that more effective services can be provided while improving efficiencies in operations and eliminating duplication of effort by joining together to conduct operations under the auspices of a new Agency; and

WHEREAS, the parties hereto, FWL and SWRL, find and determine that each party holds title to certain real property that is subject to grant conditions running to the respective party and it is desirable for each party to retain title to such property but to cooperate in the management of such real property; and

WHEREAS, the parties hereto, FWL and SWRL, find and determine that there remains a need to develop fundamental, significant improvements in education and to conduct educational research in order to solve the problems and to serve the needs of the public and private schools, colleges and universities of Arizona, California, Nevada and Utah; and

WHEREAS, the parties hereto, FWL and SWRL, have found that significant, fundamental improvements in education in Arizona, California, Nevada and Utah require thorough and complete planning and concentrated effort by the total community, including parents, local school board members, and the scientific, cultural, industrial sectors, as well as by the professional educators in schools, colleges, and universities; and

WHEREAS, the coordinating and cooperative efforts required of the public and private educational and research agencies are of such a magnitude that it is necessary for the parties to join together to establish an agency to be known as WestEd in order to accomplish the purposes set forth herein;

NOW, THEREFORE, the parties mutually agree as follows:

ARTICLE 1. TERMS OF AGREEMENT.

This Agreement shall be effective December 1, 1995 upon the execution hereof by FWL and SWRL, as attested by the signatures of execution on the final page hereof, and shall continue in effect until terminated as provided herein.

ARTICLE 2. NAME OF AGENCY.

FWL and SWRL hereby agree that a public agency, wholly separate and apart from FWL and SWRL, be and is hereby created under the aforesaid provisions of law, and shall hereafter be designated as "WestEd" and hereinafter referred to as "Agency,"

ARTICLE 3. CONTROL OF AGENCY.

The Agency shall be under the control of a Board of Directors, hereinafter referred to as the "Board,," who shall be the designated board members of FWL and SWRL and such additional members as may be appointed by the Board.

ARTICLE 4. NOTICES.

The Board, by resolution, shall designate a specific location at which it will receive notices, correspondence and other communications, and shall designate an officer for the purpose of receiving service on behalf of the Agency,

ARTICLE 5. MEETINGS.

The Board may hold special meetings as it may determine and shall hold regular meetings at least once every three months, The date, hour and place for each such regular meeting shall be fixed annually by resolution of said Board, which resolution shall be publicly posted for two weeks on the bulletin board regularly used for official notices by the Agency. The secretary to the Board shall cause to be kept minutes of its meetings, both regular and special,

ARTICLE 6. VOTING.

The presence of a majority of the directors then appointed shall be required in order to constitute a quorum necessary for the transaction of the business of the Board. No action of the Board shall be valid unless a majority of such quorum of directors then appointed concur therein by their votes.

ARTICLE 7. AFFIRMATIVE ACTION.

Selections of persons for appointment to the Board, and employment of persons in positions within the Agency will be conducted in a manner which ensures that there is no discrimination against any Board member or employee, or candidates for these positions, because of age, sex, race, color, religion, national origin, or handicap. Positive action will be taken to further and enhance the representation of women, members of minority groups, and handicapped persons on the Board and staff of the Agency.

ARTICLE 8. OFFICERS AND EMPLOYEES.

The Board shall annually elect a chairperson from its members,

The Board shall appoint, and fix and cause to be paid, the compensation of the Chief Executive Officer, who shall act as Chief Administrative Officer of the Agency, and who shall perform such other and further duties as may be determined by the Board.

The members of the Board, other than the Chief Executive Officer serving ex officio, shall serve without compensation but may be reimbursed for necessary expenses incurred in connection with attendance at meetings of the Board or for necessary expenses incurred in performing services on behalf of and at the prior and express request of the Board,

The appointees and employees of said Agency shall not be deemed by operation of this Agreement to be the employees of either FWL or SWRL, No member of the Board nor any officer, appointee, or employee of the Agency shall be entitled to any compensation or fringe benefits, including but not limited to sick leave, retirement, pension, or vacation, from FWL or SWRL by virtue of his or her office or employment by the Agency. Provided that nothing shall prohibit the Agency from contracting for the services of employees of FWL or SWRL, or of other institutions or organizations, and reimbursing them for the costs, including salaries and fringe benefits, involved in providing such services. Further provided that nothing herein shall prohibit the Agency and FWL or the Agency and SWRL from agreeing that employees of FWL or SWRL, respectively, may also be employees of the Agency,

ARTICLE 9. SCOPE OF POWERS.

(a) The Agency shall be an administrative, initiating, advisory, coordinating, and evaluating entity, The Agency shall have the power and authority to exercise any power common to the parties hereto, FWL and SWRL, and to exercise any power set forth in the California Government Code, Section 6508, provided that the same are for furtherance of the objectives of this Agreement as contained herein and in the recitals set forth above, and may to

the extent permissible thereunder, enter into contracts in its own name with persons and with public or private agencies, boards, and other entities all subject to the terms and conditions of this Agreement.

(b) Neither the Agency nor the Board shall have any power or authority to bind FWL, SWRL or the signatory parties to the Joint Powers Agreement creating FWL or SWRL to the debts, liabilities and obligations of the Agency and no debt, liability or obligation of the Agency shall be the debt, liability or obligation of FWL, SWRL or the signatory parties to the Joint Powers Agreement creating FWL or SWRL,

(c) Pursuant to Section 6509 of the California Government Code, the exercise of the powers of the Agency shall be in accordance with the manner of exercising such powers by FWL and SWRL, which is in accordance with the procedures followed by the Regents of the University of California.

(d) The Board shall adopt appropriate rules not inconsistent herewith for the orderly transaction of its business,

(e) The Agency shall have no power or authority to incur any obligations for itself or on behalf of FWL or SWRL in excess of the amount appropriated to its use by a funding source. Provided, however, the Agency is authorized to obtain funds for a short period of time to meet operational expenses from advances of funds from FWL or SWRL or from private lending sources.

(f) The Agency shall, without limitation, have the specific power to establish or contract with research centers and laboratories, to carry out or suggest experimental educational projects, to develop pilot educational programs, to conduct or authorize educational research and development including the development of all varieties of educational materials, teaching aids, and other educational components, to collect and disseminate educational information, to coordinate educational research programs, to develop educational prototypes, to evaluate educational programs and activities, and to engage in other similar, related activities.

ARTICLE 10. ADVISORY COUNCIL.

The Agency may from time to time establish and abolish one or more advisory councils to perform such functions as the Agency may determine.

ARTICLE II. INSURANCE.

The Agency shall insure itself, FWL, SWRL and the members of the Board from loss, liability, and claims arising out of or in any way connected with the performance of this Agreement.

ARTICLE 12. FUNDS AND EXPENDITURES.

(a) The Agency shall have the power and authority to receive, accept, and expend or disburse, funds by contract or otherwise, for purposes consistent with the provisions hereof, which funds may be provided by the United States Government, any State, or any subdivision of a State, and from any other person, agency or organization, whether public or private, for the purposes specified herein, and shall have the duty to maintain at all times a complete and accurate system of accounting for said funds.

(b) The Agency shall have the power and authority to receive, accept, and utilize the services of personnel offered by FWL or SWRL, or their representatives or agents; to receive, accept, and utilize property, real or personal, from FWL or SWRL, or their agents or representatives; and to receive, accept, and expend or disburse funds, by contract or otherwise, for purposes consistent with the provisions hereof, which funds may be provided by FWL or SWRL, or their agents or representatives, The Agency is authorized to enter into interagency agreements with state agencies pursuant to Section 6514.5 of the California Government Code.

(c) Each and every expenditure of funds shall be authorized or approved by the Board pursuant to a budget process as described in subsection (f) hereof, or by other appropriate procedures approved by the Board, and shall be audited by a firm of certified public accountants to be selected by the Board and paid by the Agency,

(d) The Agency shall have no power or authority to assess FWL or SWRL, the signatory parties to the Joint Powers Agreement creating FWL or SWRL or the members of the Board for dues or contributions of any kind whatsoever.

(e) The Board shall establish procedures for the investment or deposit of its funds.

(f) The Board shall adopt appropriate budgetary procedures, The Agency shall file annually with the designated representatives of FWL and SWRL a statement of the actual income and expenditures made during the prior fiscal year.

(g) The "fiscal year" of the Agency shall be December 1 to and including the following November 30, or such other annual period as may be prescribed from time to time by resolution of the Board,

ARTICLE 13. WITHDRAWAL OF PARTIES AND TERMINATION.

The powers and authority of the Agency shall continue until termination of this Agreement, The Agreement may be terminated at any time upon mutual written agreement of FWL and SWRL, Upon two (2) year's prior written notice, FWL or SWRL may withdraw from its status as a party to this Agreement, provided that at such time it has either discharged, or has arranged to the satisfaction of the remaining party for the discharge of, any pending obligations it expressly may have assumed hereunder, and that written notice of intention to so withdraw has been served. upon the effective date of withdrawal, the Joint Powers Agreement will terminate. Upon the termination date all contracts held by the Agency shall be assigned, to the extent permitted under the contract, to the party with primary duties under the contract or according to terms mutually agreed upon by FWL and SWRL.

ARTICLE 14. DISPOSITION OF PROPERTY AND FUNDS.

In the event of the final termination of this Agreement, any property interest remaining in the Agency following discharge of all obligations due by the Agency shall be disposed of by sale or other disposition according to law, and the proceeds, in cash or by their fair market value in kind at the time of final termination, distributed to FWL or SWRL in proportion to its respective contributions to the Agency.

ARTICLE 15. DISPUTE RESOLUTION.

Any dispute arising from disposition of assets of the Agency, assignment of contracts or any other matter related to this Agreement shall be resolved by alternative dispute resolution procedures, culminating in binding arbitration with a single neutral arbitrator in San Francisco, California, Neither party shall have the right to bring an action in court against the other party for any dispute arising from or related to this Agreement.

ARTICLE 16. AMENDMENTS.

This Agreement may be amended at any time by mutual agreement of FWL and SWRL according to the procedures of said parties, provided said amendment is to further carry out the purposes hereinabove expressed. Any such amendment shall be effective upon the date of final execution thereof by FWL and SWRL.

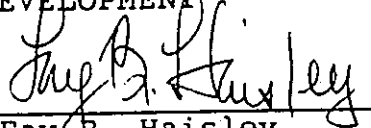
ARTICLE 17. SEVERABILITY.

Should any portion, term, condition, or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions shall not be affected thereby.

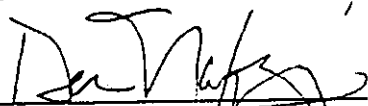
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their authorized officers thereunto duly authorized as set forth herein below.

FAR WEST LABORATORY
FOR EDUCATIONAL RESEARCH
AND DEVELOPMENT

BY:



Fay B. Haisley
Chair of Board

BY:



Dean Nafziger
Executive Director

SOUTHWEST REGIONAL LABORATORY
FOR EDUCATIONAL RESEARCH
AND DEVELOPMENT

BY:


Robert S. McCord
Chair of Board

BY:


Edwin Myers
Executive Director



ATTN: Krisha Dubreuil
New Hampshire Department of Education
101 Pleasant St.
Concord, NH 03301

OCTOBER 8, 2021

To Whom It May Concern:

I hereby certify that said authority has not been amended or repealed and remains in full force and effect as of the date of the contract to which this certificate is attached. I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that the person(s) listed above currently occupy the position(s) indicated and that they have full authority to bind the organization.

Signed: 
Michael Neuenfeldt, Oct 8, 2021 11:05 PDT

Michael J. Neuenfeldt, Deputy Chief Financial Officer

WestEd

Date: Oct 8, 2021

