



**REQUEST FOR PROPOSAL**

**2022-01-BACKGROUND CHECKS**

**CRIMINAL BACKGROUND CHECKS**

**February 11, 2022**

**Issued by:**



**New Hampshire  
Liquor Commission  
50 Storrs Street  
Concord, NH 03301**

## TABLE OF CONTENTS

<b>TABLE 1: SCHEDULE .....</b>	<b>1</b>
<b>PART I - GENERAL INFORMATION FOR PROPOSERS .....</b>	<b>2</b>
1. PURPOSE .....	2
2. ISSUING OFFICER.....	2
3. SCOPE OF WORK .....	2
4. ADDITIONAL REQUIREMENTS .....	3
<b>PART II - RFP TERMS AND INSTRUCTIONS.....</b>	<b>5</b>
1. TYPE OF CONTRACT .....	5
2. RFP INQUIRIES AND RESPONSES .....	5
3. STANDARD CONTRACT TERMS .....	5
4. AMENDMENT TO THE RFP.....	5
5. PROPOSAL FORMAT .....	5
6. PROPOSALS AND AWARDS: NON-EXCLUSIVE AGREEMENT.....	5
7. PROPOSAL SUBMISSION .....	6
8. PLANNED EVALUATIONS .....	7
9. INITIAL SCREENING.....	7
10. REVIEW OF TECHNICAL PROPOSALS .....	7
11. SCORING OF COST PROPOSALS .....	7
12. BEST AND FINAL OFFER .....	7
13. FINAL SELECTION .....	7
14. RIGHTS IN PROPOSAL EVALUATION AND CONTRACT NEGOTIATION.....	8
15. NON-COLLUSION .....	8
16. PROPERTY OF THE NHLC.....	8
17. CONFIDENTIALITY OF A PROPOSAL.....	8
18. PUBLIC DISCLOSURE .....	8
19. NON-COMMITMENT .....	9
20. PROPOSAL PREPARATION COST.....	9
21. ETHICAL REQUIREMENTS .....	9
22. CHALLENGES ON FORM OR PROCESS OF THE RFP .....	9
23. RESTRICTION OF CONTACT WITH NHLC EMPLOYEES.....	9
24. ELECTRONIC POSTING OF RFP RESULTS AND RESULTING CONTRACT.....	9
<b>PART III - INFORMATION REQUIRED FROM THE PROPOSER.....</b>	<b>10</b>
1. EXPERIENCE .....	10
2. PRICING.....	10
<b>PART IV – CRITERIA FOR SELECTION .....</b>	<b>11</b>
1. MANDATORY RESPONSIVENESS REQUIREMENTS .....	11
2. CRITERIA AND POINT ALLOCATIONS .....	11
<b>APPENDICES</b>	
APPENDIX A – GENERAL PROVISIONS, FORM P-37.....	13

**TABLE 1: SCHEDULE**

The following table sets forth the Schedule for this Request for Proposal (“RFP”). The Schedule is subject to change at the sole discretion of the New Hampshire Liquor Commission (“NHLC”). The NHLC will post any changes on its official website, [https://www.nh.gov/liquor/public\\_notices.shtml](https://www.nh.gov/liquor/public_notices.shtml) Proposers are responsible for monitoring the website for changes.

<b><u>Events</u></b>	<b><u>Responsibility</u></b>	<b><u>Date</u></b>
Request for Proposals Issued	NHLC	Friday, February 11, 2022
Deadline to Submit Inquiries By Electronic mail to NHLC Issuing Officer	Potential Respondents	Friday, February 25, 2022, by 2:00 p.m.
Anticipated Response Date to Inquiries	NHLC	Friday, March 4, 2022, by 4:00 p.m.
Deadline for Submission of Sealed Proposals	Proposers	Friday, March 25, 2022, by 2:00 p.m.

## **PART I - GENERAL INFORMATION FOR PROPOSERS**

### **1. PURPOSE**

The NHLC seeks to procure services for criminal background checks. The NHLC is issuing this Request for Proposal (RFP) as a vehicle for soliciting and evaluating proposals from interested companies with the goal of contracting with one certified Contractor (“Contractor” or “Proposer”).

### **2. ISSUING OFFICER**

The Issuing Officer responsible for managing the RFP process and the sole point of contact is:

Ms. Janet Donnelly, Paralegal  
NH Liquor Commission,  
50 Storrs Street  
Concord, NH, 03301  
(email: [janet.donnelly@liquor.nh.gov](mailto:janet.donnelly@liquor.nh.gov))

### **3. SCOPE OF WORK**

The scope of services shall include, but shall not be limited to, the following:

1. The contractor shall provide unlimited secure client code(s) to access the web based services with the ability to track reports ordered by each specific user. This access must allow for online information submission and reports with real-time (7 days a week/24-hours) results. The web-based software must be fully supported by the vendor.
2. The background check shall provide a comparison of the social security number and data from the credit bureaus to determine every name that a candidate has ever been known by (AKA’s), and run a search on each name found. The background check search must include, but is not limited to, the following:
  - National Criminal Records Search;
  - Statewide Criminal History/records;
  - National Sex Offender record;
  - Department of Correction records from all states;
  - Government Watch List;
  - OIG Sanctions list;
  - OFAC list of the Specially Designated Nationals and Blocked Persons;
  - Denied Persons List;
  - FDA Debarment List;
  - County criminal records from all states;
  - National Security sources
3. Provide customized, confidential management reports that are printable and federally compliant.
4. Training will be provided either through a webinar or onsite.
5. The contractor must be able provide NHLC immediate record response.

6. NHLC must be able to have multi-users in the contractor's database that are able to perform background checks at the same time.
7. The contractor must be in compliance with all State and Federal Laws.
8. The contractor must deliver any of the 613 notification and/or re-verification on all background searches.
9. The contractor must assist with the Pre-Adverse & Adverse Action letter templates.
10. The contractor must handle customer disputes.
11. The contractor must have On-line web application available 24/7 that is easy to use.
12. The contractor must send "real-time" email notifications to NHLC.
13. The contractor must communicate all Compliance notifications via email and customer service newsletters to NHLC.
14. The contractor must provide exceptional customer service with a dedicated account representative available: Monday – Friday 8:00am – 4:00pm EST.

#### **4. ADDITIONAL REQUIREMENTS**

1. Contractor shall secure and pay for all permits, inspections, and licenses necessary for the execution of work.
2. Contractor shall perform all work according to the best practices and standards of the trade and in accordance with the local, state and federal codes.
3. Contractor shall complete work to the satisfaction of the NHLC and in accordance with the specifications herein mentioned, at the price herein.
4. Major projects or services shall require an estimate prior to work commencing, which estimate shall be provided at no charge to the NHLC.
5. Normal Working Hours: Normal hours are considered to be 8:00 AM to 5:00 PM, Monday through Friday.
6. Other Hours: Other hours shall be considered overtime, holidays, and weekends.
7. Contractor shall take all responsibility for work under this contract, for the protection of the work, and for preventing injuries to persons and damage to property and utilities on or about the work. The Contractor shall in no way be relieved of its responsibility by any right of the NHLC to give permission or issue orders relating to any part of the work, or by any such permission given on orders issued or by failure of the NHLC to give such permission or issue such orders.

8. Contractor shall bear all losses on account of the amount or character of the work performed, or because the nature in which the work performed is different from what was estimated or expected, or on account of the weather, elements, or other causes.
9. Contractor's staff shall consist of qualified technicians who are completely familiar with the products and equipment they shall use. The NHLC Contracting Officer(s) may require the Contractor to dismiss such employees as they deem incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work is deemed to be contrary to the public interest or inconsistent with the best interest of security.
10. Contractor or staff shall not represent themselves as employees or agents of the State.
11. While on the NHLC property, Contractor's staff shall be subject to control of the State, but under no circumstances shall such staff be deemed to be employees of the State or NHLC.
12. Any Contract resulting from this RFP shall not, in whole or in part, be subcontracted, assigned, or otherwise transferred to any other Contractor without prior written approval by the NHLC. In the event the NHLC approves the use of a subcontractor, the Contractor shall be directly responsible for subcontractor's performance and work quality. Subcontractors must abide by all terms and conditions under this RFP and any resulting contract.

## PART II - RFP TERMS AND INSTRUCTIONS

### 1. TYPE OF CONTRACT

Any contract resulting from this RFP shall be structured as a not-to-exceed contract.

### 2. RFP INQUIRIES AND RESPONSES

All inquiries concerning this RFP, including requests for clarifications, requests for changes to the RFP, and questions regarding New Hampshire Form P-37, which is attached to this RFP as **Appendix A**, shall be submitted via email to Janet.Donnelly@liquor.nh.gov, who shall be the Issuing Officer and single point of contact for this RFP. Proposers shall not contact the Issuing Officer by phone. Proposers shall not contact the issuing officer after the close of the proposal inquiry period. **All inquiries must be received by the RFP Issuing Officer no later than 2:00 p.m. on Friday, February 25, 2022.** The NHLC may exercise its discretion in determining whether to provide an answer to inquiries received after the close of the proposer inquiry period.

The NHLC intends to issue responses to inquiries on or before the date specified in the Schedule; however, this date is subject to change at the NHLC's discretion. The NHLC may consolidate or paraphrase questions for efficiency and clarity. The NHLC may amend this RFP on its own initiative or in response to issues raised by inquiries. Oral statements, representations, clarifications, or modifications shall not be binding upon the NHLC. The NHLC will post responses at: [https://www.nh.gov/liquor/public\\_notices.shtml](https://www.nh.gov/liquor/public_notices.shtml). Proposers are responsible for viewing updated information online before submitting a proposal.

### 3. STANDARD CONTRACT TERMS

The NHLC may consider modifications of State Form P-37. To the extent that a Proposer believes that exceptions to the P-37 are necessary, **the Proposer shall raise those issues during the RFP Inquiry and Response Period by requesting an exception to the provision at issue.** The NHLC will review requested exceptions and accept, reject, or note that it is open to negotiation of the proposed exception. The NHLC will provide notice to all potential Proposers of the exceptions that have been accepted or deemed negotiable. In no event is a Proposer to submit its own standard contract terms and conditions as a replacement for the State's terms in response to this solicitation.

### 4. AMENDMENT TO THE RFP

The NHLC may amend this RFP at any time. The NHLC will post any amendments on its website: [https://www.nh.gov/liquor/public\\_notices.shtml](https://www.nh.gov/liquor/public_notices.shtml). In the event of an amendment, the NHLC may extend deadlines and/or invite submission of additional information. Proposers are responsible for checking the website periodically for any new information or amendments.

### 5. PROPOSAL FORMAT

Proposers must submit a complete response to this RFP using the format specified in Part III. An official authorized to bind the proposer to its proposal must sign the proposal.

### 6. PROPOSALS AND AWARDS; NON-EXCLUSIVE AGREEMENT

The NHLC intends to award a contract to one proposer. Notwithstanding the foregoing or any provision of this RFP to the contrary, the NHLC reserves the right, at any time and in its sole discretion, to reject any or all proposals, wholly or in part, and/or to award multiple contracts to one or more proposers, wholly or in part. A contractor will not retain any exclusive rights to provide the services and supplies described in this RFP.

## 7. PROPOSAL SUBMISSION

1. **Proposal Submission Deadline:** Proposals must be submitted in hard copy marked “New Hampshire Liquor Commission, Response to RFP 2022-01-BACKGROUND CHECKS.” Proposals must be submitted to the NHLC no later than the Closing Date and Time in Table 1: *Schedule*. Any proposer that elects to mail its proposal must allow sufficient mail delivery time. The NHLC accepts no responsibility for mislabeled, damaged, or delayed mail. Proposals will not be accepted via email or facsimile transmission.

If due to inclement weather or any other cause, the location to which proposals are to be returned is closed on the Closing Date and Time in Table 1: *Schedule*, the deadline for submission shall be automatically extended until the next day the office is open, unless the respondents are otherwise notified. The NHLC will reject proposals not submitted by the Closing Date and Time or as otherwise extended.

2. **Proposal Receipt:** A proposal will be considered received on the date and time of the NHLC’s receipt as officially documented by the NHLC.

3. **Proposal Information:**

- i. Proposals shall be delivered to the address below and identified on the envelope as:

Proposals:           New Hampshire Liquor Commission  
                              ATTN: “Janet Donnelly, RFP 2022-01-BACKGROUND CHECKS”  
                              50 Storrs Street  
                              Concord, NH 03301

From:                 Company/Proposer Name  
                              Address of Proposer  
                              Phone No. Of Proposer  
                              Fax No. of Proposer  
                              Email Address of Proposer:

All Proposals submitted must consist of:

1. One (1) original (clearly identified as such) and three (3) copies of the “Technical Proposal,” including all required attachments; and
  2. One (1) original Cost Proposal in a separate and **sealed** envelope labeled “COST PROPOSAL.”
- ii. Proposers must provide all information requested in this RFP. If the Proposer’s response does not comply with the conditions for submittal to this RFP, the NHLC may reject it.
  - iii. The contents of the proposal of the successful proposers(s) will become contractual obligations, except to the extent the contents are changed through best and final offers or contract discussions. The finalized and approved contract language shall prevail over the proposal in the event of any inconsistency or ambiguity;
  - iv. In submitting the proposal, the Proposer agrees that the proposal will remain valid for one hundred eighty (180) calendar days after the closing date for submission of proposals and may be extended beyond that by mutual agreement.



8. **PLANNED EVALUATIONS**

The NHLC will use the following process:

- Initial screening for compliance with submission requirements;
- Evaluation of Technical Proposals and scoring;
- Review of Cost Proposals and final scoring;
- Best and Final Offer (BAFO), if deemed beneficial; and
- Select the highest scoring Proposer and begin contract negotiation.

9. **INITIAL SCREENING**

The NHLC may reject a proposal that fails to satisfy minimum requirements.

10. **REVIEW OF TECHNICAL PROPOSALS**

The NHLC will select an evaluation team to score Technical Proposals.

11. **SCORING OF COST PROPOSALS**

The evaluation team will unseal and review Cost Proposals after scoring the other criteria. Each Cost Proposal will be scored according to the following formula:

$$\text{Vendor's Cost Proposal Score} = \left( \frac{\text{Lowest Proposed Cost}}{\text{Vendor's Proposed Cost}} \right) \times \text{Total Possible Points}$$

Proposers are advised that this **is not a lowest bid award** and that the score of the Cost Proposal will be combined with the other categories to determine the highest-scoring Proposer.

12. **BEST AND FINAL OFFER**

Upon completion of the scoring process, the NHLC may, at its sole discretion, invite the highest-scoring Proposers to submit a “Best and Final Offer” (BAFO). The NHLC will provide a deadline for the submission of BAFOs and may uniformly communicate any price target(s) that it is seeking. Each invited Proposer is limited to one BAFO. A Proposer’s BAFO shall amend its initial price proposal only. The BAFO shall not alter the substance of the technical proposal. All restrictions on contact with NHLC employees shall remain in effect. Upon receipt of BAFOs, the NHLC will substitute the Proposer’s original pricing with its BAFO pricing and then re-score based on the BAFO pricing. The NHLC will not select a Proposer based on the lowest-priced BAFO. A final selection, if any, shall be based on the combined score of the technical proposal and BAFO pricing. In the event of a BAFO, only those Proposers invited to submit a BAFO will be considered for award.

13. **FINAL SELECTION**

If the NHLC elects to make an award, the NHLC will issue an “intent to negotiate” notice to the highest-scored Proposer. Should the NHLC be unable to reach agreement with the selected Proposer, the NHLC may negotiate with the second preferred Proposer and so on, or the NHLC may reject all proposals, cancel this RFP, or solicit Proposals under a new procurement process.

**14. RIGHTS IN PROPOSAL EVALUATION AND CONTRACT NEGOTIATION**

The NHLC reserves the right to:

- a. Make independent investigations and consider any source of information, including but not limited to, State employees, previous customers, internet research, and rating agencies;
- b. Request additional information to clarify elements of a Proposal;
- c. Waive minor or immaterial deviations from the RFP, if in the best interest of the State;
- d. Omit any planned evaluation step if, in the NHLC's view, the step is not needed;
- e. At its sole discretion, reject any and all Proposals at any time; or
- f. Cancel this RFP.

**15. NON-COLLUSION**

The Proposer's signature on a Proposal guarantees that the prices, terms and conditions, and work quoted have been established without collusion with other Proposers and without effort to preclude the NHLC from obtaining the best possible competitive Proposal.

**16. PROPERTY OF THE NHLC**

All material received in response to this RFP shall become the property of the NHLC and will not be returned to the Proposer. Upon Contract award, the NHLC reserves the right to use any information presented in any Proposal.

**17. CONFIDENTIALITY OF A PROPOSAL**

Unless necessary for contract approval, the substance of a proposal must remain confidential until the Effective Date of any Contract resulting from this RFP. A Proposer's disclosure or distribution of Proposals other than to the NHLC will be grounds for disqualification.

**18. PUBLIC DISCLOSURE**

In order to protect the integrity of the bidding process, notwithstanding RSA 91-A:4, no information shall be available to the public, or to the members of the general court or its staff concerning this procurement from the time the request is made public until the RFP closing date.

The content of each Proposal shall become public upon the award of any resulting Contract. **Any information submitted as part of a response to this request for proposal (RFP) may be subject to public disclosure under RSA 91-A.** However, business financial information and proprietary information such as trade secrets, business and financial models and forecasts, and proprietary formulas may be exempt from public disclosure under RSA 91-A:5, IV. If you believe any information being submitted should be kept confidential as financial or proprietary information; you must specifically identify that information in a letter to the agency, and must mark/stamp each page of the materials that you claim must be exempt from disclosure as "CONFIDENTIAL." A designation as confidential by the Proposer does not have the effect of making such information exempt. The NHLC will determine the information it believes is properly exempt. Marking an entire Proposal or entire sections (*e.g.* pricing) as confidential will not be accepted. Notwithstanding any provision of this RFP to the contrary, Proposer pricing will be subject to disclosure upon approval of the contract. The NHLC will endeavor to maintain the confidentiality of portions of the Proposal that are clearly and properly marked confidential.

If a request is made to the NHLC to view portions of a Proposal that the Proposer has properly and clearly marked confidential, the NHLC will notify the Proposer of the request and of the date the NHLC plans to release the records. By submitting a Proposal, Proposers agree that unless the

Proposer obtains a court order, at its sole expense, enjoining the release of the requested information, the NHLC may release the requested information on the date specified in the NHLC's notice without any liability to the Proposers.

**19. NON-COMMITMENT**

This RFP does not commit the NHLC to award a Contract. The NHLC reserves the right, at its sole discretion, to reject any and all Proposals, or any portions thereof, at any time; to cancel this RFP; and to solicit proposals for the same or similar service(s) under a new acquisition process.

**20. PROPOSAL PREPARATION COST**

By submitting a Proposal, a Proposer agrees that in no event shall the NHLC be either responsible or liable for any costs incurred by a Proposer in the preparation of or in connection with the Proposal, or for Work performed prior to the Effective Date of a resulting Contract.

**21. ETHICAL REQUIREMENTS**

From the time this RFP is published until contract award, no Proposer shall offer or give, directly or indirectly, any gift, expense reimbursement, or honorarium, as defined by RSA 15-B, to any elected official, public official, public employee, constitutional official, or family member of any such official or employee who will or has selected, evaluated, or awarded an RFP, or similar submission. Any Proposer that violates RSA 21-G:38 shall be subject to prosecution for an offense under RSA 640:2. Any Proposer convicted of an offense based on conduct in violation of this section, which has not been annulled, or that is subject to a pending criminal charge, shall be disqualified this RFP or any RFP or similar request for submission issued by any state agency.

**22. CHALLENGES ON FORM OR PROCESS OF THE RFP**

Within five business days of the NHLC's posting of its selection on its website, dissatisfied proposers may, in accordance with RSA 21-G:37, request that the agency review its procurement process. The request must be in writing and must specify all points on which the proposer believes the agency erred. The request may not include substantive information not contained in the proposer's original proposal. The agency shall respond within 5 business days of receipt. By submitting a proposal, the proposer waives any challenges to the agency's authority to conduct this procurement or to the form and procedures set forth in this RFP.

**23. RESTRICTION OF CONTACT WITH NHLC EMPLOYEES**

From the date of release of this RFP until an award is announced, all communication regarding this RFP with NHLC employees or other vendors under contract with the NHLC is forbidden. NHLC employees have been directed not to hold conferences or engage in discussions concerning this RFP with any potential contractor during the selection process. Proposers may be disqualified for violating this restriction on communications.

**24. ELECTRONIC POSTING OF RFP RESULTS AND RESULTING CONTRACT**

Upon receipt of proposals, the Agency will post the number of responses received with no further information. No later than five (5) business days prior to final Agency approval, or submission of a contract to the Department of Administrative Services, the Agency will post the name, rank or score of each vendor. **By submitting a proposal, vendors acknowledge and agree that any contract resulting from this RFP will be made accessible to the public online.**

## PART III - INFORMATION REQUIRED FROM THE PROPOSER

Proposals must be submitted in the following format, including heading descriptions:

### 1. EXPERIENCE

#### A. Company Profile and Experience

Describe the company's background and its experience providing background checks and related services. Include the following information:

- Full legal company name;
- Year business started;
- If applicable, information on any parent or subsidiary relationships;
- State of formation;
- Location of headquarters;
- Current number of individuals employed; and
- Relevant licenses or certifications held.

#### B. Company Capability

Describe how your company intends to provide the NHLC with the deliverables set forth in Section I above, include in your description an overview of your company's capability to provide numerous individual background checks each day. Also provide a detailed summary of your company's experience providing background check services to commercial and governmental clients. Include examples of current retail business and government entity clients most similar in size and scope to the NHLC. Provide three (3) customer references, including the name, current address and telephone number of the responsible official who may be contacted by the NHLC.

### 2. PRICING

#### Cost Breakdown

##### A. Year one (6/30/22 through 6/29/23)

- Price per background check: \$\_\_\_\_\_ each.

##### B. Year two (6/30/23 through 6/29/24)

- Price per background check: \$\_\_\_\_\_ each.

##### C. Year three (6/30/24 through 6/30/25)

- Price per background check: \$\_\_\_\_\_ each.

## **PART IV - CRITERIA FOR SELECTION**

### **1. MANDATORY RESPONSIVENESS REQUIREMENTS**

To be eligible for selection, a proposal must be:

1. Timely received; and
2. Properly signed by the Proposer's authorized representative.

The NHLC reserves the right, in its sole discretion, to waive technical or immaterial nonconformities in a proposal.

### **2. CRITERIA AND POINT ALLOCATIONS**

The following criteria will be used in evaluating each proposal:

**Pricing (45 Points)** – This refers to the costs provided by the proposer in response to the Pricing information required in Part III, Section 11 above. Of the 45 available points, each of the three years will be worth 15 points.

**Company Profile and Experience (25 points)** – This refers to the Proposer's organizational structure and history and capability to provide the work requested.

**Capability (30 points)** – This refers to the Proposer's prior experience performing the services listed within, including serving other clients with similar needs and product quality.

# APPENDICES

**APPENDIX A**

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

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

**AGREEMENT**

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

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name		1.2 State Agency Address	
1.3 Contractor Name		1.4 Contractor Address	
1.5 Contractor Phone Number	1.6 Account Number	1.7 Completion Date	1.8 Price Limitation
1.9 Contracting Officer for State Agency		1.10 State Agency Telephone Number	
1.11 Contractor Signature  <p align="right">Date:</p>		1.12 Name and Title of Contractor Signatory	
1.13 State Agency Signature  <p align="right">Date:</p>		1.14 Name and Title of State Agency Signatory	
1.15 Approval by the N.H. Department of Administration, Division of Personnel <i>(if applicable)</i>  By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) <i>(if applicable)</i>  By: _____ On: _____			
1.17 Approval by the Governor and Executive Council <i>(if applicable)</i>  G&C Item number: _____ G&C Meeting Date: _____			

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

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**

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

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

**4. CONDITIONAL NATURE OF AGREEMENT.**

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

**5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.**

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

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

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

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

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

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

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

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



**7. PERSONNEL.**

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

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

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

**8. EVENT OF DEFAULT/REMEDIES.**

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

8.1.1 failure to perform the Services satisfactorily or on schedule;

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

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

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

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

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

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

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

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

**9. TERMINATION.**

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

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

**10. DATA/ACCESS/CONFIDENTIALITY/ PRESERVATION.**

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

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

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

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

**12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.**

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

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

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

**14. INSURANCE.**

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

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

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

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

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

**15. WORKERS' COMPENSATION.**

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

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner

described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

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

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

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

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

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

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

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

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

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