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State Responses to 2023-078 Adult Education Data System  
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Section	Submitted Question	State Response
General	Can you please provide your reasoning for replacing the current legacy system, LiteracyPro LACES?	The State of New Hampshire requires all services to be procured through a competitive bidding process.
Section 1.2 Schedule of Events pg. 7	Would the State consider granting a 2-week extension?	No because it can take up to 8 weeks for a contract to be approved by the Governor & Council and the current contract expires on June 30, 2023.
Section 2.3 Electronic Proposals, pg 8	There's a 10mb size limit on submitted response files. Are we allowed to submit compressed (.zip) files, in the event that our files exceed this size?	The Bureau prefers that you submit the proposal in multiple emails (labeled as x of y) with attachments that do not exceed the maximum amount. Oversize files risk being rejected by the State servers and not delivered to the intended recipient.
Section 2.5 Vendor Inquiries, pg. 9	RFP states The State's final response to Vendor inquiries and any requested changes to terms and conditions raised during the Vendor Inquiry Period will be posted to the DAS Website by the date specified as the final State responses to Vendor inquiries as specified in the Schedule of Events. Will answers be posted as they come in, or only on 4/26?	All of the State's official responses will be posted in one document. The State will post those in accordance with the Schedule.

<p>Section 5.5.1 Disclosure of Information Submitted in Response to RFP, pg 19</p>	<p>Please clarify the requirements with regard to marking confidential information, are we to interpret there to be 3 methods for marking proprietary content:  1) "CONFIDENTIAL" on pages  2) separate table with details &amp; rationale  3) fully redacted copy to be delivered with our response</p>	<p>This is correct.</p>
<p>Section 5.5.1 Disclosure of Information Submitted in Response to RFP, pg 19</p>	<p>Should the letter designating confidentiality be included in the RFP response?</p>	<p>Yes.</p>
<p>Section 5.5.1 Disclosure of Information Submitted in Response to RFP, pg 19</p>	<p>Just to clarify, as per Section 5.5, "The Right-to-Know law (RSA 91-A) obligates the State to conduct an independent analysis of the confidentiality of the information submitted, regardless of whether it is marked confidential." Will NH be reviewing and enforcing this? (Our experience is that some vendors redact a majority of their proposal).</p>	<p>Yes, the State conduct an independent analysis.</p>
<p>Section 5.5.1 Disclosure of Information Submitted in Response to RFP, pg. 19</p>	<p>Should the redacted copy and justification be sent to you as well as being included in the official response?</p>	<p>The redacted copy and the list of pages with the rationale should be clearly marked as such and submitted with the proposal.</p>
<p>Section 5.5.1 Disclosure of Information Submitted in Response to RFP, pg. 19</p>	<p>We plan to submit our recent tax filing. As you can imagine, this is very sensitive information. Will you please confirm that this information will be considered confidential and proprietary, that it will be approved for redaction, and that it will not be accessible to the public - including via the Freedom of Information Act? We are pretty sure that this is the case and we believe that it is stated as such in the RFP but we want to be absolutely certain this information will remain private and confidential.</p>	<p>Please mark and detail confidential information in accordance with Section 5.5.1.</p>
<p>6.3 Anticipated Contract Term pg. 23  B-1 Statement of Work, pg. 28</p>	<p>The Effective Date and implementation data are both 7/1/2023. Please clarify contract and implementation dates.</p>	<p>Section 6.3, paragraph 2 should read "The initial Contract term will begin on the Effective Date and extend through June</p>

		<p>30, 2028. This will be corrected in Addendum 2.</p> <p>The effective date is July 1, 2023 or upon Governor &amp; Council approval, whichever is later.</p> <p>The solution must be implemented by July 1, 2023 <u>or</u> contain a transition period that will not delay required federal and state reporting due on October 1, 2023.</p>
Appendix B Statement of Work pg. 28	Depending on current implementation date, when will the training need to occur?	It is the responsibility of the vendor to propose a transition plan including training prior to “going live”.
Appendix B Section B-1 Statement of Work, pg. 28	The State office must be able to audit data entry to ensure compliance with the NH Data and Assessment policy and to identify common errors to address through technical assistance. Could you provide an example of what is meant by the ability “to identify common errors to address through technical assistance.”?	The Bureau uses audit logs to ensure that data is being entered within the time frame required in the Data Policy. The Bureau provides technical assistance to programs and or individuals who are not meeting that requirement. Additionally, when there is a pattern of common errors identified, the Bureau provide technical assistance to address the errors.
Appendix B Section B-5 Activity, Deliverable or Milestone, pg. 29	Must vendors submit the required plans with the proposal response or upon contract award?	The Table B-3 Deliverables must be submitted with the proposal. An electronic copy is available as a spreadsheet in the Business and Technical Requirements Workbook.

Appendix C, C-2.2 State Personnel and Training, Topic 12, pg 31	How many staff will require pre-deployment system training?	There are two State staff and at least one Data Entry Specialist in each local adult education center. There are currently 37 centers, but all adult education center programs are currently in open competition and that number may change by July 1, 2023.
Appendix C, pg 31	If our auxiliary content does not fit within the required page limits are we able to attach elsewhere?	As stated in Appendix C, vendors must limit narrative responses describing the Software, Technical, Services and Project Management to the page limit listed. In the event that the response exceeds the page limit, the State will limit its consideration to the prescribed page limit.
Appendix C, Topic 4 pg. 33 Appendix C, Topic 13 pg. 37	Both sections as for available Documentation supporting the system. Do you want the same information in both places or in Topic 13, can we simply refer back to the items provided in Topic 4?	You may refer back to the items in Topic 4.
Appendix C, Topic 10 pg. 36	Do you have a preferred hosting solution?	It is the vendor's responsibility to identify the hosting solution.
Appendix E, Pricing	May we include a budget narrative to be added to this pricing document with more detailed information about pricing and assumptions made pertaining to the pricing model.	You may include a budget narrative.
Appendix E pg. 47	Is the State willing to provide an estimated budget for this opportunity?	It is the responsibility of the vendor to propose the best pricing available.
Appendix E, Table 1.6, pg. 50	Table E-1.6 requires a summary of previous table. Item 2 asks for Hardware Pricing (total from Hardware Pricing Worksheet). But	This RFP is for a web-based system and therefore the Hardware Pricing Worksheet was

	there is no Hardware Pricing Worksheet.	removed from the template.  Addenda 2 will correct the Table E-1.6 by removing line 2.
Appendix H pg. 56  Sample Contract	Please clarify – Sample contract documents states that the Terms and Definitions is Exhibit F but it appears to be labeled Exhibit H instead.	In the RFP, Appendix H contains the Terms and Conditions.  When a Contract is drafted, the Terms and Definitions will be Exhibit F.
Sample Contract, Section 9.2.3, pg. 12	Please confirm that transition services will be limited to providing the State with a full and complete copy of the data.	Transition services will include a copy of the data, but may also include additional services required to end out the program year in order to submit the federal reports accurately.
Sample Contract, P-37 Agreement  Section 4 Conditional Nature of Agreement	Requested change:  <b>4.</b> Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part, the State shall have the right to withhold payment until such funds become available, if ever, and State <u>or Contractor</u> shall have the right to reduce or terminate the Services under this Agreement immediately upon giving <u>or receipt the Contractor notice</u> of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account	This is negotiable at time of contract.

	identified in block 1.6 in the event funds in that Account are reduced or unavailable.	
Sample Contract, P-37 Agreement  Section 5 Contract Price/Price Limitation/ Payment	Requested change:  Remove Section 5.3	This is not acceptable.
Sample Contract, P-37 Agreement  Section 6 Compliance by Contractor with Laws and Regulations/Equal Employment Opportunity	Requested change:  6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws and the Governor’s order on Respect and Civility in the Workplace, Executive order 2020-01. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also <del>comply</del> <u>not knowingly infringe</u> with <del>all</del> <u>any</u> applicable intellectual property laws.	This is negotiable at the time of contract.
Sample Contract, P-37 Agreement  Section 6 Compliance by Contractor with Laws and Regulations/Equal Employment Opportunity	Requested change:  6.4. The Contractor agrees to permit the State or United States access to any of the Contractor’s <u>relevant</u> books, records and accounts for the purpose of ascertaining compliance with this Agreement and all rules, regulations and orders pertaining to the covenants, terms and conditions of this Agreement.	This is negotiable at time of contract.
Sample Contract, P-37 Agreement  Section 6 Compliance by Contractor with Laws and Regulations/Equal Employment Opportunity	Requested change:  6.4. The Contractor agrees to permit the State or United States access to any of the Contractor’s books, records and accounts for the purpose of ascertaining <u>payments received by Contractor</u> <del>compliance with this Agreement and all rules, regulations and</del>	This is negotiable at time of contract.

	<del>orders pertaining to the covenants, terms and conditions of this Agreement.</del>	
Sample Contract, P-37 Agreement  Section 8 Event of Default/Remedies	Requested change:  <b>8.1.1</b> failure to perform the Services <del>pursuant to the terms of this Agreement</del> <u>satisfactorily or on schedule</u> ;  <b>8.1.3</b> failure to <u>materially</u> perform any other covenant, term or condition of this Agreement.  <b>8.2.2</b> give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement <u>until Contractor cures the Event of Default. 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</u> ;  <b>8.2.3</b> 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 <u>which is not cured by Contractor within thirty (30) calendar days</u> ; and/or  <b>8.2.4</b> 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 <u>if Contractor fails to cure the Event of Default within thirty (30) calendar days. or in equity, or both.</u>	These changes are not acceptable.
Sample Contract, P-37 Agreement  Section 8 Event of Default/Remedies	Requested change:  8.1.1 <u>material</u> failure to perform the Services <del>satisfactorily or on schedule pursuant to the applicable Statement of Work</del> ;	This is negotiable at time of contract.
Sample Contract, P-37 Agreement	Requested change:  Remove sections 8.2.2, 8.2.3 and 8.2.4.	This is not acceptable.

<p>Section 8 Event of Default/Remedies</p>		<p>1. The State is willing to agree to a 5 day cure period. 2. The State cannot agree to remove 8.2.3 or 8.2.4.</p>
<p>Sample Contract, P-37 Agreement</p> <p>Section 10 Property Ownership/Disclosure</p>	<p>Requested change:</p> <p>10.2 <del>Excluding Contractor IP (as defined below), a</del>All data and any Property which has been received from the State, or purchased with funds <del>solely and exclusively for the State provided for that purpose under this Agreement</del>, 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.</p>	<p>This is negotiable at time of contract.</p>
<p>Sample Contract, P-37 Agreement</p> <p>Section 10 Property Ownership/Disclosure</p>	<p>Requested change:</p> <p>10.4.1 In the event of the unauthorized release of Confidential Information, Contractor shall immediately notify the State's Chief Information Security Officer, and <del>if the unauthorized release was the direct result of Contractor's intentional or willful misconduct or failure to implement the technical and organizational safeguards to protect such information then</del> the State may immediately be entitled to pursue any remedy at law and in equity, including, but not limited to, injunctive relief.</p>	<p>This is not acceptable. The Vendor must provide notice of an unauthorized release.</p>
<p>Sample Contract, P-37 Agreement</p> <p>Section 10 Property Ownership/Disclosure</p>	<p>Requested change:</p> <p>10.7 Contractor Confidential Information. Contractor shall clearly identify in writing all information it claims to be confidential or proprietary upon providing such information to the State. For the purposes of complying with its legal obligations, the State is under no obligation to accept the Contractor's designation of material as confidential. Contractor acknowledges</p>	<p>This is negotiable at time of contract.</p>



	<p>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. <u>The same use and nondisclosure obligations imposed on Contractor with respect to State Confidential Information, shall be applicable to State with respect to Contractor’s Confidential Information.</u></p>	
<p>Sample Contract, P-37 Agreement</p> <p>Section 10 Property Ownership/Disclosure</p>	<p>Requested change:</p> <p>Remove Section 10.9</p>	<p>This is negotiable at time of contract.</p>
<p>Sample Contract, P-37 Agreement</p> <p>Section 12 Assignment/ Delegation/ Subcontracts</p>	<p>Requested change:</p> <p>12.1 Contractor shall provide the State written notice <del>at least fifteen (15) calendar days before</del> <u>upon</u> any <del>proposed</del> assignment, delegation, or other transfer of any interest in this Agreement. No such assignment, delegation, or other transfer shall be effective without the written consent of the State; <u>provided, however, that Contractor may assign this Agreement without obtaining consent in the event of a merger, acquisition, or sale of all or substantially all of its assets.</u></p>	<p>This is not acceptable.</p>
<p>Sample Contract, P-37 Agreement</p>	<p>Requested change:</p>	<p>This is not acceptable.</p>

<p>Section 13 Indemnification</p>	<p><b>13.</b> The Contractor shall indemnify, defend, and hold harmless the State, its officers, and employees from and against all actions, claims, damages, demands, judgments, fines, liabilities, losses, and other expenses, including, without limitation, reasonable attorneys' fees, arising out of or relating to this Agreement directly <del>or</del> <del>indirectly</del> arising from death, personal injury, property damage, intellectual property infringement, or other claims asserted against the State, its officers, or employees caused by the acts or omissions of <u>gross</u> negligence, reckless or willful misconduct, or fraud by the Contractor, its employees, agents, or subcontractors. <u>Contractor shall not indemnify the State for any of the claims contained within this Section if the claims arose from or were caused by the acts or omissions of the State.</u></p> <p>The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the State's sovereign immunity, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.</p>	
<p>Sample Contact, P-37 Agreement</p> <p>Section 13 Indemnification</p>	<p>Requested change:</p> <p><b>13. INDEMNIFICATION.</b> The Contractor shall indemnify, defend, and hold harmless the State, its officers, and employees from and against all <u>third party</u> actions, claims, damages, demands, judgments, fines, liabilities, losses, and other expenses, including, without limitation, reasonable attorneys' fees, arising out of or relating to this Agreement directly or indirectly arising from death, personal injury, property damage, intellectual property infringement, or other claims asserted against the State, its officers, or employees caused by the acts or omissions of negligence, reckless or willful misconduct, or fraud by the</p>	<p>This is not acceptable.</p>

	<p>Contractor, its employees, agents, or subcontractors. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the State's sovereign immunity, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.</p>	
<p>Sample Contact, P-37 Agreement</p> <p>Section 16 Waiver of Breach</p>	<p>Requested change:</p> <p><b>16. WAIVER OF BREACH.</b> A <u>State's party's</u> failure to enforce its rights with respect to any single or continuing breach of this Agreement shall not act as a waiver of the right of the <u>State-party</u> to later enforce any such rights or to enforce any other or any subsequent breach.</p>	<p>This is negotiable at the time of contract.</p>
<p>Sample Contact, P-37 Agreement</p> <p>Section 26 Exhibits/ Attachments</p>	<p>Requested change:</p> <p>i. The Exhibits and Attachments referred to in and attached to the Contract, <u>including Contractor's License Agreement,</u> -are incorporated by reference as if fully included in the text of the Contract.</p>	<p>This is not acceptable. Section 6.4 of the RFP states that in no event is a Vendor to submit its own standard contract terms and conditions as a replacement for the State's terms in response to this solicitation.</p>
<p>Sample Contact, P-37 Agreement</p> <p>Section 27 Non-Exclusive Contract</p>	<p>Requested change:</p> <p>i. 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 <u>but Vendor shall not be required to disclose Vendor's Confidential Information.</u> The State intends to use, whenever possible, existing Software and hardware contracts to acquire supporting Software and hardware.</p>	<p>This is negotiable at the time of contract.</p>

<p>Sample Contact, P-37 Agreement</p> <p>Section 29 Order of Precedence</p>	<p>Requested change:</p> <p><b>ORDER OF PRECEDENCE</b></p> <ul style="list-style-type: none"> <li>i. In the event of conflict or ambiguity among any of the text within this agreement, the following Order of Precedence shall govern:</li> <li>ii. State of New Hampshire, &lt;AGENCY NAME&gt; Contract Agreement &lt;AGENCY TRACKING/CONTRACT 202X-XXX.</li> <li>iii. State of New Hampshire, &lt;AGENCY NAME&gt; &lt;AGENCY RFP#&gt; &lt;RFP TITLE&gt;.</li> <li>iv. Vendor Proposal Response to &lt;AGENCY NAME&gt; &lt;AGENCY RFP#&gt; &lt;RFP TITLE&gt; dated <input type="text" value="(Select Date)"/></li> <li>v. Additional Contractor Provided Documents (see Exhibit G)</li> <li><u>vi. Contractor Quote, (see Exhibit G)</u></li> <li><u>vii. Contractor's License Agreement (see Exhibit H)</u></li> </ul>	<p>This is not acceptable. The State will not agree to a Contractors License Agreement. Section 6.4 of the RFP provides: In no event is a Vendor to submits its own standard contract terms and conditions as a replacement for State's term in response to this solicitation.</p>
<p>Sample Contact, Exhibit A Special Provisions</p> <p>Provision 5</p>	<p>Requested change:</p> <p><del>The State's</del><u>Each Party's</u> liability under this Agreement shall be limited to monetary damages not to exceed the contract price pursuant to Paragraph 5.5 <del>Each Party</del><u>The Contractor</u> agrees that it has an adequate remedy at law for any breach of this Agreement <del>by the State</del> and hereby waives any right to specific performance or other equitable remedies <del>against the State</del>. Subject to applicable laws and regulations, in no event shall <del>either Party</del> <u>the State</u> 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.</p>	<p>This is not acceptable.</p>
<p>Sample Contact, Exhibit A Special Provisions</p>	<p>Requested change:</p>	<p>This is not acceptable.</p>

<p>Provision 5</p>	<p><b>5.5</b> <del>The State's</del> <u>Each party's</u> 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 <del>the State</del> <u>either party</u> 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.</p>	
<p>Sample Contract, Exhibit A Special Provisions</p> <p>Provision 8</p>	<p>Requested change:</p> <p><b>8.2.5</b> <u>if Contractor fails to cure the Event of Default within thirty (30) calendar days</u> give the Contractor a written notice specifying the event of Default, terminate the agreement as breached, and procure Services that are the subject of the Contract from another source and Contractor shall be liable for reimbursing the State for the <u>increase price for the</u> replacement Services, <del>and all administrative costs directly related to the replacement of the Contract and procuring the Services from another source, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, and staff time costs;</del> all of which shall be subject to the limitations of liability set forth in the Contract.</p>	<p>This is not acceptable.</p>
<p>Sample Contact, Exhibit A Special Provisions</p> <p>Provision 8</p>	<p>Requested change:</p> <p>Remove 8.2.5</p>	<p>This is not acceptable.</p>
<p>Sample Contract, Exhibit A</p> <p>Section 9 Termination</p>	<p>Requested change:</p> <p><b>A 4 Provision 9 TERMINATION</b></p>	<p>This is negotiable at time of contract.</p>

	<p><b>9.1</b> 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. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. The State shall be liable for cost of all Services and Deliverables for which Acceptance has been given by the State, provided through the date of termination <del>but as well as will not be liable for</del> 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.</p>	
<p>Sample Contract, Exhibit A Special Provisions</p> <p>Section 9 Termination</p>	<p>Requested change:</p> <p><b>9.2.1</b> Upon termination of the Contract, <del>Contractor shall return all State Data to the State. 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.</del></p> <p>After receipt of a notice of termination, and except as otherwise directed by the State, Contractor shall:</p> <ul style="list-style-type: none"> <li>a. Stop work under the Contract on the date, and to the extent specified, in the notice;</li> <li>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;</li> </ul>	<p>This is negotiable at time of contract.</p>

	<p>c. Take such action as the State directs, or as necessary to preserve and protect the <u>State Data</u> <del>property related to the Contract</del> which is in the possession of Contractor and in which the State has an interest;</p> <p>d. Take no action to intentionally erase any State <u>D</u>data until directed by the State;</p> <p>e. Transfer <del>title</del> to the State and deliver in the manner, at the times, and to the extent directed by the State, <u>all State Data</u> <del>any property which is required to be furnished to the State and which has been accepted or requested by the State</del>;</p> <p>f. Implement an orderly return of State <u>D</u>data in a CSV or another mutually agreeable format at a time agreed to by the parties;</p> <p>g. Securely dispose/destroy of all requested <u>State D</u>data in all of its forms, such as disk, CD / DVD, backup tape and paper, when requested by the State. <u>State</u> 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</p> <p>Provide written Certification to the State that Contractor has surrendered to the State <u>Data</u> <del>all said property</del> and after 180 days has erased all State <u>D</u>data.</p>	
<p>Sample Contract, Exhibit A Special Provisions</p> <p>Section 9 Termination</p>	<p>Requested change:</p> <p><b>9.2.3</b> If the Contract has expired, or terminated prior to the Completion Date, for any reason, the Contractor shall provide, for a period up to ninety (90) days after the expiration or termination, all transition services requested by the State, at no additional cost, to allow for the expired or terminated portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of <u>State Data</u> <del>such Services</del></p>	<p>This is negotiable at time of contract.</p>

	to the State or its designees (“Transition Services”).	
Sample Contract, Exhibit A  Section 12 Assignment/ Delegation/ Subcontracts	Requested change:  Remove Section 12.3	This is not acceptable.
Sample Contract, Exhibit B  Section 7 Project Management	Requested change:  e. 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 <u>unless the Project Manager is terminated for cause, resigns or is unable to perform due to illness</u> . State approvals for replacement of Project Manager shall not be unreasonably withheld. The replacement Project Manager is subject to the same requirements and Review as set forth above. Contractor shall assign a replacement Project Manager within ten (10) business days of the departure of the prior Project Manager, and Contractor shall continue during the ten (10) business day period to provide competent project management Services through a qualified interim Project Manager.	This is negotiable at time of contract.
Sample Contract, Exhibit B  Section 7 Project Management	Requested change:  a. 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 <u>unless the Key Project Staff is terminated for cause, resigns or is unable to perform due to illness</u> . 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.	This is negotiable at time of contract.



<p>Sample Contract, Exhibit B</p> <p>10.3 Support Obligations</p>	<p>Requested change:</p> <p>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 <u>pre-paid</u> 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.</p>	<p>This is negotiable at time of contract.</p>
<p>Sample Contract, Exhibit B</p> <p>10.4 Contract Warranties and Representations</p>	<p>Requested Change:</p> <ul style="list-style-type: none"> <li>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 <u>prepaid</u> fees paid to Contractor for the program license and any unused, prepaid technical support fees the State has paid for the program license; or</li> <li>b. the re-performance of the deficient Services, or</li> <li>c. if Contractor cannot substantially correct a breach in a commercially reasonable manner, the State may end the relevant Services and recover the fees <u>pre-paid</u> to Contractor for the deficient Services.</li> </ul>	<p>This is negotiable at the time of contract.</p>
<p>Sample Contract, Exhibit B</p> <p>10.4.3 Compatibility</p>	<p>Requested change:</p> <ul style="list-style-type: none"> <li>a. 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</li> </ul>	<p>This is negotiable at the time of contract.</p>

	operate with the rest of the System without loss of any <u>material</u> functionality.	
Sample Contract, Exhibit B 10.4.5 Breach of Warranty	Requested change:  <b>10.4.5 Breach of Warranty</b> d. In the event of a breach of a warranty in this Section 10, Contractor shall, as the State’s sole remedy for breach thereof, promptly reperform the services or correct the Software such that it complies with the stated warranties.	This is negotiable at time of contract.
Sample Contract, Exhibit B 10.4.5 Breach of Warranty	Request to add:  <u>10.4.5 Contractor is not obligated to correct, cure, or otherwise remedy any deficiency or defect under this Section if: (1) the System or Software has been misused or damaged in any respect; or (2) Contractor has not been notified, in writing, of the existence and nature of such deficiency or defect promptly upon discovery. The foregoing warranty shall apply only to the most current version of the Software issued by Contractor. Contractor assumes no responsibility for the use of superseded, outdated, or uncorrected versions of the Software. Contractor is not responsible for obsolescence of the Software that may result from changes in State’s requirements.</u>  <u>10.4.6 Third party data. State acknowledges that the Software may display data from other organizations and/or access Internet sites of other organizations and/or provide Internet links to allow users to visit the web sites of other organizations. Contractor makes no representations concerning this information or regarding the quality or acceptability</u>	10.4.5 – Negotiable 10.4.6 – Negotiable 10.4.7 – Not acceptable

	<p><u>of the data, products or services offered by the companies or providers referenced at these sites, or whether any permission or agreement may be required by State to access this information. Contractor reserves the right to remove this data and/or these links if it deems it necessary.</u></p> <p><u><b>10.4.7 Disclaimer of Warranties.</b></u>  <u>CONTRACTOR DOES NOT REPRESENT OR WARRANT THAT ALL ERRORS IN THE SOFTWARE AND DOCUMENTATION WILL BE CORRECTED. THE WARRANTIES STATED IN THIS SECTION ARE THE SOLE AND THE EXCLUSIVE WARRANTIES OFFERED BY CONTRACTOR. THERE ARE NO OTHER WARRANTIES RESPECTING THE SOFTWARE AND DOCUMENTATION, AND SERVICES PROVIDED HEREUNDER, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF DESIGN, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, EVEN IF CONTRACTOR HAS BEEN INFORMED OF SUCH PURPOSE. NO AGENT OF CONTRACTOR IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS OF CONTRACTOR AS SET FORTH HEREIN.</u></p>	
<p>Sample Contract, Exhibit B</p> <p>11 Data Protection</p>	<p>Requested change:</p> <p>a. At no time shall any <del>State Data</del> <del>or processes</del> 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</p>	<p>This is negotiable at time of contract.</p>

	<p>subsequent use in any transaction that does not include the State.</p> <p><b>b.</b> The Contractor shall not use any <u>State Confidential</u> information collected in connection with the service issued from this Contract for any purpose other than fulfilling the service.</p>	
<p>Sample Contract, Exhibit B</p> <p>11.3 Security Incident or Data Breach</p>	<p>Requested change:</p> <p><b>11.3.2</b> 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 <del>if it reasonably believes thereupon has been a security</del> <u>Data Breach incident.</u></p>	<p>This is negotiable at time of contract.</p>
<p>Sample Contract, Exhibit B</p> <p>11.3 Security Incident or Data Breach</p>	<p>Requested change:</p> <p><b>11.3.4</b> 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 <del>prevent its</del> <u>safeguard against its release as required under Section 11,</u> the Contractor and/or the third party hosting company shall bear the costs associated with:</p>	<p>This is negotiable at time of contract.</p>
<p>Sample Contract, Exhibit B</p> <p>Merchant Card Services</p>	<p>Requested change:</p> <p>Delete this section.</p>	<p>The section for Merchant Card Services is not applicable for any contract resulting from this RFP and will be removed.</p>

<p>Sample Contract, Exhibit C Price and Payment Schedule</p> <p>Section 4</p>	<p>Requested change:</p> <p>a. 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 <u>and the State shall not withhold approval for Services and deliverables accepted by the State.</u>—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.</p>	<p>This is negotiable at time of contract.</p>
<p>Sample Contract, Exhibit C Price and Payment Schedule</p> <p>Section 9</p>	<p>Requested change:</p> <p>The State shall withhold ten percent (10%) of the price for each Deliverable (<u>“Holdback”</u>), except Software License fees, as set forth in the Payment Table, until successful conclusion of the Warranty Period. <u>Withing thirty (30) days after successful conclusion of the Warranty Period the State shall pay Contractor the Holdback.</u></p>	<p>This is negotiable at time of contract.</p>
<p>Sample Contract, Exhibit C Price and Payment Schedule</p> <p>Section 9</p>	<p>Requested change:</p> <p><del>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.</del></p>	<p>This is negotiable at time of contract.</p>

Sample Contract, Exhibit D Software License Agreement	Requested change:  Remove section 1 in reference to COTS perpetual license.	This will be removed because it not applicable to a contract resulting from this RFP.
Sample Contract, Exhibit D Software License Agreement	Requested change:  3. <del>Software and</del> <u>Documentation Copies</u> . Contractor shall provide the State with an electronic version in both Microsoft Word and PDF formats of the Software’s associated Documentation. The State shall have the right to copy the <del>Software and its associated</del> Documentation within its possession for its internal business needs. To the extent that the State does not have possession of the <del>Software</del> <u>Documentation</u> , Contractor shall provide a copy of the <del>Software and associated</del> Documentation upon request. The State agrees to include copyright and proprietary notices provided to the State by the Contractor on such copies.	This is negotiable at time of contract.
Sample Contract, Exhibit D Software License Agreement	Requested change:  7. The warranty of non-infringement shall <del>be an on going and perpetual obligation that</del> shall survive <u>for two years after the</u> termination of the Contract. In the event that someone makes a claim against the State that any Contracted Resources infringe their intellectual property rights, Contractor shall defend and indemnify the State against the claim provided that the State:	This is not acceptable.
Sample Contract, Exhibit D Software License Agreement	Requested change:  7. <u>Software Non-Infringement</u> . Contractor warrants that it has good title to, or the right to allow the State to use all Services, equipment, and Software, including any and all component parts thereof such as third-party software or	This is negotiable at time of contract.

	<p>programs that may be embedded in the Software (“Contracted Resources”) provided under this Contract, and that such Services, equipment, and Software do not, <u>to Contractor’s knowledge,</u> violate or infringe any patent, trademark, copyright, trade name or other intellectual property rights or misappropriate a trade secret of any third party.</p>	
<p>Sample Contract, Exhibit D Software License Agreement</p>	<p>Requested change</p> <p>If Contractor believes or it is determined that any of the Contracted Resources may have violated someone else’s intellectual property rights <u>during the Term,</u> Contractor may choose to either modify the Contracted Resources to be non-infringing or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, Contractor may end the license, and require return <u>and termination</u> of the applicable Contracted Resources and refund all fees the State has paid Contractor under the Contract.</p>	<p>This is not acceptable.</p>
<p>Sample Contract, Exhibit D Software License Agreement</p>	<p>Requested change:</p> <p>9. <u>Custom Software.</u> Should any custom source code be developed <u>which is specifically identified as “Custom Software” in the applicable statement of work and is not a derivative, modification, enhancement, repair of the Software,</u> 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 <del>custom developed software</del> <u>Custom Software.</u></p>	<p>This is negotiable at time of contract.</p>
<p>Sample Contract, Exhibit D Software License Agreement</p>	<p>Requested change:</p> <p>9. <u>Custom Software.</u> Should any custom source code be developed, Contractor shall</p>	<p>This is negotiable at time of contract.</p>

	provide the State with a copy of the source code, which shall be subject to the License rights. <del>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.</del>	
Sample Contract, Exhibit D Software License Agreement	Requested change:  10. <u>Software Escrow</u> . Contractor agrees to provide to <del>the State</del> <u>deposit</u> the currently existing source code and any other tools and requirements necessary to create executable or interpretive programs <u>of the Software ("Escrow Materials") with a .</u> <del>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.</del>	This is negotiable at time of contract.
Sample Contract, Exhibit D Software License Agreement	Requested changes:  Contractor agrees that the State shall be entitled to <del>utilize the source code in its possession and/or</del> demand a release of the <del>source code</del> <u>Escrow Materials</u> from the Escrow Agent upon the occurrence of any of the following events ("Release Events"):  (a) Contractor has made an assignment for the benefit of creditors: (b) Contractor institutes or becomes subject to a liquidation or <u>Chapter 7</u> bankruptcy proceeding of any kind <u>which is not dismissed within forty-five (45) days</u> ;	The first paragraph is negotiable.  Items a – f are not acceptable.



	<p>(c) A receiver or similar officer has been appointed to take charge of all or part of Contractor’s assets;  <u>or</u></p> <p>(d) Contractor terminates its maintenance and operations support services for the State for the Software or has ceased supporting and maintaining the Software for the State <del>whether</del> due to its ceasing to conduct business <del>generally or otherwise</del>, except in cases where the termination or cessation is a result of the non-payment or other fault of the State;</p> <p>(e) <del>Contractor defaults under the Contract; or Deleted</del>  <del>Contractor ceases its on-going business operations or that portion of its business operations relating to the licensing and maintenance of the Software Deleted</del></p>	
<p>Sample Contract, Exhibit D Software License Agreement</p>	<p>Requested change:</p> <p>Upon the occurrence of a Release Event, Contractor hereby grants the State the right to use, copy, <u>and</u> modify, <del>display, distribute, and prepare derivative works of</del> the <del>source code</del> Escrow Materials, 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 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.</p> <p><u>Contractor shall be and remain the sole and exclusive owner of all right, title and interest, including all intellectual property rights in and to the Source Materials and all enhancements, modifications and derivatives thereof. All Source Materials are Contractor’s Confidential Information subject to the non-disclosure and use requirements under this Contract.</u></p>	<p>This is negotiable at time of contract.</p>

<p>Sample Contract, Exhibit D Software License Agreement</p>	<p>Requested Change</p> <p><del>10. <u>Software Escrow.</u> 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.</del></p> <p><del>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"):</del></p> <ul style="list-style-type: none"> <li><del>(c) Contractor has made an assignment for the benefit of creditors;</del></li> <li><del>(d) Contractor institutes or becomes subject to a liquidation or bankruptcy proceeding of any kind;</del></li> <li><del>(f) A receiver or similar officer has been appointed to take charge of all or part of Contractor's assets;</del></li> <li><del>(g) Contractor terminates its maintenance and operations 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;</del></li> <li><del>(h) Contractor defaults under the Contract;</del></li> </ul> <p><del>or</del></p> <ul style="list-style-type: none"> <li><del>(f) Contractor ceases its on-going business operations or that portion of its business operations relating to the licensing and maintenance of the Software.</del></li> </ul> <p><del>Upon the occurrence of a Release Event, Contractor hereby grants the State the right to use, copy, modify, display, distribute, and prepare derivative works of the source code,</del></p>	<p>This is negotiable at time of contract excepting items listed above.</p>
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	<p><del>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 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.</del></p>	
Sample Contract, Exhibit D-1 Custom Software Agreement	<p>Requested change: Remove Exhibit</p>	This is negotiable at time of contract.
Sample Contract, Exhibit D-1 Custom Software Agreement	<p>Requested change:</p> <ol style="list-style-type: none"> <li>1. <u>Software Title</u>. The Contractor agrees that any and all <u>Custom Software (as defined in the Software License Agreement)</u> <del>work product created pursuant to this Agreement, including but not limited to all Software,</del> are deemed to be "works for hire" within the meaning of the Copyright Act of 1976. To the extent Contractor is deemed to have retained any legal title, rights and interest in the <u>Custom Software</u> <del>se works,</del> Contractor hereby assigns any and all such title, rights, and interest (including all ownership and intellectual property rights) in the <u>Custom Software</u> <del>and related work product</del> to the State of New Hampshire in consideration for the promises set forth within this Agreement.</li> </ol>	This is negotiable at time of contract.
Sample Contract, Exhibit D-1 Custom Software Agreement	<p>Requested Change</p> <p><u>2 Documentation and Copies</u>. The State shall be entitled to copies of any <del>work product</del><u>Custom Software</u> upon request to Contractor. At the conclusion of this Agreement, Contractor agrees to provide all copies of the <u>Custom Software</u> for all versions, including related</p>	This is negotiable at time of contract.

	documentation, to the State. Contractor shall not retain any <del>work product associated Custom Software with this Agreement</del> unless authorized by the State in writing.	
Sample Contract, Exhibit D-1 Custom Software Agreement	Request change:  <u>3. Restriction on Use.</u> Unless specifically authorized by the State, Contractor shall not <del>utilize work Custom Software product derived as part of this Agreement</del> in any manner other than as required by Contractor to complete its obligations under this Agreement.	This is negotiable at time of contract.
Sample Contract, Exhibit D-1 Custom Software Agreement	Requested change:  <u>4. Software Non-Infringement.</u> Contractor warrants that the <del>Custom</del> Software, including any and all component parts thereof (“Contracted Works”) that are original works of the Contractor that 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 <del>for Contracted Works</del> 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 Works infringe their intellectual property rights, Contractor shall defend and indemnify the State against the claim provided that the State:	This is negotiable at time of contract.

<p>Sample Contract, Exhibit D-1 Custom Software Agreement</p>	<p>Requested change:</p> <p>If Contractor believes or it is determined that any of the Contracted Works may have violated someone else’s intellectual property rights, Contractor may choose to either modify the Contracted <del>Resources</del> <u>Works</u> to be non-infringing or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, Contractor may end the license, and require return of the applicable Contracted Works and refund all fees the State has paid Contractor under the Contract <u>applicable to the infringing portion of the Contracted Work</u>. Contractor will not indemnify the State if the State alters the Contracted <del>Resources—Work</del> without Contractor’s consent or uses it outside the scope of use identified in Contractor’s user Documentation or if the State uses a version of the Contracted Works which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Contracted <del>Resources</del> <u>Work</u> which was provided to the State at no additional cost. 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 Contractor. Contractor will not indemnify the State to the extent that an infringement claim is based upon the combination of any Contracted Works with any products or services not provided by Contractor without Contractor’s consent.</p>	<p>This is not acceptable.</p>
<p>Sample Contract, Exhibit D-1 Custom Software Agreement</p>	<p>Requested change:</p> <p><u>5. Viruses.</u> Contractor shall provide <u>Custom</u> Software that is free of viruses, destructive programming, and mechanisms designed to disrupt the performance of the Software in accordance with the Specifications.</p>	<p>This is not acceptable, all software must be warrantied to be free of viruses.</p>
<p>Sample Contract, Exhibit D1</p> <p>Section 6</p>	<p>Requested change:</p> <p>6.1.1</p>	<p>This is not acceptable.</p>

	<p>a. Every Authorized User has the responsibility to assure the protection of information from unauthorized access, misuse, theft, damage, destruction, modification, or disclosure <u>using the safeguard identified in Section 11 of the Software License Agreement.</u></p>	
<p>Sample Contract, Exhibit D1</p> <p>Section 6</p>	<p>Requested change:</p> <p><b>6.1 State Website Copyright</b>  All right, title and interest in the State WWW site, including copyright to all <u>State</u> 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 <u>that are developed by the State.</u> All WWW pages and any other Data or information shall, where applicable, display the State's copyright.</p>	<p>This is not acceptable.</p>
<p>Sample Contract, Exhibit D1</p> <p>Section 6</p>	<p>Requested change:</p> <p>Unless otherwise agreed to by the State, <del>the Contractor's personnel</del> all work performed by Contractor's personnel at the State's facilities shall occur shall work forty (40) hour weeks between the hours of 8 am and 5 pm (Eastern Time), excluding State of New Hampshire holidays. Changes to this Schedule may be made upon agreement with the State Project Manager.</p>	<p>This is negotiable at time of contract.</p>
<p>Sample Contract, Exhibit F</p>	<p>Requested change:</p> <p>Definition of Data</p> <p>State records, files, forms, electronic information and other documents or information, in either electronic or paper form <u>provided by the State,</u> that will be used /converted by the Vendor during the</p>	<p>This is negotiable at time of contract.</p>

	contract term. <u>Also referred to as "State Data."</u>	
Sample Contract. Exhibit F	Requested change:  Definition of Software  All <del>Custom, SAAS and COTS</del> computer programs and applications provided by the Contractor under the Contract.	This is negotiable at time of contract.