

State of New Hampshire**OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION**

121 South Fruit Street, Suite 303
 Concord, N.H. 03301-2412
 Telephone 603-271-2152 · Fax 603-271-6702

LINDSEY B. COURTNEY
 Interim Executive Director

HALLIE A. PENTHENY
 Director of Finance



May 26, 2020

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

REQUESTED ACTION

Authorize the Office of Professional Licensure and Certification (OPLC), Division of Technical Professions, Real Estate Commission, to enter into a contract with PSI Services LLC of Glendale, California (Vendor Code 170061) for testing services from July 1, 2020, to June 30, 2023, in an amount not to exceed \$179,000. 100% Agency Income.

Funds are anticipated to be available in the following account for Fiscal Year 2021, upon the continued appropriation of funds in the future operating budget:

Division of Technical Professions	<u>FY 2021</u>
01-21-21-212010-240500000	
104-500742 CERTIFICATION EXPENSE	\$179,000

EXPLANATION

Pursuant to RSA 331-A:11, the Real Estate Commission is required to administer examinations to candidates for real estate broker and salesperson licenses in the State of New Hampshire.

OPLC advertised for bids on the state's website and PSI Services LLC (PSI) was the only organization to submit a proposal. It is also the current Real Estate exam provider. PSI (originally as Applied Measurement Professionals, Inc.) has administered the real estate broker and salesperson license examinations for the Real Estate Commission since July 1, 2003. The expiration date of the current contract is June 30, 2020.

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The submitted proposal meets all requirements of the request for proposal. The contract value is estimated on a similar number of applicants taking the exam, as tested in FY19 and FY20.

While this is a three-year contract, OPLC anticipates that no more payments will be made to the vendor by OPLC after FY21. Under prior contracts, OPLC has collected payment for examination services from the applicant and made payment to the vendor. In FY21, OPLC will complete rulemaking to permit PSI to collect payment for testing directly from the applicant. The \$179,000 for FY21 is an annual projection but it is not anticipated that it will take a full year to enact the changes.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "L. Courtney", written in a cursive style.

Lindsey B. Courtney
Interim Executive Director



State of New Hampshire
OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION
DIVISION OF TECHNICAL PROFESSIONS
121 South Fruit Street, Suite 201
Concord, N.H. 03301-2412
Telephone 603-271-2219 · Fax 603-271-7928

JOSEPH G. SHOEMAKER
Director



MEMORANDUM

April 24, 2020

Joe Shoemaker
OPLC, Technical Division Director
121 South Fruit Street
Concord, NH 03301

Evaluation of PSI Exam Services Proposal

In July 2017 the New Hampshire Real Estate Commission (NHREC) entered in to a contract with PSI Services (PSI) to provide real estate examination services for three years from July 1, 2017 through June 30, 2020. The contract was a result of a Request for Proposal (RFP) issued earlier that year. The contract awarded to PSI was for an amount not to exceed \$537,000 over the length of the contract. The cost was based on a projected number of exams at a rate of \$63.00 per salesperson candidate per exam, and \$79.00 per broker candidate per exam.

On March 6, 2020 the Office of Professional Licensure and Certification (OPLC) issued an RFP for real estate examination services. The RFP was announced on the Department of Administrative Services and OPLC's web sites, and by email to two vendors known by the Association of Real Estate License Law Officials (ARELLO) to have experience offering such services to similar state agencies overseeing real estate licensees throughout the United States. The two vendors were PSI Services of Glendale, CA and Pearson VUE of Bloomington, MN.

It should be noted two differences between the current contract and the one resulting from this RFP. First, the current contract is for 3-years but the new contract will be for an initial 3-year period, with an option to renew for an additional 2 years at the discretion of OPLC/NHREC. Second, NHREC staff currently processes all exam paperwork and payments, but the new contract will have the vendor perform those duties upon passage of new NHREC rules.

Section 1.B. of the NHREC's RFP detailed a schedule of dates regarding the RFP process, later amended to allow vendors some extra time for proposal submissions due to the COVID-19 health emergency. Interested vendors had until March 30, 2020 to submit any questions regarding the RFP. One vendor

submitted questions by the deadline and received responses from the NHREC shortly thereafter. Also in accordance with section 1.B. proposals were to be submitted to the NHREC no later than 2:30 pm April 16, 2020. One company, PSI, submitted a proposal. No proposal or further communication was received from Pearson VUE.

The PSI proposal was reviewed, evaluated and scored by the NHREC's evaluation team consisting of Administrator III, Rick Wisler, and Supervisor II Bobbie Mayo, and in accordance with section 6 of the RFP. Mr. Wisler has extensive experience writing RFPs and evaluating proposals over his 44-year career with the State of New Hampshire, including evaluations for: lottery gaming systems, legal services, advertising/marketing, janitorial, building leases, real estate examinations and more. Ms. Mayo has 13 years with state government and extensive experience with the real estate examination registration process, licensing, complaint investigations and customer service. At the conclusion of the review, it was the evaluation team's opinion that PSI Services' proposal provided the information requested by the RFP resulting in the following scores:

6.A.1 Experience (maximum 20 points): 20 points awarded. PSI Services has experience with 35 clients for real estate examination programs.

6.A.2 Test Development (maximum 20 points): 20 points awarded. PSI Services offered experience and a comprehensive and sound approach to test development including job analysis, exam specifications, question review and pretesting.

6.A.3 Accreditation (maximum 5 points): 5 points awarded. PSI Services is an accredited member of ARELLO.

6.A.4 Test Administration Capabilities (maximum 10 points): 9 points awarded. PSI Services offered a technological and physical secured system that is accommodating, flexible and extensive to allow New Hampshire candidates to test not only in the four specified cities in New Hampshire, but also in approximately 400 centers across the United States. A one point deduction was given because PSI only provided a definition of their Premier Plus exam site configuration and it is believed other multi-use facilities are also being used that may or may not meet the same level as demonstrated.

6.A.5 Technology (maximum 5 points): 5 points awarded. PSI Services' proposal identifies a reasonable and secured approach provide testing services and reporting needed by the NHREC, provides a redundant communications network and data storage to ensure the integrity of all information in the event of power failure or natural disaster, and their web based credit card payment system is compliant with PCI standards.

Points awarded to PSI for Technical Proposal: 59 out of a possible 60 points.

6.A.6 Initial Price Proposal (maximum 25 points by using the formula: $\text{score} = \frac{\text{Average Basic Cost per candidate (initial 3-year proposed salesperson exam cost} + \text{initial 3-year proposed broker exam cost}}{2}$). Then $(\frac{\text{Lowest Proposed Average Basic Price}}{\text{Proposer's Average Basic Proposed Price}}) \times 25$ points: 25 points awarded. PSI Services' price proposal is \$67.00 per salesperson candidate per exam and \$78.00 per broker candidate per exam. The price proposal was awarded the maximum of 25 points because it was the only proposal submitted. Please note: the price proposal is \$4.00 more for the salesperson and \$1.00 less for the broker exam when compared to the current PSI Services' contract with the NHREC.

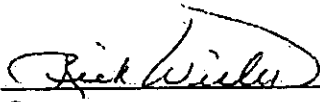
6.A.7 Extension Price Proposal (maximum 15 points by using the formula: Average Basic Cost per candidate (2-year extension proposed salesperson exam cost + 2-year extension proposed broker exam cost / 2). Then (Lowest Proposed Extension Average Basic Price/Proposer's Average Extension Basic Proposed Price) x 15 points: 15 points awarded. PSI Services' price proposal is \$67.00 per salesperson candidate per exam and \$78.00 per broker candidate per exam. The price proposal was awarded the maximum of 25 points because it was the only proposal submitted. Please note: the price proposal is \$4.00 more for the salesperson and \$1.00 less for the broker exam when compared to the current PSI Services' contract with the NHREC.

Points awarded to PSI for Price Proposal: 40 out of a possible 40 points.

Total Points awarded to PSI for Technical and Price Proposals: 99 out of a possible 100 points.

It is the opinion of the evaluation team that PSI Services' proposal meets or exceeds the RFP requirements and that OPLC/NHREC should enter in to a contract with PSI Services for examination services as detailed in the RFP and vendor proposal.

Submitted by:



Rick Wisler, Administrator III



Bobbie Mayo, Supervisor II

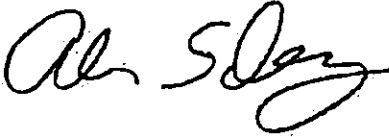
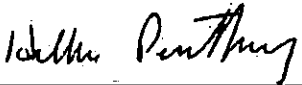
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name Office of Professional Licensing and Certification		1.2 State Agency Address 121 South Fruit Street Concord, NH 03301	
1.3 Contractor Name PSI Services LLC		1.4 Contractor Address 611 N. Brand Blvd., 10 th Floor Glendale, CA 91203	
1.5 Contractor Phone Number 818-847-6180	1.6 Account Number 01-21-001-212010 - 2405-104-500742	1.7 Completion Date June 30, 2023	1.8 Price Limitation \$179,000.00
1.9 Contracting Officer for State Agency Hallie Pentheny, Director of Finance		1.10 State Agency Telephone Number 603-271-0142	
1.11 Contractor Signature  Date: 5/22/20		1.11 Name and Title of Contractor Signatory Alon Schwartz Senior Vice President, Licesnure	
1.13 State Agency Signature  Date: 5-27-20		1.14 Name and Title of State Agency Signatory Hallie Pentheny, Director of Finance	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By: <i>Takmina Rakhmatova</i> On: <u>5/27/2020</u>			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: _____			

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

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

EXHIBIT A – OTHER PROVISIONS**STATUTORY AUTHORITY OF THE COMMISSION:**

The Commission shall have sole responsibility for establishing minimum qualifications and passing requirements for candidates, and the contractor shall have no liability for general, special or consequential damages resulting from, or claiming to have resulted from establishing such qualifications and requirements, or from any other action by the Commission.

LEGAL SUPPORT:

In the event that legal action is taken against the Commission in which the validity of any examination is challenged, the contractor under this agreement, will provide support to the nature and extent of which will be appropriate to the circumstances of the litigation, including without limitations, assisting in pretrial discovery and preparation of contractor witnesses and consultation on matters relevant to the litigation. The contractor will provide this support without charge to the Commission for the time of contractor staff (and as appropriate, contractor external legal counsel).

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 shall survive the termination of this agreement.

ASSIGNMENTS:

The contractor shall not assign this agreement or enter into subcontracts for any of the work described herein without obtaining prior written approval of the Commission except for transportation, shipping, delivery and communication services, printing of the examination materials, test center services, and soliciting other qualified persons for the purpose of drafting and offering advice on proposed examination questions.

FORCE MAJEURE:

The parties shall not be responsible for delays or failures in performance resulting from acts, event or conditions beyond their control, including but not limited to acts of God, strikes, riots, acts of war, epidemics, fire, communication line failures, power failures, private or public carrier failures, earthquakes or other disasters.

GOVERNING LAWS:

This agreement shall be governed by and construed under the laws of the State of New Hampshire.

RIGHTS TO MATERIALS:

The State of New Hampshire retains all ownership rights to documents, materials, reports, and item pools related to the New Hampshire state specific laws, rules, and regulations portion of the examination.

EXHIBIT B – SCOPE OF SERVICES

This contract agreement, effective the 1st day of July, 2020, and to continue through the 30th day of June 2023, by and between PSI Services LLC of Glendale, California (herein referred to as “PSI Services LLC”), a corporation of the state of California, and the Real Estate Commission of the State of New Hampshire (herein referred to as “Commission”). The Commission, at its sole discretion, may exercise the one (1) option to extend the contract agreement for an additional two years under the same terms and conditions. This Agreement consists of the following documents: Exhibits A, B and C which are all incorporated herein by reference as if fully set forth herein.

PSI Services LLC will:

- A. Test all candidates using computer-based method;
- B. Obtain the Commission’s approval for all examination questions and simulation problems, original or revised, prior to first use;
- C. Develop and maintain unique, valid, reliable, secure and legally defensible examinations for entry-level real estate salespersons and brokers for the State of New Hampshire in accordance with specifications developed by PSI Services LLC, and an Examination Review Committee (ERC) consisting of specialists from the State of New Hampshire, the Commission and PSI Services LLC staff members. A two-part multiple-choice test is required for salespersons and a national portion simulation test and a state portion multiple-choice test is required for brokers. The first part of the examination for both salespersons and brokers will be a national portion that will measure knowledge and skills relevant to general practices and principles of real estate that are common to all licensing jurisdictions. The second part of the examination will be a State of New Hampshire portion that will measure knowledge and skills relevant to real estate laws, rules and regulations specific to the State of New Hampshire and other topics to be determined by the Commission. The national and state multiple-choice examinations shall be interchanged and scrambled so that each test presentation is unique. A permanent file shall be maintained of all candidates who have tested including their test scores and response records of each candidate;
- D. Organize test administrations and administer examinations on a Monday through Friday schedule throughout the term of the contract. A temporary closure of any test center for scheduled examinations must be pre-approved by the Commission. If a test center is not available to conduct scheduled examinations due to an emergency that would not allow pre-

approval, the contractor shall notify the Commission within one business day after emergency closure. The examinations are to be administered in four (4) separate test centers acceptable to the Commission in Concord, Manchester, Nashua and Portsmouth, NH. Organize test administrations and administer examinations on Saturdays at all New Hampshire sites on a rotating basis and offer New Hampshire examinations at other PSI Services LLC testing locations where available throughout the United States. Examinations may be administered at other times and places as may be agreed upon by the Commission and PSI Services LLC;

- E. Establish and operate four (4) "Premier Plus" test centers, as defined within PSI Services LLC's proposal to RFP OPLC 2020-04 and which is incorporated into this Contract by reference. Test centers are to be located within New Hampshire, provided with physical facilities and equipment adequate for testing and meet the accessibility requirement of the Americans with Disabilities Act, provide all test center personnel, and accommodation of special testing needs of candidates with disabilities.
- F. Print and distribute sufficient copies of the New Hampshire Examination Candidate Handbooks to the Commission, individual candidates and other designated parties upon request;
- G. Provide at least one (1) toll-free PSI Services LLC telephone number to all candidates for inquiries or to resolve any concerns in a timely, efficient, and responsible manner regarding test scheduling, test examination, administration and test results. The call center may be based outside of the continental United States and must have operators fluent in the English language and able to assist candidates with all examination registration related questions. The call center will be available for calls during the days and times specified in PSI Services LLC's proposal;
- H. Until such time as the Commission amends its rules to allow otherwise, timely process candidate registration information received from the Commission;
- I. Upon the effective date of an amended Commission rule, timely process candidate registration and credit card payment information received from the candidate;
- J. Provide the candidates the option to schedule examinations through PSI Services LLC's on-line scheduling system or by a toll-free telephone number;
- K. A toll-free telephone and website reservation system for examination candidates to schedule examination appointments and provide confirmation numbers for all examination candidates through contractor's toll-free telephone and website reservation system.
 - a. Upon the effective date of an amended Commission rule, forms and payments shall be accepted by the contractor via mail or electronically; and
 - b. Electronic submissions of documents and payments shall be conducted through a well-recognized and secured method.

- L. Score examinations and provide the examination results to the candidates at the testing site upon completion of the examination. Passing candidates shall be provided with a passing score report and a New Hampshire Real Estate Application form for Brokers and for Salespersons. Failing candidates shall receive a diagnostic profile of their strengths and weaknesses of the examination and instructions to re-apply for future examinations;
- M. Provide to the Commission on a monthly basis, the following reports:
1. An alphabetical roster of all broker candidates who passed;
 2. An alphabetical roster of all salesperson candidates who passed;
 3. An alphabetical roster of all broker candidates who failed;
 4. An alphabetical roster of all salesperson candidates who failed;
 5. An alphabetical roster of all candidates who were absent from testing;
 6. Separate summary statistics for broker and salesperson examinations;
 7. Summary of pass/fail statistics for real estate pre-licensing schools/instructors.
- N. Provide summary reports of pass/fail statistics to NH accredited real estate pre-licensing schools/instructors.

COMMISSION WILL:

- A. At PSI Services LLC's request and availability, appoint individuals to the national and state exam review committee who are knowledgeable about the respective fields of real estate and about requirements for entry-level salespersons and brokers;
- B. Forward candidate registration information electronically on a periodic basis to PSI Services LLC;
- C. Protect the security of the examination by safekeeping under lock and key, if examination questions are temporarily furnished to the Commission by PSI Services LLC in paper format, and keep secure examination questions furnished electronically;
- D. Not use, copy, reproduce, disclose or otherwise transmit in any manner any examination questions temporarily furnished to the Commission by PSI Services LLC;
- E. Assist in the investigation of any security breach in connection with the development or administration of examinations;
- F. Provide PSI Services LLC with documentation of all real estate laws, rules and regulations currently in force in the State of New Hampshire, and promptly inform and provide documentation to PSI Services LLC of any and all changes in the State of New Hampshire laws, rules and regulations;

- G. Establish a passing score for the examination;
- H. Meet with PSI Services LLC's representatives as necessary for the purpose of developing content specifications and reviewing examination questions and simulation problems for the national and state sections of the examination;
- I. Provide PSI Services LLC a list of accredited real estate schools at the beginning of each contract period, and notify PSI Services LLC of any additions or deletions in the interim.

EXHIBIT C – METHOD OF PAYMENT

1. Notwithstanding anything to the contrary, the total remuneration under this Contract for Fiscal Year 2021 (July 1, 2020 through June 30, 2021) shall not exceed \$179,000 paid by the Commission.
2. Until such time as the Commission amends its rules to allow otherwise, in consideration for the services to be performed by PSI Services LLC hereunder, the Commission agrees to pay PSI Services LLC a fee of \$67.00 for an original exam and \$65.00 for a re-take exam for each salesperson candidate registered and scheduled to be tested from the period of July 1, 2020 through June 30, 2023.
3. If the Commission approves remote examinations, any candidate may elect to take the exam remotely through a PSI offered internet service that has been approved by the Commission. The exam fee for an approved remote exam would be at the same rate as stated above.
4. Upon the effective date of an amended Commission rule, PSI Services LLC shall receive, as the sole consideration, fees which PSI Services LLC shall directly charge to applicants to sit for the New Hampshire real estate sales agent and broker licensure examinations.

State of New Hampshire

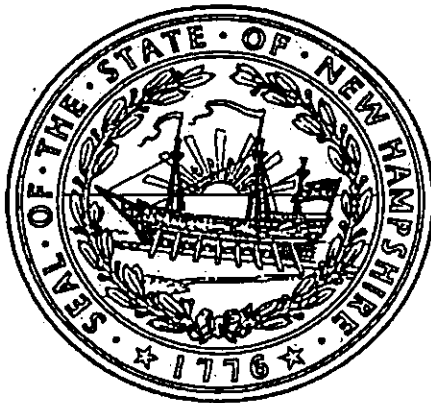
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that PSI SERVICES LLC is a Delaware Limited Liability Company registered to do business in New Hampshire as PSI EXAM SERVICES on May 23, 2017. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 770978

Certificate Number: 0004909869



IN TESTIMONY WHEREOF,
I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 7th day of May A.D. 2020.

A handwritten signature in black ink, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State

CERTIFICATE OF AUTHORITY

I, Paul Dean, a Manager or Member of PSI Services, LLC, a limited liability company (the "Company"), **DO HEREBY CERTIFY** that I am a Manager or Member of the Company who has the authority to act as an agent of the Company in executing this Certificate of Authority. I further certify that the following individuals are Managers or Members of the Company who have the authority to execute and commit the Company to the conditions, obligations, stipulations and undertakings contained in client agreements and RFPs:

Alon Schwartz, Senior Vice President, Licensure

FURTHER, I CERTIFY that all necessary approvals by the Managers or Members of the Company have been obtained with respect to the execution of said Contract.

IN WITNESS THEREOF, I have set my hand this 5th day of May, 2020.

DocuSigned by:
Paul Dean

Manager or Member



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
5/29/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW...

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement...

PRODUCER: HAUSER, 5905 E. Galbraith Rd, Suite 9000, Cincinnati OH 45236
CONTACT NAME: Michelle Davis, PHONE: 513-745-9200, FAX: 513-745-9219, ADDRESS: mdavis@thehausergroup.com
INSURER(S) AFFORDING COVERAGE: INSURER A: Federal Insurance Company, NAIC #: 20281; INSURER B: Vigilant Insurance Company, NAIC #: 20397

COVERAGES CERTIFICATE NUMBER: 727667600 REVISION NUMBER:

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

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSD, SUBR WVD, POLICY NUMBER, POLICY EFF, POLICY EXP, LIMITS. Rows include Commercial General Liability, Automobile Liability, Umbrella Liability, Workers Compensation, and Property - Special Form.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER: For Information Purposes Only
CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE: J.M. Worrall