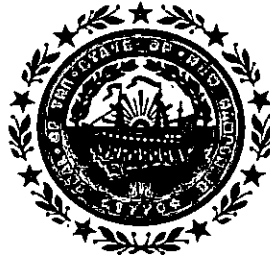


MLC

117



Frank Edelblut  
Commissioner

Christine M. Brennan  
Deputy Commissioner

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

May 3, 2022

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

**REQUESTED ACTION**

Authorize the Department of Education, Division of Learner Support, to enter into an amendment of an existing contract with the University of Kansas Center for Research, Inc. (KUCR), (vendor code 253972), Lawrence, Kansas, to administer the Dynamic Learning Maps (DLM) alternate assessment in English language arts, mathematics, and science, by decreasing the price limitation by \$200,000 from \$1,350,900 to 1,150,900, effective upon Governor and Council approval for the period of August 1, 2022 through July 31, 2024. The original contract was approved by Governor and Council on June 16, 2021 (Item #125). 100% Federal Funds

Funds to support this request are available in the account titled IDEA-Special Education- Elem/Sec, in FY 22 and FY 23 and anticipated to be available in FY 24, upon the availability and continued appropriation of funds in the future operating budget, with the ability to adjust encumbrances between Fiscal Years through the Budget Office without further Governor and Council approval, if needed and justified:

SFY	Funding	Current	This Request	Revised
2022	06-56-56-562010-25040000-102-500731	\$450,300		\$450,300
2023	06-56-56-562010-25040000-102-500731	\$450,300	(\$100,000)	\$350,300
2024	06-56-56-562010-25040000-102-500731	\$450,300	(\$100,000)	\$350,300
<b>Total</b>		\$1,350,900	(\$200,000)	\$1,150,900

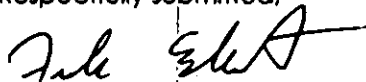
His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
Page 2 of 2

**EXPLANATION**

The Department is requesting this amendment because KUCR is in a position to reduce the cost of the consortium services for both the English language arts and mathematics consortium services and the science consortium services from \$150,000 to \$100,000. This results in a price reduction of \$100,000 for FY 23 and FY 24 of the current contract.

In the event that Federal Funds no longer become available, General Funds will not be requested to support this program.

Respectfully submitted,



Frank Edelblut  
Commissioner of Education

FE:mw:emr



**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF INFORMATION TECHNOLOGY**  
27 Hazen Dr., Concord, NH 03301  
Fax: 603-271-1516 TDD Access: 1-800-735-2964  
[www.nh.gov/doit](http://www.nh.gov/doit)

**Denis Goulet**  
*Commissioner*

April 11, 2022

Frank Edelblut, Commissioner  
Department of Education  
State of New Hampshire  
101 Pleasant Street  
Concord, NH 03301

Dear Commissioner Edelblut:

This letter represents formal notification that the Department of Information Technology (DoIT) has approved your agency's request to amend the contract with the University of Kansas Center for Research, Inc. (KUCR), of Lawrence, KS, as described below and referenced as DoIT No. 2021-091A.

This amendment is to decrease the price limitation by \$200,000 from \$1,350,900 to 1,150,900, for the administration of the Dynamic Learning Maps (DLM) alternate assessment in English-language arts, mathematics, and science. The price will be reduced by \$100,000 for FY 23 and FY 24 due to the fact KUCR has reduced the price of consortium fees.

This amendment shall be effective upon Governor and Executive Council approval through July 31, 2024.

A copy of this letter should accompany the Department of Education's submission to the Governor and Executive Council for approval.

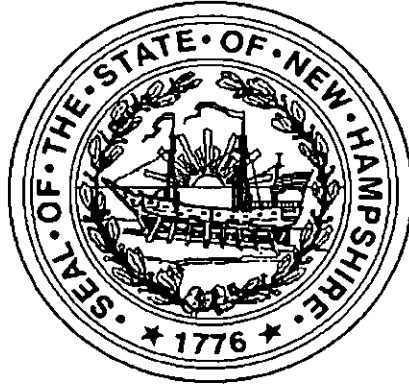
Sincerely,

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

Denis Goulet

DG/ik  
DoIT #2021-091A

cc: Bruce Smith, Assistant Director ASD/DoIT



**STATE OF NEW HAMPSHIRE**

**Department of Education:**

**DOE NH Alt Assessment-DLM: 2021-09**

**AMENDMENT A (1)**

**INFORMATION TECHNOLOGY**

## INTRODUCTION

WHEREAS, pursuant to an Agreement approved by Governor and Council, on 6/16/21, Item #125 (herein after referred to as the "Agreement"), University of Kansas Center for Research, Inc. (KUCR) (hereinafter referred to as "Contractor" agreed to supply certain services upon the terms and conditions specified in the Agreement and in consideration of payment by the Department of Education (hereinafter referred to as the "Department"), certain sums as specified therein;

WHEREAS, pursuant to the Agreement Section 17: Amendment and the provisions of the Agreement, the Agreement may be modified or amended only by a written instrument executed by the parties thereto and approved by the Governor and Executive Council;

WHEREAS, the Vendor and the Department have agreed to amend the Agreement in certain respects;

WHEREAS, the Department and the Vendor wish to decrease the Contract price by \$200,000.00 beginning August 1, 2022 to bring the total contract price to \$1,150,900.00.

WHEREAS, the Department and the Vendor seek to clarify the Agreement.

NOW THEREFORE, in consideration of the foregoing, and the covenants and conditions contained in the Agreement and set forth herein, the parties agree as follows:

The Agreement is hereby amended as follows:

1. Amend Section 1.8 of the State of New Hampshire P-37 General Provisions by decreasing the Price Limitation by \$200,000.00 from 1,350,900.00 to \$1,150,900.00.
2. The Agreement is further amended as described in Table 1:

<b>TABLE 1: AMENDMENT DETAILS</b>	
<b>Exhibit C</b>	<b>AMENDED TEXT</b>
<b>Price and Payment Schedule</b>	
<b>Section Number 9</b>	<p>Add: 9. PAYMENT SCHEDULE Activities / Deliverables / Milestones Pricing</p> <p><b><u>Updated Invoice and Payment Schedule for 2022-2023 and 2023-2024</u></b></p> <p>This Contract will allow KUCR to invoice the State for the following activities, Deliverables, or milestones appearing in the price and payment tables below.</p>

FY Academic Testing Year (July 1 – June 30),		Estimated Amount
First Payment upon NH Governor and Council Approval of Contract	35% of Estimated Amount	\$122,605.00
Second Payment January 1	35% of Estimated Amount	\$122,605.00
Final Payment upon conclusion of the end-of-year assessment as described below.	Final invoice adjusted to account the actual number of students tested.	\$105,090.00
<b>Total</b>		<b>\$350,300.00</b>
<p>For English Language Arts, Mathematics and Science testing services, estimated payment will be based on 1,480 students (1025 students in English language arts and mathematics and 455 students in science) the State will pay KUCR an annual non-refundable fixed rate price amount of \$200,000 (\$100,000 for annual English language arts consortium operations costs plus \$100,000 for annual science consortium operations costs) plus a per student cost up to \$150,300.00, which is <math>(\\$120.00 \times 1,025) + (\\$60 \times 455)</math>. Costs after the 2022-23 testing year will be determined based on discussions with the Consortium.</p> <ul style="list-style-type: none"> <li>• KUCR shall invoice STATE for 35% of the estimated total cost on or before August 1, of the current testing year and STATE shall pay on or before September 1 of the current testing year,</li> <li>• KUCR shall invoice STATE for 35% of the estimated total cost on or before January 1, of the current testing year and STATE shall pay on or before February 1 of the current testing year, and</li> <li>• KUCR shall invoice STATE for the balance of the total cost, based on the actual total number of students tested during either the instructionally embedded or end-of-year assessment, upon completion and delivery of the annual test reports, or in the event testing is not completed through no fault of KUCR, KUCR shall final invoice STATE in line with the cancellation component outlined below and STATE shall pay within 30 calendar days.</li> </ul> <p><b>Early Termination and Cancellation</b></p> <p>If STATE cancels student testing or this Agreement terminates early due to no fault of KUCR, KUCR shall final invoice and STATE shall pay a pro-rated amount from the schedule below, exclusive of any non-refundable consortium fees paid, based on the total estimated contract cost (number of students x tests) or actual student/test counts from the most recent school year in which regular testing</p>		

occurred, whichever is less. STATE shall pay within thirty (30) calendar days of receipt of invoice:

Month of cancellation	Percentage of total cost
July	9%
August	18%
September	27%
October	36%
November	45%
December	54%
January	63%
February	72%
March	81%
April	90%
May	95%
June	100%

**TABLE 2: CONTRACT HISTORY**

CONTRACT AND AMENDMENT NUMBER	AMENDMENT TYPE	G&C APPROVAL DATE	END DATE	CONTRACT AMOUNT
Contract 2021-09	Original Contract	6/16/21, Item #125	July 31, 2024	\$1,350,900
Contract 2021-09	1 <sup>st</sup> Amendment	TBD, Item #TBD	July 31, 2024	\$1,150,900
<b>CONTRACT TOTAL</b>				<b>\$1,150,900</b>

**CONTRACTOR**

Except as provided herein, all provisions of the Agreement shall remain in full force and effect. This modification shall take effect upon approval from the Governor and the Executive Council for the period of August 1, 2022 to July 31, 2024.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first above written.

**Alicia M. Reed/ahc**  
Digitally signed by Alicia M. Reed/ahc  
Date: 2022.04.12 16:01:10 -05'00'

Date: 04/12/2022

Alicia M. Reed, Director of Research Administration  
University of Kansas Center for Research, Inc. (KUCR)

**STATE OF NEW HAMPSHIRE**

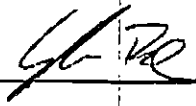
  
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Date: 05/12/2022

Frank Edelblut, Commissioner of Education  
State of New Hampshire  
Department of Education

The preceding Amendment, having been reviewed by this office, is approved as to form, substance, and execution.

**Approved by the Attorney General**

  
\_\_\_\_\_

Date: 05/12/2022

State of New Hampshire, Department of Justice



I hereby certify that the foregoing amendment was approved by the Governor and Executive Council of the State of New Hampshire at the Meeting on: \_\_\_\_\_ (date of meeting)

**Office of the Secretary of State**

\_\_\_\_\_

Date: \_\_\_\_\_

State of New Hampshire, Department of Administration

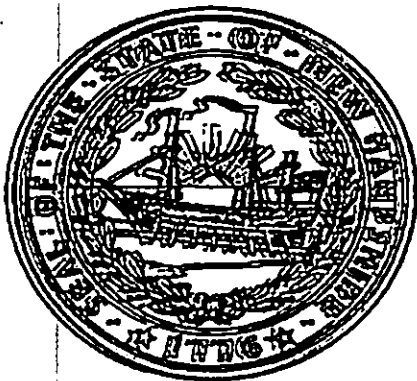
**State of New Hampshire**  
**Department of State**

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that UNIVERSITY OF KANSAS CENTER FOR RESEARCH, INC. is a Kansas Nonprofit Corporation registered to transact business in New Hampshire on October 20, 2014. 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: 716395

Certificate Number: 0005365060



IN TESTIMONY WHEREOF,

I have set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 10th day of May A.D. 2021.

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

William M. Gardner  
Secretary of State

**CERTIFICATE OF VOTE**

(Corporation without a Seal)

I, Simon Atkinson, do hereby certify that:  
(Name of the Officer of the Corporation; cannot be signatory)

(1) I am the duly elected officer of University of Kansas Center for Research, Inc.  
(Corporation Name)

(2) The following are true copies of the resolutions duly adopted at a meeting of the Board of Directors of the Corporation duly held on January 15, 2015.  
(Date)

RESOLVED: That this Corporation enter into a contract with the State of New Hampshire, acting through its Department of Education.

RESOLVED: That Alicia M. Reed Director of Research Administration,  
(Name of Contract Signatory) (Title of Contract Signatory)

is hereby authorized on behalf of this Agency to enter into the said contract with the State and to execute any and all documents, agreements and other instruments, and any amendments, revisions, or modifications thereto, as he/she may deem necessary, desirable or appropriate.

(3) The foregoing resolution(s) have not been amended or revoked, and remain in full force and effect as of the 12th day of April, 2022.  
(Day) (Month) (Yr) (Must be same date as the contract date)

IN WITNESS WHEREOF, I have hereunto set my hand as the Business Representative of the Corporation this 18th day of April, 2022.  
(Day) (Month) (Yr)

  
(Signature of Officer of Corporation)

STATE OF NEW HAMPSHIRE

COUNTY OF N/A

On \_\_\_\_\_, 20\_\_\_\_, the foregoing instrument was acknowledged before me.

In witness whereof I hereunto set my hand and official seal.

My commission expires on:

\_\_\_\_\_  
Notary Public/Justice of the Peace



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
4/15/2022

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. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**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. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

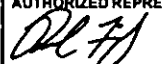
<b>PRODUCER</b> Arthur J. Gallagher Risk Management Services, Inc. 235 Highlandia Drive, Suite 200 Baton Rouge LA 70810	<b>CONTACT NAME:</b> Cheryl Kelley <b>PHONE (A/C No, Ext):</b> 512-652-2461 <b>E-MAIL ADDRESS:</b> cheryl_kelley@ajg.com	<b>FAX (A/C No):</b> 512-652-2462
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> University of Kansas Center for Research, Inc. 2385 Irving Hill Rd., RM 108 Lawrence KS 66045	<b>INSURER A:</b> Trumbull Insurance Company	
	<b>INSURER B:</b> Hartford Casualty Insurance Company	
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	

**COVERAGES**                      **CERTIFICATE NUMBER:**                      **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. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:				7/1/2021	7/1/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY				7/1/2021	7/1/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000				7/1/2021	7/1/2022	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N	N/A			<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

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

<b>CERTIFICATE HOLDER</b> New Hampshire Department of Education 25 Hall Street Concord, NH 03301	<b>CANCELLATION</b> 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 
---	---

**KU** OFFICE OF THE  
GENERAL COUNSEL  
The University of Kansas

April 12, 2022.

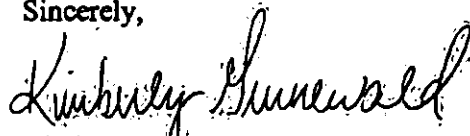
To Whom It May Concern:

In response to your request for a certificate of insurance for the University of Kansas, please be advised that under the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.* (the "Act"), the State of Kansas has assumed liability for the negligent or wrongful acts and omissions of its employees and agents acting within the scope of their responsibilities on behalf of the State of Kansas, as outlined in that Act. This includes the University of Kansas and its employees. The liability for claims within the scope of the Act may not exceed Five Hundred Thousand Dollars (\$500,000) per occurrence. Additionally, the State is required to indemnify its employees for injury or damages proximately caused by the employee's acts or omissions that fall within the parameters of the Act. The University of Kansas will remain covered by the Act for the duration of the Event.

Further, Kansas's state worker's compensation self-insurance fund, which is wholly self-insured, provides worker's compensation coverage to State employees per K.S.A. 44-575.

I trust that the coverage provided by the Kansas Tort Claims Act and the State Self-Insurance Fund will adequately fulfill the insurance requirement, but please feel free to contact me if you have any questions or need additional information.

Sincerely,



Kimberly Grunewald  
Deputy General Counsel

LB

125



Frank Edelblut  
Commissioner

Christine M. Brennan  
Deputy Commissioner

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

March 30, 2021

His Excellency, Governor Christopher T. Sununu  
and The Honorable Council  
State House  
Concord, NH 03301

**REQUESTED ACTION**

Authorize the Department of Education to enter into a **sole source** contract with the University of Kansas Center for Research, Inc. (KUCR), Lawrence, Kansas, (Vendor Code 253972), in the amount of \$1,350,900.00, to administer the Dynamic Learning Maps (DLM) alternate assessment in English language arts, mathematics, and science, effective upon Governor and Council approval for the period August 1, 2021 through July 31, 2024. 100% Federal Funds

Funds to support this request are anticipated to be available in the account titled Special Education Elem/Sec, upon the availability and continued appropriation of funds in the future operating budget, with the ability to adjust encumbrances between Fiscal Years through the Budget Office without further Governor and Council approval, if needed and justified:

	<b><u>FY22</u></b>
06-56-56-562010-25040000-102-500731 Contracts for Program Services	\$450,300.00
	<b><u>FY23</u></b>
06-56-56-562010-25040000-102-500731 Contracts for Program Services	\$450,300.00
	<b><u>FY24</u></b>
06-56-56-562010-25040000-102-500731 Contracts for Program Services	\$450,300.00

**EXPLANATION**

The Department is requesting that this be approved as a **sole source** contract due to the fact that in 2014, representatives from the Department and a group of NH Alt Assessment Stakeholders (Special Education Directors, teachers, private providers and partners) made the decision for the DOE to request approval to move forward with DLM as its partner for the development and implementation of the state's next alternate assessment. Prior to this decision,

His Excellency, Governor Christopher T. Sununu  
and The Honorable Council  
Page 2

the Department and Stakeholders met to learn more about the options of joining a state-led alternate assessment consortium. The reason for reviewing these options came from feedback and requests received from parents and educators to look at other alternate assessment tools.

There were two identified consortiums focused on building a new generation of assessments for students with the most significant cognitive impairments: Dynamic Learning Maps (DLM) and the National Center and State Collaborative (NCSC). The stakeholder group was presented with information from both consortiums, researched publically available information regarding the assessments designed by DLM and NCSC, talked with other state members of each consortium and reviewed the feedback received from a posted survey.

The department received approval on October 1, 2014 (Item #38) to pay membership dues to KUCR for the 2014-15 year and moved forward with its use of DLM as the alternate assessment in English language arts and mathematics. An alternate assessment in science was added four years ago.

By entering into this contract, New Hampshire will fulfill, RSA 193-C:6, "Each year, a statewide assessment shall be administered in all school districts in the state in grades 3 through 8 and one grade in high school." and be able to provide valuable feedback and documentation to schools, districts and the public as to the status of K-12 education in New Hampshire. By administering the Dynamic Learning Maps Assessment through the multi-state coalition of state departments of education, New Hampshire can continue to share resources and employ cost-cutting measures to produce a high quality assessment at a reasonable price to the state.

In the event that Federal Funds no longer become available, General Funds will not be requested to support this program.

Respectfully submitted,



Frank Edelblut  
Commissioner of Education

FE:mw:emr



**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF INFORMATION TECHNOLOGY**

27 Hazen Dr., Concord, NH 03301  
Fax: 603-271-1516 TDD Access: 1-800-735-2964  
www.nh.gov/doi

**Denis Goulet  
Commissioner**

April 23, 2021

Frank Edelblut, Commissioner  
Department of Education  
State of New Hampshire  
101 Pleasant Street  
Concord, NH 03301

Dear Commissioner Edelblut:

This letter represents formal notification that the Department of Information Technology (DoIT) has approved your agency's request to enter into a sole source contract with the University of Kansas Center for Research, Inc. of Lawrence, KS, as described below and referenced as DoIT No. 2021-091.

This is a sole source contract with the University of Kansas Center for Research, Inc. (KUCR) to utilize the Dynamic Learning Maps (DLM) as the alternate assessment in English Language Arts, Mathematics and Science. KUCR is the sole provider, publisher, hosting source and distributor of the Dynamic Learning Maps Alternate Assessment Program, Dynamic Learning Maps Essential Elements, and ancillary materials.

This is a not to exceed contract with a price limitation of \$1,350,900 and shall be effective upon Governor and Executive Council approval through August 1, 2024.

A copy of this letter should accompany the Department of Education's submission to the Governor and Executive Council for approval.

Sincerely,

A handwritten signature in black ink, appearing to read "Denis Goulet".

Denis Goulet

DG/ik  
DoIT #2021-091

cc: Bruce Smith, Assistant Director ASD/DoIT





STATE OF NEW HAMPSHIRE

New Hampshire Department of Education:

**DOE NH Alt Assessment-DLM :**

DOE 2021-091

STATE OF NEW HAMPSHIRE  
New Hampshire Department of Education  
2021-091 DOE NH Alt Assessment-DLM

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STATE OF NEW HAMPSHIRE  
 New Hampshire Department of Education  
 2021-091 DOE NH Alt Assessment-DLM

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

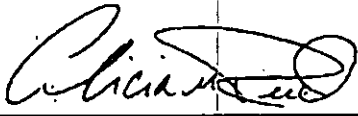
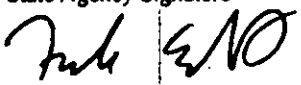

**Notice:** This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

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

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

State Agency Name New Hampshire Department of Education		State Agency Address 101 Pleasant Street, Concord, NH 03301	
1.4 Contractor Name University of Kansas Center for Research, Inc. (KUCR)		1.4 Contractor Address 2385 Irving Hill Road, Lawrence, KS 66045-7568	
1.5 Contractor Phone Number 785-864-3441	1.6 Account Number Federal: 2504	1.7 Completion Date July 31, 2024	1.8 Price Limitation \$1,350,900.00
1.9 Contracting Officer for State Agency Melissa White, Administrator, Academics & Assessment		1.10 State Agency Telephone Number 603-271-3855	
1.11 Contractor Signature   Date: 5/12/2021		1.12 Name and Title of Contractor Signatory Alicia M. Reed, Director of Research Administration	
1.13 State Agency Signature   Date: 5-26-21		1.14 Name and Title of State Agency Signatory Frank Edelblut, Commissioner	
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:  Christopher Bond, Attorney On: 5/27/21			
1.17 Approval by the Governor and Executive Council (if applicable)			

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G&C Item number:	G&C Meeting Date:
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**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

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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,



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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.

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Contractor Initials: AMR

Date: 5/12/2021

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**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.

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**EXHIBIT A - SPECIAL PROVISIONS**

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

**Provision 5, Contract Price/Price Limitation/ Payment, is updated with the following addition:**

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

**Provision 6, Compliance By Contractor With Laws And Regulations/Equal Employment Opportunity**

**Subparagraph 6.1 is replaced as follows:**

- 6.1** If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines that may apply or that the United States may issue to implement these regulations. The Contractor further 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.

**Provision 7, Personnel**

**Subparagraph 7 is replaced as follows:**

- 7.1** The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor assures that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.
- 7.2** The Contracting Officer specified in block 1.9, or 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.

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**Provision 8, Event Of Default/Remedies**

Subparagraph 8.2.2 of the General Provisions, Event of Default/Remedies, is replaced as follows:

- 8.2.2 Give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement until the Default is cured;

**Provision 8, Event Of Default/Remedies is updated with the following addition:**

- 8.4 Procure Services that are the subject of the Contract from another source and Contractor shall be liable for providing reasonable transition assistance to the State for the replacement Services.

**Provision 9, Termination, is deleted and replaced with the following:**

**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. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. The State shall be liable for cost of all Services and Deliverables for which Acceptance has been given by the State, provided through the date of termination but will not be liable for any costs for incomplete Services or winding down the Contract activities. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

**9.2 Termination Procedure**

- 9.2.1 Upon termination of the Contract, the State, in addition to any other rights provided in the Contract, may require Contractor to deliver to the State any property, including without limitation, Software and Written Deliverables, for such part of the Contract as has been terminated.
- 9.2.2 After receipt of a notice of termination, and except as otherwise directed by the State, Contractor shall:
- a. Stop work under the Contract on the date, and to the extent specified, in the notice;
  - b. Promptly, but in no event longer than ten (10) days after termination, terminate its orders and subcontracts related to the work which has been terminated, and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the State to the extent required, which approval or ratification shall be final for the purpose of this Section;
  - c. Take such action as the State directs, or as necessary to preserve and protect the property related to the Contract which is in the possession of Contractor and in which the State has an interest;

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- d. Take no action to intentionally erase any State data until directed by the State;
- e. Transfer title to the State and deliver in the manner, at the times, and to the extent directed by the State, any property which is required to be furnished to the State and which has been accepted or requested by the State;
- f. Implement an orderly return of State data in a CSV or another mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of State data;
- g. Securely dispose of all requested data in all of its forms, such as disk, CD / DVD, backup tape and paper, when requested by the State. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the State; and
- h. Provide written Certification to the State that Contractor has surrendered to the State all said property and after 180 days has erased all State data.

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

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

Subparagraph 10 of the General Provisions, Data/Access/Confidentiality/Preservation, is replaced as follows:

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

10.1 As used in this Agreement, the word "data" shall mean all student data provided by State during the performance of this Agreement.

10.2 and 10.3 remain the same as in the P-37.

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

10.4 In performing its obligations under this Agreement, Contractor may gain access to Confidential Information of the State. Confidential Information includes any and all information owned or managed by the State of NH - created, received from or on behalf of any Agency of the State or accessed in the course of performing contracted Services - of which collection, disclosure, protection, and disposition is governed by state or federal law or regulation. This information includes, but is not limited to Protected Health Information (PHI), Personally Identifiable Information (PII), Personal Financial Information (PFI), Federal Tax Information (FTI), Social

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Security Numbers (SSN), Payment Card Industry (PCI), and or other sensitive and Confidential Information. The Contractor shall not use the Confidential Information developed or obtained during the performance of, or acquired, or developed by reason of the Agreement, except as directly connected to and necessary for the performance of the Agreement. Contractor shall maintain the confidentiality of and protect from unauthorized use, disclosure, publication, and reproduction (collectively "release"), all Confidential Information.

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

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

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

10.6 A receiving Party also may disclose Confidential Information to the extent required by an order of a court of competent jurisdiction. Any disclosure of the Confidential Information shall require the prior written approval of the State. Contractor shall immediately notify the State if any request, subpoena or other legal process is served upon Contractor regarding the Confidential Information, and Contractor shall cooperate with the State in any effort the State undertakes to contest the request, subpoena or other legal process, at no additional cost to the State.

10.7 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 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

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order enjoining the disclosure, the State shall release the information on the date specified in the State's notice to Contractor, without any liability to the State.

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

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

12.3 In the event that Contractor should change ownership for any reason whatsoever that results in a change of control of the Contractor, the State shall have the option of:

- a. continuing under the Agreement with Contractor, its successors or assigns for the full remaining Term of the Agreement or for such period of time as determined necessary by the State;
- b. immediately terminate the Agreement without liability to or further compensation owed to Contractor, its successors or assigns.

**Provision 13, Indemnification**

**Subparagraph 13 of the General Provisions, Indemnification, is replaced as follows:**

**13. INDEMNIFICATION**

The Contractor agrees to accept responsibility for injury or damage to any person or persons or property that arise solely out of the Contractor's negligent acts or omissions in connection with this Project. Contractor further agrees that the State shall not be liable for damages arising solely from injuries or damages sustained by any person or persons or property resulting from the negligent performance or omission by the Contractor of this Agreement.

**Provision 14. Insurance**

**Subparagraph 14 of the General Provisions, Insurance, is replaced as follows:**

14.1 The Contractor shall, at its sole expense, obtain and maintain insurance during the term of this contract as provided herein in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

- 14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$1,000,000 per occurrence; and

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 fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and ay renewals thereof shall be attached and are incorporated herein by reference.

14.4 The Contractor certifies that project personnel working under this contract are University of Kansas employees, and therefore State of Kansas employees. Under the Kansas Tort Claims Act, K.S.A. 75-6101 et seq. ("Act"), the State of Kansas has assumed liability for the negligent or wrongful acts and omissions of its employees

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and agents acting within the scope of their responsibilities, as outlined in the Act. The Contractor will remain covered under the Act for the duration of the contract. Additionally, the state of Kansas is required to indemnify its employees against damages for injury or damages proximately caused by the employee's acts or omissions in accordance with the Act.

**Subparagraph 15 of the General Provisions, Worker's Compensation, is replaced as follows:**

**15. WORKERS' COMPENSATION**

- 15.1 By signing this agreement, the Contractor agrees, certifies and agrees that the Contractor is covered by the terms of the State of Kansas Workers Compensation Act, K.S.A. 44-501.
- 15.2 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.

**Provision 18. Choice Of Law And Forum**

**Paragraph 18 of the General Provisions is replaced as follows:**

18. Contractor shall comply with all applicable federal, state, and local laws and regulations. All issues of law relating to the governmental authority and the sovereign and governmental immunities and liabilities of the State of Kansas acting by and through the University of Kansas, shall be resolved and enforced according to the laws of the State of Kansas, without resort to any jurisdiction's conflict of law rules or doctrines. Nothing this contract shall be construed as a waiver of the State of Kansas' right to be subject to suit in only the courts of Kansas. Further, the Univeristy of Kansas, its officers, employees and agents shall be subject to no liability or obligation arising out of this contract that would not be recognized and enforced against them by the courts of the State of Kansas.

Likewise, all issues of law relating to the governmental authority and the sovereign and governmental immunities and liabilities of the State of New Hampshire acting by and through the Department of Education, shall be resolved and enforced according to the laws of the State of New Hampshire, without resort to any jurisdiction's conflict of law rules or doctrines. Nothing this contract shall be construed as a waiver of the State of New Hampshire's right to be subject to suit in only the courts of New Hampshire. Further, the State of New Hampshire, its officers, employees and agents shall be subject to no liability or obligation arising out of this contract that would not be recognized and enforced against them by the courts of the State of New Hampshire.

**The following Provisions are added and made part of the P37:**

**25. FORCE MAJEURE**

- 25.1 Neither Contractor nor the State shall be responsible for delays or failures in performance resulting from events beyond the control of such Party and without fault or negligence of such Party. Such events shall include, but not be limited to, acts of God, strikes, lock outs, riots, and acts of War, epidemics, acts of



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Government, fire, power failures, nuclear accidents, earthquakes, and unusually severe weather.

- 25.2 Except in the event of the foregoing, Force Majeure events shall not include the Contractor's inability to hire or provide personnel needed for the Contractor's performance under the Contract.

**26. EXHIBITS/ATTACHMENTS**

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

**27. NON-EXCLUSIVE CONTRACT**

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

**28. GOVERNMENT APPROVALS**

Contractor shall obtain all necessary and applicable regulatory or other governmental approvals necessary to perform its obligations under the Contract.  
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**EXHIBIT B – STATEMENT OF WORK (SOW) BUSINESS AND TECHNICAL REQUIREMENTS AND DELIVERABLES**

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

**I. STATEMENT OF WORK**

KUCR, through AAI shall provide the professional services listed below. The professional services set forth below shall be performed: (i) using the requisite degree of skill, care and diligence; and (ii) will be reasonably accurate in accordance with accepted professional testing standards. This statement of work applies to all tests that are under operational administration including instructionally embedded assessments.

**DLM English Language Arts and Mathematics Alternate Assessment Training and Support Services**

- AAI will annually update and make available required training modules for DLM English language arts and mathematics test administrators in self-directed and facilitated formats. Modules will be hosted by AAI.
- AAI will annually update and deliver consortium-level training sessions for district-level staff who support English language arts and mathematics DLM implementation. At least two training sessions will be conducted annually via web conferencing software and recordings posted for later access.
- AAI will annually update and make available manuals and supporting materials for DLM English language arts and mathematics test administrators and individuals in district support roles (e.g. assessment coordinators) to provide for a valid, reliable, and standard administration of the DLM English language arts and mathematics alternate assessment.
- AAI will provide a toll free telephone number for state educators to have access to a service desk between the hours of 7:00 am and 6:00 pm Central Time Monday through Friday during the DLM End-of-Year test window and between 8:00 am and 5:00 pm Central Time at other times of the year (except National Holidays and December 26 through January 1). Tier 1 support will provide a response or resolution back to the originating caller within 24 hours. Tier 2 help desk support will trouble shoot problems not solvable by Tier 1 support. Tier 2 support will be available 8:00 am to 5:00 pm Central Time Monday through Friday (except National Holidays and December 26 through January 1).

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**DLM English Language Arts and Mathematics Alternate Assessment Preparation Services**

- AAI will provide online access to allow local educators to input First Contact survey and Personal Needs and Preferences information needed to provide necessary accessibility supports and determine determining appropriate initial placement into the DLM English language arts and mathematics assessments.
- AAI will provide practice activities and released testlets that may be accessed in KITE to allow students and educators to become familiar with the English language arts and mathematics assessments. A minimum of one new testlet per grade will be added each year.
- AAI will provide a file format to State to allow State to provide a school system hierarchy that AAI will enter into the KITE™ system. State provides a single organizational file annually to AAI for registration of districts and schools to set up the KITE™ system.
- AAI will provide functionality and supporting materials for centralized or distributed (SEA, LEA, or school) data load into the KITE™ system, including student names and appropriate demographic information, educator accounts, and rosters. AAI will ensure appropriate FERPA safeguards on all student data including authenticated user access.
- AAI will provide functionality and supporting materials for state/district management and access to update student and educator records during the year.

**DLM English Language Arts and Mathematics Alternate Assessment Administration Services**

- AAI will deliver instructionally embedded assessments for English language arts and mathematics in grades 3-8 and high school (optional for year-end states).
- AAI will deliver spring adaptive English language arts and mathematics in grades 3-8 and high school.
- AAI will support state selection of its own spring English language arts and mathematics testing window within the standard consortium wide window.
- AAI will make available built-in accessibility features for use during assessment and deliver alternate forms as needed for accessibility via the KITE system.

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- AAI will provide state and district staff with access to on-demand data extracts that may be used to guide local data management and assessment preparation and monitoring.
- AAI will provide general project support (equivalent to approximately 10 days of staff time per year for the period of the contract) for state-level implementation of the DLM English language arts and mathematics assessment system, including: A designated main point of contact for state level DLM policy and implementation questions; and Email/Phone consultation (e.g., consult on state training and communication plans, consult and provide feedback on state developed materials and training, consult on capacity building for state to support local implementation).

**DLM English Language Arts and Mathematics Alternate Assessment KITE™ System Services**

- AAI will provide educators with an interface to manage DLM assessments, including assignment of instructionally embedded assessments and access to information about testlets.
- AAI will provide the KITE assessment administration platform and ongoing maintenance of the KITE assessment administration platform.
- Seeking advice from the consortium Governance Board, AAI will prioritize and implement KITE™ system enhancements to support the DLM English language arts and mathematics system on at least an annual basis.

**DLM English Language Arts and Mathematics Alternate Assessment Professional Development Services**

- AAI will provide professional development modules that addresses general components of the DLM System (e.g., Claims and Conceptual Areas, DLM Essential Elements) and instructional practices (e.g., Universal Design for Learning, Principles of Instruction in English Language Arts, Unitizing, and Counting and Cardinality), to support instruction aligned with the DLM AA. Modules will be available in Self-Directed format, available 24 hours a day, 7 days per week to educators through an on-line portal accessed via the DLM website, and in Facilitated format for use in face-to-face training or as part of local professional learning communities. All materials will be hosted by AAI.
- Seeking advice from the DLM Governance Board, AAI will prioritize and create new and enhance existing English language arts and mathematics instructional activities.

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- AAI will provide SEA with monthly reports regarding educator completion of Self-Directed versions of professional development modules.
- AAI, through the use of websites, interactive learning opportunities and social media will support educators working with students with the most significant cognitive disabilities in the DLM Consortium by designing, hosting and publicizing trainings and classroom supports including familiar texts, sample lesson plans, writing tools, and other instructional resources.

**DLM English Language Arts and Mathematics Alternate Assessment Psychometric Services**

- AAI will produce an annual update to the consortium-wide English language arts and mathematics technical manual.
- AAI will fund four meetings per year of the DLM Consortium Technical Advisory Committee to advise on the design and delivery of the English language arts and mathematics alternate assessment system.
- AAI will conduct, present, and publish studies documenting the technical quality of the DLM English language arts and mathematics assessments including policy and instructional implications. Results will be used to guide English language arts and mathematics assessment system and KITE system improvement.
- AAI will organize documentation to support USED peer review requirements and will facilitate all non-state specific peer review efforts.

**DLM English Language Arts and Mathematics Alternate Assessment Scoring and Reporting Services**

- AAI will produce PDF files containing student, class, school, and district English language arts and mathematics reports that may be accessed and printed by the appropriate local education agency or its designee. Report files will be packaged by student school and district for electronic distribution.
- AAI will produce a PDF file with a state level report on English language arts and mathematics results that State-authorized SEA
- AAI will provide the SEA with an electronic data file in csv format containing all student results, performance levels, and information indicating the student, classroom, teacher, school, and district for each content area tested and any other data in the DLM database required for accountability reporting.

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- AAI will provide the SEA with the electronic data file in csv format containing all student results, performance levels, and information indicating the student, classroom, teacher, school, and district for each content area tested and any other data in the DLM database required for accountability reporting.
- AAI will provide facility within the KITE™ system to allow teachers to look at the results of the DLM English language arts and mathematics instructionally embedded assessment.

**DLM English Language Arts and Mathematics Alternate Assessment Consortium Services**

- AAI will host face-to-face governance board meetings twice per year and cover the cost of attendance for two representatives per state.
- AAI will host virtual governance partner calls up to once per month and convene ad-hoc committee meetings as needed.
- AAI will provide states with access to DLM Technical Advisory Committee meetings where states may virtually attend and observe the meeting.
- AAI will provide governance board members with the opportunity to review and provide feedback on draft consortium training resources, manuals, and reports.
- AAI will host, maintain and enhance the DLM web site, including state-specific pages with contents to support implementation of DLM English language arts and mathematics assessments.
- AAI will make one site visit per year (e.g., state level training on implementation, meeting with state representatives, state TAC meeting participation, and/or stakeholders to provide DLM-specific information).

**DLM English Language Arts and Mathematics Alternate Assessment Content and Standards Services**

- AAI will maintain and make available the DLM English language arts and mathematics Essential Elements. AAI will keep track of any recommendations for changes to the Essential Elements. At any time, the English language arts and mathematics Governance Board can vote to revise and reissue the Essential Elements, with any such motion including a schedule for implementation to allow the following: Time to revise the learning map neighborhoods, Essential Element Concept Maps, and testlets; time for educators to familiarize themselves with any changes; and time for states to adopt the revised DLM English language arts and mathematics Essential Elements.

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**DLM English Language Arts and Mathematics Alternate Assessment Development Services**

- AAI, with input from the English language arts and mathematics consortium governance board, will create a test development plan that includes up to 200 testlets in English language arts and mathematics annually to replace testlets due to exposure, including accessible alternate forms as needed.
- AAI will annually complete all English language arts and mathematics test development processes including internal, external, and editorial reviews; field testing; and preparation for operational delivery including accessibility tagging and QC procedures.

**DLM Science Alternate Assessment Training and Support Services**

- AAI will annually update and make available required training modules for DLM Science test administrators in self-directed and facilitated formats. Modules will be hosted by AAI.
- AAI will annually update and deliver consortium-level training sessions for district-level staff who support science DLM implementation. At least two training sessions will be conducted annually via web conferencing software and recordings posted for later access.
- AAI will annually update and make available manuals and supporting materials for DLM science test administrators and individuals in district support roles (e.g., assessment coordinators).
- AAI will provide a toll free telephone number for state educators to have access to a service desk between the hours of 7:00 am and 6:00 pm Central Time Monday through Friday during the DLM End-of-Year test window and between 8:00 am and 5:00 pm Central Time at other times of the year (except National Holidays and December 26 through January 1). Tier 1 support will provide a response or resolution back to the originating caller within 24 hours. Tier 2 help desk support will trouble shoot problems not solvable by Tier 1 support. Tier 2 support will be available 8:00 am to 5:00 pm Central Time Monday through Friday (except National Holidays and December 26 through January 1).

**DLM Science Alternate Assessment Preparation Services**

- AAI will provide online access to allow local educators to input First Contact survey and Personal Needs and Preferences information needed to provide necessary

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accessibility supports and determine appropriate initial placement into the DLM Science Assessments.

- AAI will provide practice activities and released testlets that may be accessed in KITE to allow students and educators to become familiar with the science assessments. A minimum of one new testlet per grade span will be added each year.
- AAI will provide a file format to State to allow State to provide a school system hierarchy that AAI will enter into the KITE™ system. State provides a single organizational file annually to AAI for registration of districts and schools to set up the KITE™ system.
- AAI will provide functionality and supporting materials for centralized or distributed (SEA, LEA, or school) data load into the KITE™ system, including student names and appropriate demographic information, educator accounts, and rosters. AAI will ensure appropriate FERPA safeguards on all student data including authenticated user access.
- AAI will provide functionality and supporting materials for state/district management and access to update student and educator records during the year.

**DLM Science Alternate Assessment Administration Services**

- AAI will deliver instructionally embedded assessments for science in elementary, middle, and high school.
- AAI will deliver spring adaptive science assessments in grade bands (3-5, 6-8, and high school).
- AAI will support state selection of its own spring science testing window within the standard consortium wide window.
- AAI will make available built-in accessibility features for use during assessment and deliver alternate forms as needed for accessibility via the KITE system.
- AAI will provide state and district staff with access to on-demand data extracts that may be used to guide local data management and assessment preparation and monitoring.
- AAI will provide general project support (equivalent to approximately 10 days of staff time per year for the period of the contract) for state-level implementation of the DLM science assessment system, including: A designated main point of contact for state level DLM policy and implementation questions; and Email/Phone consultation (e.g., consult on state training and communication plans, consult and



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provide feedback on state developed materials and training, consult on capacity building for state to support local implementation).

**DLM Science Alternate Assessment KITE™ System Services**

- AAI will provide educators with an interface to manage DLM assessments, including assignment of instructionally embedded assessments and access to information about testlets.
- AAI will provide the KITE assessment administration platform and ongoing maintenance of the KITE assessment administration platform.
- Seeking advice from the Science Governance Board, AAI will prioritize and implement KITE system enhancements to support the DLM science system on at least an annual basis.

**DLM Science Alternate Assessment Professional Development Services**

- AAI will create up to 5 professional development modules annually that support instruction aligned to the DLM Science Essential Elements. Modules will be available in a self-directed format, available 24 hours a day, and 7 days per week to educators through the DLM website. All materials will be hosted by AAI.
- Seeking advice from the DLM Science Governance Board, AAI will prioritize and create new and enhance existing science instructional activities.
- AAI will provide SEA with monthly reports regarding educator completion of Self-Directed versions of professional development modules.
- AAI, through the use of websites, interactive learning opportunities, and social media, will support educators working with students with the most significant cognitive disabilities in the DLM Consortium by designing, hosting and publicizing trainings and classroom supports including familiar texts, sample lesson plans, writing tools, and other instructional resources.

**DLM Science Alternate Assessment Psychometric Services**

- AAI will produce an annual update to the consortium-wide science technical manual.
- AAI will fund four meetings per year of the DLM Consortium Technical Advisory Committee to advise on the design and delivery of the science alternate assessment system.

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- AAI will conduct, present, and publish research documenting the technical quality of the DLM science assessments including groundwork necessary to support both integrated and year-end testing models, policy and instructional implications. Results will be used to guide science assessment system and KITE system improvement.
- AAI will organize documentation to support USED peer review requirements and will facilitate all non-state specific peer review efforts.

**DLM Science Alternate Assessment Scoring and Reporting Services**

- AAI will produce PDF files containing student, class, school, and district science reports that may be accessed and printed by the appropriate local education agency or its designee. Report files will be packaged by student school and district for electronic distribution.
- AAI will produce a PDF file with a state level report on science results that State- authorized SEA representatives may access and print.
- AAI will provide the SEA with an electronic data file in csv format containing all student results, performance levels, and information indicating the student, classroom, teacher, school, and district for each content area and any other data in the DLM database required for accountability reporting.
- AAI will provide facility within the KITE™ system to allow teachers to look at the results of the DLM science instructionally embedded assessment.

**DLM Science Alternate Assessment Consortium Services**

- AAI will host face-to-face science governance board meetings twice per year and cover the cost of attendance for two representatives per state.
- AAI will host virtual science governance partner calls up to once per month and convene ad-hoc committee meetings as needed.
- AAI will provide states with access to DLM Technical Advisory Committee meetings where states may virtually attend and observe the meeting.
- AAI will provide science governance board members with the opportunity to review and provide feedback on draft consortium training resources, manuals, and reports.
- AAI will host, maintain and enhance the DLM web site, including state- specific pages with contents to support implementation of DLM science assessments.

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- AAI will make one site visit per year (e.g., state level training on implementation, meeting with state representatives, state TAC meeting participation, and/or stakeholders to provide DLM-specific information).

**DLM Science Alternate Assessment Content and Standards Services**

- AAI will maintain and make available the DLM Science Essential Elements. AAI will keep track of any recommendations for changes to the Essential Elements. At any time, the Science Governance Board can vote to revise and reissue the Essential Elements, with any such motion including a schedule for implementation to allow the following: Time to revise the learning map neighborhoods, Essential Element Concept Maps, and testlets; time for educators to familiarize themselves with any changes; and time for states to adopt the revised DLM Science Essential Elements.

**DLM Science Alternate Assessment Development Services**

- AAI, with input from the science consortium governance board, will create a test development plan that includes up to 300 testlets in science annually for the consortium, including accessible alternate forms as needed.
- AAI will annually complete all science test development processes including internal, external, and editorial reviews; field testing; and preparation for operational delivery including accessibility tagging and QC procedures.
- AAI will develop and field test instructionally embedded assessments for science in elementary, middle, and high school.

## **2. BUSINESS / TECHNICAL REQUIREMENTS**

Table C-2 General System Requirements The hosting service provided by the University of Kansas must conform to the information technology Privacy, and security standards of the University of Kansas, which include but are not limited to:

University of Kansas Security Standards

The primary information can be found at:

KORA – Kansas Open Records Act

<http://www.privacy.ku.edu/resources/hipaa.shtml>

Information Access and Technology Policies

<http://www.policy.ku.edu/infoaccess.shtml>

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Specific Documents:	
<p><b>Information Access</b>            Acceptable Use of Educational Technologies:            Guidelines for Faculty and Staff            Access to Libraries Services, Policies on            Blackboard, Policies and Procedures Related to Use            of, University of Kansas            Circulation Policies and Procedures, KU Libraries            Code of Conduct for Library Users, KU Libraries            Confidentiality Agreement for Use of Alumni            Information System            Content Management System Policy            Data Classification and Handling Policy            Data Classification and Handling Procedures Guide            Guest Access to Wireless Network            Index to Policies and Procedures, KU Libraries            Information Access Control Policy            Internal Audit Charter            Investigative Contact by Law Enforcement, Policy            and Procedures            KLETC Open Records Request Policy            KU Alumni Association E-mail Policy            KU Card Center - Obtaining the KU Card            KU Card Center - Request for Release of Photo            KU Card Center - Terms and Conditions of the KU            Card            KU Libraries: Access, Circulation, and Request            Services - Requirements for KU Students, Faculty,            Staff, and Affiliates on the Lawrence and Edwards            Campuses            KU Libraries: Access, Circulation, and Request            Services for KU Faculty, Staff, and Affiliates            KU Libraries: Access, Circulation, and Request            Services for KU Graduate Students            KU Libraries: Access, Circulation, and Request            Services for KU Undergraduate and Law Students            KU Libraries: Code of Conduct for Library Users            Library Services for Other Users            Maintenance of Alumni Records            Missing Residential Student Policy and Procedure:            Vice Provost for Student Affairs            Open Access Policy for University of Kansas            Scholarship            Records Retention Schedule            Requests for Alumni Records            Safety and Security of Funds            Student Record Policy Primary Records Custodians            Student Records Policy: Office of the University            Registrar            Systems Development Life Cycle (SDLC) Policy            Systems Development Life Cycle (SDLC) Standard            Undergraduate Admission Records Retention            Policy: Office of Admissions and Scholarships            Virtual Private Network (VPN) Remote Access            Procedure</p>	<p><b>Privacy &amp; Security</b>            Acceptable Use of Educational Technologies:            Guidelines for Faculty and Staff            Access to Libraries Services, Policies on            Blackboard, Policies and Procedures Related to            Use of, University of Kansas            Clinic Policies and Procedures Regarding Privacy            &amp; Security of Patient Information            Code of Conduct for Library Users, KU Libraries            Confidentiality of Proposals and Awards            Credit Card Information            Data Center and Server Room Policy            Data Center and Server Room Standards            Data Classification and Handling Policy            Data Classification and Handling Procedures            Guide            Education Credential Files: University Career            Center            Electronic Data Disposal Policy            Electronic Data Disposal Procedure            Gramm-Leach-Bliley Student Financial            Information Security Program            Health Information Privacy Policy: Watkins Health            Services            Identity Theft Prevention Program            Information Access Control Policy            Information Technology Security Policy            Instructions for a lost, stolen, or damaged KU Card            KU Card Center - Disclosure Statement            KU Card Center - Report KU Card Lost or Stolen            KU Card Center - Request for Release of Photo            KU Libraries: Code of Conduct for Library Users            KU Libraries: Privacy and Confidentiality            KUMC Computer Security Incident Response            KUMC Computer Security Policy            KUMC Gramm-Leach-Bliley Act            KUMC Mobile Device Security            KUMC Password Policy            KUMC Payment Card Acceptance            KUMC Secure Application Development            KUMC Sensitive Information in Electronic and            Paper-Based Systems            KUMC Vulnerability Management            KUMC Working with Vendor Systems            Missing Residential Student Policy and Procedure:            Vice Provost for Student Affairs            Password Policy            Privacy Policy, General            Privacy Policy: Counseling and Psychological            Services            Record Confidentiality            Records Retention Schedule            Roles and Responsibilities for Information            Management Policy</p>

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<p>Virtual Private Network (VPN) Service on the University of Kansas Data Network</p>	<p>Safety and Security of Funds  Security Policy Procedure: Risk and Vulnerability Guidelines  Security Policy: Assessment for Local IT Environments and Outline for Risk and Vulnerability Assessments  Student Record Policy Primary Records Custodians  Student Records Policy: Office of the University Registrar  Systems Development Life Cycle (SDLC) Policy  Systems Development Life Cycle (SDLC) Standard  Unauthorized Peer-to-Peer File Sharing</p>
<p>Information Technology  Acceptable Use of Educational Technologies: Guidelines for Faculty and Staff  Acceptable Use of Electronic Information Resources  Access to Libraries Services, Policies on Blackboard, Policies and Procedures Related to Use of, University of Kansas  Code of Conduct for Library Users, KU Libraries  Content Management System Policy  Data Center and Server Room Policy  Data Center and Server Room Standards  Electronic Mail Policy  Internet-Based Credit Card Processing Policy  KUMC Computer Equipment Disposal and Media Sanitization  KUMC Copyright Policy and Guidelines  KUMC Email Use  KUMC Internet Use  KUMC Ownership of Computing Hardware and Software  KUMC Roles of Technical Support Associates  KUMC Social Media  KUMC Software Licensing  KUMC Student Email Use  KUMC Web Resource Accessibility  KUMC Web Server Appropriate Use  KUMC Working with Vendor Systems  Mobile Communication &amp; Information Devices Network Policy  Server Registration &amp; Centralization  Telecommunications Physical Infrastructure  Telecommunications Wiring Policy  Unauthorized Peer-to-Peer File Sharing  Visual Identity (Web Standards) Manual for the University of Kansas  Wireless Local Area Network (LAN) Systems Policy</p>	

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Specific Documents:

Data Classification and Handling Policy

<https://documents.ku.edu/policies/IT/DataClassificationandHandlingPolicy.htm>

Data Classification and Handling Guide

<https://documents.ku.edu/policies/IT/DataClassificationandHandlingProceduresGuide.htm>

Data Center and Server Room Policy

[https://documents.ku.edu/policies/IT/DataCenterandServerRoom\\_Policy.htm](https://documents.ku.edu/policies/IT/DataCenterandServerRoom_Policy.htm)

Data Center and Server Room Standards

[https://documents.ku.edu/policies/IT/DataCenterandServerRoom\\_Standards.htm](https://documents.ku.edu/policies/IT/DataCenterandServerRoom_Standards.htm)

Data Disposal Policy

<https://documents.ku.edu/policies/IT/DataDisposalPolicy.htm>

Data Disposal Procedure

<https://documents.ku.edu/policies/IT/DataDisposalProcedure.htm>

Information Access Control Policy

<https://documents.ku.edu/policies/IT/InformationAccessControlPolicy.htm>

Technical requirements are included in 2021-091 Attachment I DOE NH Alt Assessment-DLM CONTRACT Requirements\_updated 3.29.21 and are hereby incorporated within.

### 3. ACTIVITY, DELIVERABLE, AND MILESTONE

#### DELIVERABLES, MILESTONES AND ACTIVITIES:

KUCR shall provide the State with access to the Kansas Interactive Testing Engine™ platform (KITE) to provide the DLM Alternate Assessment. The KITE platform will meet and perform in accordance with the Contract Specifications and Deliverables, and in accordance with the time frames provided below.

The Activities, Deliverables, and Milestones are set forth in the Schedule described below. By unconditionally accepting a Deliverable, the State reserves the right to reject any and all Deliverables in the event the State detects any Deficiency in the System.

Pricing will be effective for the Term of this Contract, and any extensions thereof.

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**DELIVERABLES, MILESTONES, AND ACTIVITIES SCHEDULE**

Reference Number	Activity, Deliverable, or Milestone	Deliverable Type	Projected Delivery Date
1	Science Summer Governance Meeting	Non-Software	After fully executing contract
2	Annual Work Plan	Written	Summer
3	Webinars	Non-Software	Early September
4	Registration of Districts and Schools, local ability enabled and dependent on SEA delivery of state organization file.	Non-Software	As per schools' schedule
5	Registration of Educators, local ability enabled and dependent on SEA delivery of state organization file.	Non-Software	As per schools' schedule
6	Registration of Students, local ability enabled and dependent on SEA delivery of state organization file.	Non-Software	Deadline January for Year End September or Year Round
7	On-line access to allow educators to input information, local ability enabled and dependent on SEA delivery of state organization file.		As per schools' schedule
8	Practice Tests and Sample Items		Early September

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9	DLM Instructionally Embedded Assessment		The Instructionally Embedded assessment window for the consortium is mid-September through the end of February. State Partners set their own window with the consortium window.
10	DLM End of Year Assessment		The spring assessment window for the consortium is mid-March through the end of the first full week of June. State Partners set their own window with the consortium window.
11	Test Administration Manual, and Assessment Coordinator Manual Available	Written	August



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12	Local Caching Server Update		End of September – est.
13	Chromebook and iPad applications available		Early September
14	Updated version of KITE client available		Early September
15	Closing Date for Data validation/revision window #1	Non-Software	Early August
16	SEA Audit of Operational Forms	Written	Not applicable
17	Preparation for Fiscal Year Operational Spring Window.	Software	Late November through Mid-March
18	Consortium Fiscal Year Operational Spring Window	Software	Mid-March through Mid-June
19	Final Scores Sent to States.	Electronic Format	No later than July 31 of each year

**4. DELIVERABLE REVIEW AND ACCEPTANCE**

**4.1 Non-Software and Written Deliverables Review and Acceptance**

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

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Acceptance, Acceptance in part, conditional Acceptance, or rejection thereof, with the option to extend the Review Period up to five (5) additional business days, or mutually agreed upon timeframe. If the Contractor fails to correct the Deficiency within the allotted period, the State may, at its option, continue reviewing the Deliverable and require the Contractor to continue until the Deficiency is corrected, or immediately terminate the Contract, declare the Contractor in default, and or pursue its remedies at law and in equity.

**4.2 Software Deliverables Review and Acceptance**

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

**4.3 Conditional and Unconditional Acceptance**

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

**5. CHANGE ORDER**

State may make changes, revisions or request enhancements to the Scope of Work at any time by written Change Order. The State originated changes, revisions or enhancements shall be approved by the Department of Information Technology. Within ten (10) business days of Contractor's receipt of a Change Order, Contractor shall advise the State, in detail, of any impact on cost (e.g., increase or decrease), the Schedule, and the Work Plan.

Contractor may propose a change within the scope of the Contract by written Change Order, identifying any impact on cost, the Schedule, and the Work Plan. The State shall acknowledge receipt of Contractor's requested Change Order within ten (10) business days. The State Agency, as well as the Department of Information Technology, must review and approve all Change Orders in writing. The State shall be deemed to have rejected the Change Order if the Parties are unable to reach an agreement in writing within 30 days of receipt of the Change Order.

Change orders resulting in an increase of Price Limitation, an extension of time for Contract completion or a significant change to the scope of the Contract may require approval by the Governor and Council.

A Change Order which is accepted and executed by both Parties and if applicable, approved by Governor and Council, shall amend the terms of this Agreement.

**6. IMPLEMENTATION SERVICES**

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

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

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

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Contractor Initials: AMR

Date: 5/12/2021

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**7. PROJECT MANAGEMENT**

The Contractor shall provide project tracking tools and templates to record and manage Issues, Risks, Change Requests, Requirements, and other documents used in the management and tracking of the project. The State believes that effective communication and Reporting are essential to Project success. The Contractor shall employ effective communication and Reporting strategies to ensure Project success. The Contractor Key Project Staff shall participate in meetings as requested by the State, in accordance with the requirements and terms of this Contract.

The Project requires the coordinated efforts of a Project Team consisting of both Contractor and State personnel. Contractor shall provide all necessary resources to perform its obligations under the Contract. Contractor is responsible for providing all appropriate resources and personnel to manage this Project to a successful completion.

**7.1 The Contractor Key Project Staff**

**7.1.1 The Contractor's Contract Manager**

Contractor shall assign a Contract Manager who will be responsible for all Contract authorization and administration, including but not limited to processing Contract documentation, obtaining executive approvals, tracking costs and payments, and representing the parties in all Contract administrative activities. Contractor's Contract Manager is:

Alicia Reed, Director of Research Administration  
785-864-3289  
[amreed@ku.edu](mailto:amreed@ku.edu)

**7.1.2 The Contractor's Project Manager**

Contractor shall assign a Project Manager who is qualified to perform or supervise the Contractor's obligations under this Agreement. Contractor's Project Manager is:

Meagan Karvonen, Director and Principal Investigator  
85-864-3537  
[karvonen@ku.edu](mailto:karvonen@ku.edu)

Contractor's selection of the Project Manager shall be subject to the prior written approval of the State. The State's approval process may include, without limitation, at the State's discretion, review of the proposed Project Manager's resume, qualifications, references, and background checks, and an interview. The State may require removal or reassignment of Project Manager who, in the sole judgment of the State, is found unacceptable or is not performing to the State's satisfaction. Project Manager must be qualified to perform the obligations required of the position under the Contract, shall have full authority to make binding decisions

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under the Contract, and shall function as Contractor's representative for all administrative and management matters. Project Manager must be available to promptly respond during normal Business Hours within five (5) days of inquiries from the State, and be at the site as needed. Project Manager must work diligently and use his/ her best efforts on the Project.

**7.1.3 Background Check**

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

**7.1.4 Termination for Lack of Project Management and Key Project Staff**

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

**7.2 The State Key Project Staff**

**7.2.1 The State Contract Manager**

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

Melissa White, Administrator  
603-271-3855  
[Melissa.White@doe.nh.gov](mailto:Melissa.White@doe.nh.gov)

**7.2.2 The State Project Manager**

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

Melissa White, Administrator  
603-271-3855  
[Melissa.White@doe.nh.gov](mailto:Melissa.White@doe.nh.gov)

The State Project Manager's duties shall include the following:

Leading the Project;  
Engaging and managing all Contractors working on the Project;  
Managing significant issues and risks;  
Reviewing and accepting Contract Deliverables;  
Invoice sign-offs;  
Review and approval of Change Orders;  
Managing stakeholders' concerns.

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**8. WORK PLAN**

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

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

**Implementation Schedule – Activities / Deliverables / Milestones.** Any additional activities and milestones will be decided by the Consortium.

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

**9. ACCEPTANCE & TESTING SERVICES**

KUCR shall provide the following Services described below, including but not limited to:

**1. TESTING AND ACCEPTANCE**

KUCR shall be responsible for testing the software and KITE Platform prior to allowing State and other Consortium States access. Training on using KITE is available, in form of webinars and online, to the State staff responsible for assessment activities.

KUCR has an overall internal testing plan for the KITE platform. Testing shall be performed in accordance with this plan, including but not limited to, User Acceptance Testing.

**1.1 Regression Testing**

The KUCR will perform regression testing as necessary to fulfill the requirements under the Exhibit E, Implementation. Regression testing means selective re-testing to detect faults introduced during the modification effort, both to verify that the modifications have not caused unintended adverse effects, and to verify that the modified and related (possibly affected) System components still meet their specified requirements.

**1.2 Security Review and Testing**

All components of the software and KITE platform shall be reviewed and tested internally prior to allowing access to State and Consortium users.

See 2021-091 Attachment 1 DOE NH Alt Assessment-DLM CONTRACT Requirements updated 3.29.21 for additional requirements.

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**10. MAINTENANCE, OPERATIONS AND SUPPORT**

**10.1 SYSTEM MAINTENANCE**

KUCR shall host, maintain, and support the software and KITE platform in all material respects for the duration of the Contract.

KUCR's Responsibility - KUCR shall maintain the functionality and security of the software and KITE platform. KUCR will not be responsible for maintenance or support for Software developed or modified by the State.

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

**10.2 SYSTEM SUPPORT**

**KUCR's Responsibility**

KUCR will be responsible for providing technical support to State users as provided herein:

- a. Tier 1 Help Desk Support - CETE will provide a toll free telephone number for STATE educators to have access to a help desk between the hours of 7:00 am and 6:00 pm Central Time Monday through Friday during the DLM End-of-Year test window and between 8:00 am and 5:00 pm Central Time at other times of the year (except National Holidays and December 26 through January 1 when the Help Desk will be closed). Tier 1 support to provide a response or resolution back to the originating caller within 24 hours.
- b. Tier 2 Help Desk Support - CETE will provide Tier 2 help desk support between 8:00 am and 5:00 pm Central Time Monday through Friday (except National Holidays and December 26 through January 1 when the Help Desk will be closed). Tier 2 help desk support will trouble shoot problems not solvable by Tier 1 support.

**10.3 SUPPORT OBLIGATIONS AND TERM**

KUCR shall provide ongoing operational support and hosting of the software and KITE platform for the DLM Alternate Assessment for the duration of the contract period;

See 2021-091 Attachment 1 DOE NH Alt Assessment-DLM CONTRACT Requirements\_updated 3.29.21 for additional requirements.

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

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

a. For all maintenance Services calls, the Contractor shall ensure the following information will be collected and maintained:

- i. nature of the Deficiency;
- ii. current status of the Deficiency;
- iii. action plans, dates, and times;
- iv. expected and actual completion time;
- v. Deficiency resolution information;
- vi. resolved by;
- vii. identifying number i.e. work order number; and
- viii. issue identified by; and

b. The Contractor must work with the State to identify and troubleshoot potentially large-scale System failures or Deficiencies by collecting the following information:

- i. mean time between Reported Deficiencies with the Software;
- ii. diagnosis of the root cause of the problem; and
- iii. identification of repeat calls or repeat Software problems.

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

#### **10.4 Contract Warranties and Representations**

##### **10.4.1 System**

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

##### **10.4.2 Software**

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

For any breach of the above Software warranty, in addition to all its other remedies at law and in equity, at the State's option the Contractor shall: (a) provide the correction of program errors that cause breach of the warranty, or if Contractor cannot substantially correct such breach in a commercially reasonable manner, the State may end its program license if any and recover the fees paid to Contractor for the program license and any unused, prepaid technical support fees the State has paid for the program license; or (b) the re-performance of the deficient Services, or (c) if Contractor cannot substantially

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correct a breach in a commercially reasonable manner, the State may end the relevant Services and recover the fees paid to Contractor for the deficient Services.

**10.4.3 Compatibility**

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

**10.4.4 Services**

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

**11. DATA PROTECTION**

Protection of personal privacy and data shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of State information and comply with the following conditions:

- a. The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and non-public information. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own Personal Data and non-public data of similar kind.
- b. All data obtained by the Contractor in the performance of this contract and all Personal Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the Personal Data.
- c. Unless otherwise stipulated, the Contractor shall encrypt all non-public data at rest and in transit. The State shall identify data it deems as non-public data to the Contractor. The level of protection and encryption for all non-public data shall be identified and made a part of this contract.
- d. At no time shall any data or processes – that either belong to or are intended for the use of the State or its officers, agents or employees – be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the State.
- e. The Contractor shall not use any information collected in connection with the service issued from this Contract for any purpose other than fulfilling the service.



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**11.1 Data Location**

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

**11.2 Security Incident Or Data Breach**

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

- a. Incident Response: the Contractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. Discussing security incidents with the State should be handled on an urgent as-needed basis, as part of the Contractor communication and mitigation processes as mutually agreed upon, defined by law or contained in the contract.
- b. Security Incident Reporting Requirements: the Contractor shall report a security incident to the State identified contact immediately if it reasonably believes there has been a security incident.
- c. Breach Reporting Requirements: If the Contractor has actual knowledge of a confirmed data breach that affects the security of any State content that is subject to applicable data breach notification law, the Contractor shall (1) promptly notify the appropriate State identified contact within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.

**11.3 Breach Responsibilities**

**11.3.1** This section only applies when a Data Breach occurs with respect to State data within the possession or control of the Contractor and/or the third party designee hosting the data as agreed upon by the Contractor and the State.

**11.3.2** The Contractor, unless stipulated otherwise, shall immediately notify the appropriate State identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.

**11.3.3** The Contractor, unless stipulated otherwise, shall promptly notify the appropriate State identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a Data Breach the Contractor shall:

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- a. cooperate with the State as reasonably requested by the State to investigate and resolve the Data Breach;
- b. promptly implement necessary remedial measures, if necessary; and
- c. document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

11.3.4 Unless otherwise stipulated, if a Data Breach is a direct result of the Contractor's breach of its contract obligation or the third party hosting company to encrypt Personal Data or otherwise prevent its release, the Contractor and/or the third party hosting company shall bear the costs associated with:

- a. the investigation and resolution of the Data Breach;
- b. notifications to individuals, regulators or others required by State law;
- c. a credit monitoring service required by State (or federal) law;
- d. a website or a toll-free number and call center for affected individuals required by State law — all not to exceed the average per record per person cost calculated for Data Breaches in the United States (currently \$201 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the Data Breach; and
- e. complete all corrective actions as reasonably determined by the Contractor based on root cause; all [(a) through (e)] subject to this Contract's limitation of liability.

See Exhibit G: Data Use Agreement Between New Hampshire Department of Education (State) and University of Kansas Center for Research, Inc. (University); DLM Governance 2021-2022; Assurances; Intellectual Property

## 12. TRAINING

The Contractor shall provide the following Training Services:

KUCR shall provide Training Services in the following manner:

### A. TRAINING

The Guide to DLM Required Training and Professional Development 2022-23 may be downloaded from, <http://dynamiclearningmaps.org/content/professional-development>.

#### 1. Delivery Method -Instructor-Led Class Training

#### 2. Project Team Developed Training

- a. KUCR and the State agree to an end user training approach using the standard training services and resources provided to DLM state partners under the service rate agreement to meet training objectives, including:

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- 1) developing “in house” experts and end-user support channels that involve and leverage internal resources and subject matter experts (SMEs); and
- 2) leveraging statewide access to computers and the Web by accessing On-line courses whenever possible to lessen time away from the job and reduce travel costs for those who are spread across the State.

**13. CERTIFICATES AND CONTRACTOR'S ATTACHMENTS**

Required Certificates and Contractor's attachments are included in Exhibit G:

Data Use Agreement Between New Hampshire Department of Education (State) and University of Kansas Center for Research, Inc. (University)

DLM Governance 2021-2022

Assurances

Intellectual Property

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**EXHIBIT C – PRICE AND PAYMENT SCHEDULE**

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**EXHIBIT C – PRICE AND PAYMENT SCHEDULE**

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

**1. CONTRACT PRICE**

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

**2. TRAVEL EXPENSES**

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

**3. SHIPPING FEES**

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

**4. INVOICING**

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

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

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**5. INVOICE ADDRESS**

Invoices may be sent to:

New Hampshire Department of Education  
Attn: Melissa White  
101 Pleasant Street  
Concord, NH 03301

**6. PAYMENT ADDRESS**

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

**7. OVERPAYMENTS TO THE CONTRACTOR**

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

**8. CREDITS**

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

**9. PAYMENT SCHEDULE**

**Activities / Deliverables / Milestones Pricing**

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

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**EXHIBIT C - PRICE AND PAYMENT SCHEDULE**

This Contract will allow KUCR to invoice the State for the following activities, Deliverables, or milestones appearing in the price and payment tables below.

FY Academic Testing Year (July 1 - June 30)		Estimated Amount
	First Payment upon NH Governor and Council Approval of Contract	35% of Estimated Amount \$157,605.00
	Second Payment January 1	35% of Estimated Amount \$157,605.00
	Final Payment upon conclusion of the end-of-year assessment as described below.	Final invoice adjusted to account the actual number of students tested. \$135,090.00
<b>Total</b>		<b>\$450,300.00</b>

For English Language Arts, Mathematics and Science testing services, estimated payment will be based on 1,480 students (1,025 students in English language arts and mathematics and 455 students in science) the State will pay KUCR an annual non-refundable fixed rate price amount of \$300,000 (\$150,000 for annual English language arts consortium operations costs plus \$150,000 for annual science consortium operations costs) plus a per student cost up to \$150,300.00, which is  $(\$120.00 \times 1,025) + (\$60 \times 455)$ . Costs after the 2021-22 testing year will be determined based on discussions with the Consortium.

- KUCR shall invoice STATE for 35% of the estimated total cost on or before August 1, of the current testing year and STATE shall pay on or before September 1 of the current testing year,
- KUCR shall invoice STATE for 35% of the estimated total cost on or before January 1, of the current testing year and STATE shall pay on or before February 1 of the current testing year, and
- KUCR shall invoice STATE for the balance of the total cost, based on the actual total number of students tested during either the instructionally embedded or end-of-year assessment, upon completion and delivery of the annual test reports, or in the event testing is not completed through no fault of KUCR, KUCR shall final invoice STATE in line with the cancellation component outlined below and STATE shall pay within 30 calendar days.

**Early Termination and Cancellation**

If STATE cancels student testing or this Agreement terminates early due to no fault of KUCR, KUCR shall final invoice and STATE shall pay a pro-rated amount from the schedule below, exclusive of any non-refundable consortium fees paid, based on the total estimated contract cost (number of students x

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**EXHIBIT C - PRICE AND PAYMENT SCHEDULE**

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tests) or actual student/test counts from the most recent school year in which regular testing occurred, whichever is less. STATE shall pay within thirty (30) calendar days of receipt of invoice:

Month of cancellation	Percentage of total cost
July	9%
August	18%
September	27%
October	36%
November	45%
December	54%
January	63%
February	72%
March	81%
April	90%
May	95%
June	100%

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EXHIBIT D – SOFTWARE AGREEMENT

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EXHIBIT D – SOFTWARE AGREEMENT

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**EXHIBIT E – ADMINISTRATIVE SERVICES**

**EXHIBIT E – ADMINISTRATIVE SERVICES**

**1. DISPUTE RESOLUTION**

Prior to the filing of any formal proceedings with respect to a dispute (other than an action seeking injunctive relief with respect to intellectual property rights or Confidential Information), the Party believing itself aggrieved (the "Invoking Party") shall call for progressive management involvement in the dispute negotiation by written notice to the other Party. Such notice shall be without prejudice to the Invoking Party's right to any other remedy permitted under the Contract. The Parties shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, between negotiators for the Parties at the following successive management levels, each of which shall have a period of allotted time as specified below in which to attempt to resolve the dispute:

<b>Table E-1.</b>			
<b>DISPUTE RESOLUTION RESPONSIBILITY AND SCHEDULE TABLE</b>			
<b>LEVEL</b>	<b>CONTRACTOR POINT OF CONTACT</b>	<b>STATE POINT OF CONTACT</b>	<b>CUMULATIVE ALLOTTED TIME</b>
Primary	KUCR Project Manager	Bureau Administrator	Five (5) Business Days
First	KUCR Director of Research Administration	Division Director	Ten (10) Business Days
Second	TBD	Commissioner of Education	Fifteen (15) Business Days

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

**2. ACCESS AND COOPERATION**

Subject to the terms of this Agreement and applicable laws, regulations, and policies, the State will provide the Contractor with access to all program files, libraries, personal computer-based Systems, Software packages, Network Systems, security Systems, and hardware as required to complete the contracted Services.

**3. RECORD RETENTION**

Contractor and its Subcontractors shall maintain all Project records including but not limited to books, records, documents, and other evidence of accounting procedures and practices, which properly and sufficiently reflect all direct and indirect costs invoiced in the performance of their respective obligations under the Contract. Contractor and its Subcontractors shall retain all such

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**EXHIBIT E - ADMINISTRATIVE SERVICES**

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records for three (3) years following termination of the Contract, including any extensions. Records relating to any litigation matters regarding the Contract shall be kept for one (1) year following the termination of all litigation, including the termination of all appeals or the expiration of the appeal period.

Upon prior notice and subject to reasonable time frames, all such records shall be subject to inspection, examination, audit and copying by personnel so authorized by the State and federal officials so authorized by law, rule, regulation or Contract, as applicable. Access to these items shall be provided within Merrimack County of the State of New Hampshire, unless otherwise agreed by the State. Delivery of and access to such records shall be at no cost to the State during the three (3) year period following termination of the Contract and one (1) year Term following litigation relating to the Contract, including all appeals or the expiration of the appeal period. Contractor shall include the record retention and Review requirements of this section in any of its subcontracts.

**4. ACCOUNTING**

Contractor shall maintain an accounting System in accordance with Generally Accepted Accounting Principles (GAAP). The costs applicable to the Contract shall be ascertainable from the accounting System.

**5. AUDIT**

The Contractor shall allow the State to audit conformance to the contract terms. The State may perform this audit or contract with a third party at its discretion and at the State's expense.

**6. MISCELLANEOUS WORK REQUIREMENTS**

**6.1 Access to State Systems**

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

**6.1.1. Computer Use**

- a. Every Authorized User has the responsibility to assure the protection of information from unauthorized access, misuse, theft, damage, destruction, modification, or disclosure.
- b. That information shall be used solely for conducting official State business, and all other use or access is strictly forbidden including, but not limited to, personal, or other private and non-State use and that at no time shall Contractor access or attempt to access any information without having the express authority to do so.
- c. That at no time shall Contractor access or attempt to access any information in a manner inconsistent with the approved policies, procedures, and /or agreements relating to system entry/access.
- d. That all software licensed, developed, or being evaluated by the State cannot be copied, shared, distributed, sub-licensed, modified, reverse engineered, rented, or sold, and that at all times Contractor must use utmost care to protect and keep such software strictly confidential in accordance with the license or any other

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**EXHIBIT E - ADMINISTRATIVE SERVICES**

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agreement executed by the State. Only equipment or software owned, licensed, or being evaluated by the State, can be used by Contractor Personal software (including but not limited to palmtop sync software) shall not be installed on any equipment.

- e. That if Contractor is found to be in violation of any of the above-stated rules, the Contractor may face default and termination under the Agreement and the individual may face removal from the State Contract, and/or criminal or civil prosecution, if the act constitutes a violation of law.
- f. That computer use shall follow the State standard policy (Statewide Computer Use Policy is available upon request)

**6.1.2. Email Use**

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

**6.1.3. Internet/Intranet Use**

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

**6.2 State Website Copyright**

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

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**EXHIBIT F – TERMS AND DEFINITIONS**

**EXHIBIT F – TERMS AND DEFINITIONS**

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

<b>TERM</b>	<b>DEFINITION</b>
<b>AA</b>	Alternate Assessment
<b>AAI</b>	Achievement and Assessment Institute is a department at the University of Kansas and the organizational home of the Dynamic Learning Maps Consortium (DLM Consortium).
<b>Acceptance</b>	Notice from the State that a Deliverable has satisfied Acceptance Test or Review.
<b>Access Control</b>	Supports the management of permissions for logging into a computer or network
<b>Agreement</b>	A Contract duly executed and legally binding.
<b>Certification</b>	KUCR's written declaration with full supporting and written Documentation (including without limitation test results as applicable) that KUCR has completed development of the Deliverable and certified its readiness for applicable Acceptance Testing or Review.
<b>Change Order</b>	Formal documentation prepared for a proposed change in the Specifications.
<b>Confidential Information</b>	Information required to be kept Confidential and restricted from unauthorized disclosure under the Contract. "Confidential Information" or "Confidential Data" means all private/restricted confidential information disclosed by one party to the other such as all medical, health, financial, public assistance benefits and personal information including without limitation, Protected Health Information and Personally Identifiable Information.  Confidential Information also includes any and all information owned or managed by the State of NH - created, received from or on behalf of any state agency or accessed in the course of performing contracted services - of which collection, disclosure, protection, and disposition is governed by state or federal law or regulation. This information includes, but is not limited to Personal Health Information (PHI); Personally Identifiable Information (PII), Federal Tax Information (FTI), Social Security Numbers (SSN), Payment Card Industry (PCI), and or other sensitive and confidential information.

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**EXHIBIT F – TERMS AND DEFINITIONS**

<b>Contract</b>	An Agreement between the State of New Hampshire and a Vendor, which creates binding obligations for each party to perform as specified in the Contract Documents.
<b>Data Breach</b>	Data Breach means the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic. With regard to Protected Health Information, "Data Breach" shall have the same meaning as the term "Breach" in section 164.402 of Title 45, Code of Federal Regulations.
<b>Deficiency (-ies)/Defects</b>	A failure, shortcoming or error in a Deliverable resulting in a Deliverable, the Software, or the System, not conforming to its Specifications.
<b>Deliverable</b>	A Deliverable is any Written, Software, or Non-Software Deliverable (letter, report, manual, book, code, or other), provided by the Contractor to the State or under the terms of a Contract requirement.
<b>DLM</b>	Dynamic Learning Maps show the relationships among skills and offer multiple learning pathways.
<b>DLM AA</b>	Dynamic Learning Maps Alternate Assessment
<b>DLM Consortium</b>	Dynamic Learning Maps Consortium is a multi-state coalition of state departments of education that acts in collaboration to research, design and implement a standards-based educational system that promotes equitable educational opportunities for students with significant cognitive disabilities in grades three through high school.
<b>DLM Consortium Associate Member</b>	Any state educational agency that is not using the DLM Alternate Assessment during the current year, but would like to attend Governance Meetings and conference calls. Associate members may participate in conversations but have no vote. Educators and students from Associate Member states will not participate in ongoing research. Associate membership requires an affirmative vote by two-thirds of the DLM Consortium Members.
<b>DLM Consortium Member</b>	Any state educational agency that approves and/or purchases the DLM Consortium student assessment services to satisfy the state and local educational agencies requirements of the Elementary and Secondary Education Act that pertain to the academic assessment students with significant cognitive disabilities.

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Contractor Initials: AMR  
Date: 5/12/2021

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**EXHIBIT F – TERMS AND DEFINITIONS**

<b>DLM Governance Board Member</b>	Any person appointed to the DLM Governance Board according to the Board Member Appointment
<b>Documentation</b>	All information that describes the installation, operation, and use of the Software, either in printed or electronic format.
<b>Enhancements</b>	Updates, additions, modifications to, and new releases for the Software or System, and all changes to the Documentation as a result of improvement in quality, value, or extent.
<b>ESEA</b>	Elementary and Secondary Education Act
<b>Essential Elements (EEs)</b>	Specific statements of knowledge and skills linked to the grade-level expectations identified in college- and career-readiness standards. EEs build a bridge from content standards to academic expectations for students with the most significant cognitive disabilities
<b>FERPA</b>	Family Educational Rights and Privacy Act
<b>Hosted Services</b>	Applications, IT infrastructure components or functions that organizations access from external service providers, typically through an internet connection.
<b>Hosting System</b>	The combination of hardware, software and networking components used by the Application Service Provider to deliver the Hosted Services.
<b>Identification and Authentication</b>	Supports obtaining information about those parties attempting to log on to a system or application for security purposes and the validation of those users.
<b>Implementation</b>	The process for making the System fully Operational for processing the Data.
<b>Kite™</b>	Kansas Interactive Testing Engine™ platform - DLM system providing an online testing interface for students that includes practice items.
<b>Kite™ Client (Windows/Mac)</b>	DLM Web-based interface used by students for taking tests
<b>Kite™ Educator Portal</b>	An application that allows educators to manage student data, enroll students in instructionally embedded assessments, retrieve test tickets, and access professional development and training modules.
<b>LEA</b>	"LEA" means local educational agency and includes any educational agency within a DLM Consortium Member state subject to the requirements of ESEA of NCLB.

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**EXHIBIT F – TERMS AND DEFINITIONS**

<b>Non-Public Information</b>	Information, other than Personal Information, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the State because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.
<b>Operational</b>	Operational means that the System is ready for use and fully functional, all Data has been loaded; the System is available for use by the State in its daily operations, and the State has issued Acceptance.
<b>Personal Information</b>	"Personally Information" (or "PI") means information which can be used to distinguish or trace an individual's identity, such as their name, social security number, personal information as defined in New Hampshire RSA 359-C:19, biometric records, etc., alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc.
<b>Proposal</b>	The submission from a Vendor in response to the Request for a Proposal.
<b>SEA</b>	State educational agency including each state's education Superintendent.
<b>Security Incident</b>	"Security Incident" shall have the same meaning "Computer Security Incident" in section two (2) of NIST Publication 800-61, Computer Security Incident Handling Guide, National Institute of Standards and Technology, U.S. Department of Commerce.
<b>Software</b>	All Custom, SAAS and COTS computer programs and applications provided by the Contractor under the Contract.
<b>Software Deliverables</b>	All Custom, SAAS and COTS Software and Enhancements.
<b>Software License</b>	Licenses provided to the State under this Contract.
<b>Software-as-a-Service (SaaS)</b>	The capability provided to the State to use the Contractor's applications running on a cloud infrastructure. The applications are accessible from various client devices through a thin-client interface such as a Web browser (e.g., Web-based email) or a program interface. The State does not manage or control the underlying cloud infrastructure including network, servers, Operating Systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.

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**EXHIBIT F – TERMS AND DEFINITIONS**

<b>Specifications</b>	Written details that set forth the requirements which include, without limitation, the RFP, the Proposal, the Contract, any performance standards, Documentation, applicable State and federal policies, laws and regulations, State technical standards, subsequent State-approved Deliverables, and other specifications and requirements described in the Contract Documents. The Specifications are, by this reference, made a part of the Contract as though completely set forth herein.
<b>State Data</b>	All Data created or in any way originating with the State, and all Data that is the output of computer processing of or other electronic manipulation of any Data that was created by or in any way originated with the State, whether such Data or output is stored on the State's hardware, the Contractor's hardware or exists in any system owned, maintained or otherwise controlled by the State or by the Contractor.
<b>State Fiscal Year (SFY)</b>	The New Hampshire State Fiscal Year (SFY) runs from July 1 of the preceding calendar year through June 30 of the applicable calendar year.
<b>Subcontractor</b>	A person, partnership, or company not in the employment of, or owned by, the Contractor which is performing Services under this Contract under a separate Contract with or on behalf of the Contractor.
<b>System</b>	All Software, specified hardware, interfaces and extensions, integrated and functioning together in accordance with the Specifications.
<b>Term</b>	Period of the Contract from the Effective Date through the Completion Date identified in the P-37 General Provisions or termination.
<b>USED</b>	United States Education Department
<b>User Acceptance Testing</b>	Tests done by knowledgeable business users who are familiar with the scope of the Project. They create/develop test cases to confirm the System was developed according to specific user requirements. The test cases and scripts/scenarios should be mapped to business requirements outlined in the user requirements documents.
<b>Verification</b>	Supports the confirmation of authority to enter a computer system application or network.
<b>Warranty</b>	The conditions under, and period during, which the Contractor will repair, replace, or other compensate for, the defective item without cost to the buyer or user. It also delineates the rights and obligations of both parties in case of a claim or dispute.



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**EXHIBIT F - TERMS AND DEFINITIONS**

<b>Warranty Period</b>	A period of coverage during which the Contractor is responsible for providing a guarantee for products and Services delivered as defined in the Contract.
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**DATA USE AGREEMENT BETWEEN**

**New Hampshire Department of Education  
(STATE) and  
University of Kansas Center for Research, Inc.  
(UNIVERSITY)**

This Data Use Agreement is made and entered into as of August 1, 2021, by and between New Hampshire Department of Education, hereafter "Holder," and UNIVERSITY, hereafter "Recipient."

1. This agreement sets forth the terms and conditions pursuant to which the Holder will disclose certain protected educational information, hereafter "PEI" in the form of a Limited Data Set to the Recipient.
2. Terms used, but not otherwise defined, in this Agreement shall have the meaning given the terms in the United States Department of Education Regulations 20 U.S.C. § 1232g; 34CFR Part 99, also known as FERPA.
3. The purpose of this disclosure is to support the development and implementation of the Dynamic Learning Maps Alternate Assessment System for students. This purpose falls under both FERPA section 99.31(a)(6)(i)(A), which allows such disclosure in order to "Develop, validate, or administer predictive tests," or "Improve instruction," and FERPA section 99.35(a)(1), which allows such disclosure for the evaluation of state and federal education programs.

3.1 For uses that do not require score reporting, may be redacted at the sole discretion of the Holder and an identifier provided by the Holder will be used to identify students during the administration of the Dynamic Learning Maps Alternate Assessments.

**4. Recipient Responsibilities**

- 4.1 The Recipient will not use or disclose the Limited Data Set for any purpose other than permitted by this Agreement pertaining to the Project, or as required by law. If disclosure of data of any kind is deemed necessary, it will take place only after prior notification of the Holder.
- 4.2 The Recipient will use appropriate administrative, physical, and technical safeguards to prevent use or disclosure of the Limited Data Set other than as provided for by this Agreement.
- 4.3 The Recipient will report to the Holder any use or disclosure of the Limited Data Set not provided for by this Agreement. The report should be made (to Holder, by Recipient) within 24 hours of its discovery.
- 4.4 The Recipient will ensure that any agent, including a subcontractor, to whom it provides the Limited Data Set, agrees to the same restrictions and conditions that apply through this Agreement to the Recipient with respect to the Limited Data Set.

4.5 The Recipient will not identify the information contained in the Limited Data Set. Any reports or materials developed by the Recipient or subcontractors that use data provided under this Agreement, will not contain any personally identifiable information that is protected by the Family Educational Rights and Privacy Act (FERPA), 34 CFR 99.

4.6 The Recipient will not contact the individuals who are the subject of the PEI contained in the Limited Data Set.

#### 5. Term and Termination

5.1 The terms of this Agreement shall be effective as of July 1, 2021, and shall remain in effect until all PEI in the Limited Data Set provided to the Recipient is destroyed or returned to the Holder.

5.2 Upon the Holder's knowledge of a material breach of this Agreement by the Recipient, the Holder shall provide an opportunity for the Recipient to cure the breach or end the violation. If efforts to cure the breach or end the violation are not successful, the Holder shall discontinue disclosure of the Limited Data Set to the Recipient if the Holder determines cure of the breach is not possible.

5.3 Both Holder and Recipient shall have the right to terminate this Data Use Agreement for any reason by providing sixty (60) days' notice of termination of this Data Use Agreement to the other party (Holder or Recipient).

#### 6. General Provisions

6.1 The Recipient and Holder understand and agree that individuals who are the subject of PEI are not intended to be third party beneficiaries of this Agreement.

6.2 This Agreement shall not be assigned by the Recipient without the prior written consent of the Holder.

6.3 Each party agrees that it shall be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party or the results thereof.

#### 7. Data Confidentiality and Security

7.1 The Recipient shall implement and adhere to policies and procedures that restrict access to the Limited Data Set. A complete list of individuals with access to the Limited Data Set will be identified and maintained.

7.2 All individuals permitted to retrieve or use data from the Limited Data Set shall only access that data either directly from secure servers or by using a KU managed device with encrypted storage. Data from the Limited Data Set shall only be stored on or retrieved from secure servers located within the United States.

7.3 All individuals permitted to use or receive the Limited Data Set for purposes of the Project agree to handle pupil data in a manner that maintains privacy and confidentiality. All

individuals using or receiving the Limited Data Set must sign and return DLM's data access form, which will be maintained for the length of the project and will be shared with the Holder upon execution of the contract, and upon request thereafter.

#### 8. Transmission of Data

8.1 All student data shall be transmitted to the Recipient via a Secure File Transfer Protocol (SFTP) or other method agreed to by the Holder and Recipient.

8.2 During this transmission, data shall be secured based upon a method agreed to by the Holder and Recipient.

#### 9. Data Storage

9.1 PEI shall be kept, for the shortest of the following periods:

- ten years,
- upon completion of all final deliverables after termination of the Holder's membership in the Dynamic Learning Maps Alternate Assessment Consortium, or use of the Dynamic Learning Maps Alternate Assessment(s), or
- the date when the data are no longer needed for the purposes for which the component of the project was conducted.

When the PEI data storage term expires, the DLM Consortium will retain de-identified (non-PEI) data only for the purposes of maintaining the DLM operational assessment system (e.g., calibration, evidence of technical quality).

9.2 Data will be stored in a secure electronic format by the Recipient. All personally identifiable information connected with this Project shall be destroyed per 9.1 and in accordance with the University of Kansas policies regarding data handling and destruction, which include the NIST Special Publication 800-88 guidelines. The Recipient shall give the Holder written notice of planned destruction of records at least thirty (30) days prior to such destruction.

#### 10. Data Elements

10.1 Attached is a Data Request (Attachment 1) listing variables to be provided by the Holder to the Recipient for use with the Project. All data remains the property of Holder.

## DLM GOVERNANCE 2021-2022

### 1. Definitions.

- a. SEA – “SEA” means state educational agency and includes each state's education Superintendent.
- b. LEA – “LEA” means local educational agency and includes any educational agency within a DLM Consortium Member state subject to the requirements of ESEA.
- c. KUCR – “KUCR” means the University of Kansas Center for Research, Inc.
- d. DLM Consortium – “DLM Consortium” means the set of states that purchase DLM Consortium student alternate assessment services.
- e. DLM Consortium Member – “DLM Consortium Member” means any state educational agency that approves and/or purchases the DLM Consortium student assessment services to satisfy the state and local educational agencies requirements of the Elementary and Secondary Education Act that pertain to the academic assessment students with significant cognitive disabilities.
- f. DLM Consortium Associate Member – “DLM Consortium Associate Member” means any state educational agency that is not using the DLM Alternate Assessment during the current year, but would like to attend Governance Meetings and conference calls. Associate members may participate in conversations but have no vote until they have entered into a contract for future assessment. Educators and students from Associate Member states will not participate in ongoing research.
- g. DLM Governance Board Member – “DLM Governance Board Member” means any person appointed to the DLM Governance Board according to the Board Member Appointment subsection below, *see* sec. 3a.
- h. Technical Advisory Committee (TAC) – The TAC consists of experts in areas of: implementation/review of large-scale accountability assessments; diagnostic classification modeling/Bayesian network analysis; and accessibility regarding students with significant cognitive disabilities. The TAC provides advice and guidance to the DLM Consortium on technical aspects of the DLM AA system.

### 2. Purpose.

- a. Advisory - The DLM Governance Board serves as an advisory board to Accessible Teaching, Learning and Assessment Systems (ATLAS) in their administration, maintenance and enhancement of the Dynamic Learning Maps Alternate Assessment system.
- b. Collaborative - The DLM Governance Board provides an organized opportunity for SEAs to associate and address common issues relating to students with significant cognitive disabilities, the academic proficiency of grade 3 through grade 12 students and other issues related to SEA and LEA requirements of ESEA.

3. Structure.

- a. Board Member Appointment – Each DLM Consortium Member should appoint two SEA representatives to the DLM Consortium Board. The representatives should be a state special education and state assessment administrator.
- b. The Director of the Dynamic Learning Maps Alternate Assessment Project will be an ex officio member of the governance board.
- c. Term of DLM Governance Board Members – Each DLM Governance Board Member will serve until replaced by their respective SEA or until their SEA is no longer a DLM Consortium Member.
- d. Removal of DLM Governance Board Members - DLM Consortium Board Members may only be removed by their respective SEA. An SEA will appoint a successor member to the DLM Governance Board if that SEA removes its appointed member.
- e. Compensation – Members of the DLM Governance Board do not receive compensation.

4. Operations.

- a. General – ATLAS will facilitate the activities of the DLM Governance Board.
- b. On-site Meeting - ATLAS will conduct on-site meetings of the DLM Governance Board at a frequency specified in the consortium scope of work (schedule XX).
- c. Ad hoc Committee Meetings - ATLAS will conduct ad hoc committee meetings of the DLM Governance Board as necessary.
- d. Communications
  - i. General - ATLAS will provide the necessary infrastructure to facilitate the DLM Governance Board activities.
  - ii. Meeting Summaries – ATLAS will maintain meeting notes and provide meeting summaries to the DLM Governance Board Members after any DLM Governance Board meeting.
- e. Costs
  - i. General – ATLAS will pay the costs associated with operating the DLM Governance Board. All travel expense reimbursements will be made in accordance with KUCR guidelines.
  - ii. Incremental Travel Expenses – If any SEA wants to bring more than two representatives to a DLM Consortium meeting, that SEA will be responsible for these peoples' travel expenses.
- f. Fiscal Impact – The activities of the DLM Governance Board will have no direct fiscal impact on individual DLM Consortium Members without an additional written agreement between the individual DLM Consortium Members and KUCR.

5. Activities.

- a. General – The activities of the DLM Governance Board include the following:
  - i. Annual DLM Governance Board meetings;
  - ii. DLM Governance Board committees as determined by this section; and
  - iii. Special meetings conducted by the DLM Consortium
- b. DLM Governance Board Meetings - ATLAS will coordinate the meetings of the DLM Governance Board.
  - i. Meeting Agendum – ATLAS, with input from the states, will set the agenda for DLM Governance Board meetings.

ii. Meeting Activities

1. Substantive Presentations. ATLAS will present updates on DLM Consortium activities related to the implementation, research and development of the DLM Consortium Works.
2. Financial Presentations. At every Governance meeting ATLAS will present a financial update on the current year budget.
3. Discussion and Review Groups. ATLAS will facilitate discussion groups on targeted topics related to the implementation, research and development of the DLM Consortium Works. The discussion groups are an opportunity for DLM Governance Board Members to provide input to the DLM Consortium and to interact and exchange ideas with other SEAs.
4. Policy Orientation and Priority Setting. ATLAS will poll the DLM Governance Board in order to ascertain the position of DLM Governance Board members on issues related to the policy orientation and priorities of the implementation, research and development. Each DLM Member state will receive one vote. The votes will be recorded by ATLAS on behalf of the DLM Consortium.

c. Committees

- i. Ad Hoc Committees – the DLM Consortium and the DLM Governance Board may form ad hoc committees to address specific issues as necessary.

## ASSURANCES

KUCR provides the DLM AA and related services offered under this Agreement as part of the non-profit research and educational activities of University, and are provided to the State of New Hampshire as part of University's mission of outreach and service to the educational community. AAI has no reason to believe that the DLM AA infringes on the intellectual property rights of any third party, or that they are unfit for the purposes described in this Agreement. Notwithstanding any other statement, KUCR and University, their respective trustees, directors, officers, employees, and affiliates make no representations and extend no warranties of any kind, either express or implied, including but not limited to warranties of merchantability, fitness for a particular purpose, absence of latent or other defects, whether or not discoverable or non-infringement of proprietary rights of any third party.

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Contractor Initials: AMR

Date: 5/12/2021



## KUCR INTELLECTUAL PROPERTY (IP)

The University of Kansas owns the copyrights, trademarks, and related intellectual property covered under this agreement (IP). This agreement does not convey any exclusive rights, title, or interest in or to IP to New Hampshire. New Hampshire shall not take any actions that would limit or restrict access to the materials by other states or otherwise adversely affect the proprietary nature of the IP.

Intellectual Property includes but is not limited to the following:

1. Dynamic Learning Map End-of-Year Alternate Assessment and DLM Instructionally Embedded Alternate Assessment, collectively known as DLM AA;
2. Dynamic Learning Map Essential Elements and Resource Guide ("DLM EE"), including future editions;
3. Professional Development materials and administration manuals for using the KITE™ system to administer DLM ("KITE Professional Development materials"); and
4. Dynamic Learning Map technical documents and research reports.

The Achievement and Assessment Institute (AAI) will use the IP to provide test administration services for DLM AA to New Hampshire under the following conditions:

1. payment of the required fees set forth in schedule B of this Agreement
2. New Hampshire acknowledges that the DLM AA is a secure test, as that term is defined in 37 C.F.R. § 202.20(b)(4).
3. New Hampshire shall implement applicable federal and statewide policies and procedures to ensure that the security of the test is maintained. New Hampshire shall immediately notify KUCR if it learns of any breach or threatened breach of test security.
4. The DLM AA shall not be copied, modified, distributed or displayed in any manner without express written permission from KUCR and with the appropriate security measures in place.

KUCR hereby grants New Hampshire the right to reproduce copies of DLM EE, KITE PD materials, and DLM Technical Manual and research reports (IP items 2-4 above) for New Hampshire's educational purposes within the state of New Hampshire.

New Hampshire shall permanently and legibly mark all DLM technical documents and research reports in accordance with all applicable copyright marking and notice provisions under title 17, US Code. Access to an electronic copy will be provided for all DLM technical documents and research reports. The DLM technical documents and research reports shall not be modified by New Hampshire.

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Date: 5/12/2021

The trademarks listed in Attachment 2 attached hereto and incorporated by reference, are intellectual property of the University (collectively the "DLM Trademarks). Any use of the DLM Trademarks shall inure to the benefit of University. New Hampshire acknowledges that University may, from time-to-time, issue trademark and copyright use guidelines and policies in order to maintain the proper use and integrity of the IP and the quality of KUCR services and products. If New Hampshire shall become aware of any misuse of IP New Hampshire agrees to notify KUCR.

DLM professional development materials ("DLM PD Materials") created by the University of North Carolina, Chapel Hill Medical School may be copied and distributed by New Hampshire, subject to acknowledgement of the copyrighted source materials. DLM PD Materials may be modified by New Hampshire in which case New Hampshire is responsible for any modified content. New Hampshire shall permanently and legibly mark all DLM PD materials in accordance with all applicable copyright marking and notice provisions under title 17, US Code. Access to an electronic copy will be provided for all DLM PD materials.

Attached are:

- A. KUCR's Certificate of Vote/Authority
- B. KUCR's Certificate of Good Standing
- C. KUCR's Certificate of Insurance
- D. Attachments
  - i. Attachment 1 – DLM Contract Requirements
  - ii. Attachment 2 - Trademarks
  - iii. Exhibits 1-4 – Department of Education Exhibits

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Date: 5/12/2021

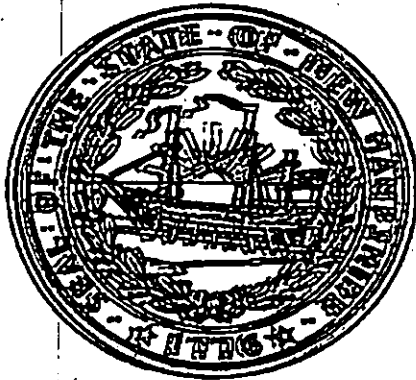
**State of New Hampshire  
Department of State**

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that UNIVERSITY OF KANSAS CENTER FOR RESEARCH, INC. is a Kansas Nonprofit Corporation registered to transact business in New Hampshire on October 20, 2014. 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: 716395

Certificate Number: 0005365060



IN TESTIMONY WHEREOF,

I have set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 10th day of May A.D. 2021.

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

William M. Gardner  
Secretary of State

**CERTIFICATE OF VOTE**  
(Corporation without a Seal)

I, Simon Atkinson, do hereby certify that:  
(Name of the Officer of the Corporation; cannot be signatory)

- (1) I am a duly elected officer of University of Kansas Center for Research, Inc.  
(Corporation Name)
- (2) The following are true copies of the resolutions duly adopted at a meeting of the Board of Directors of the Corporation duly held on January 15, 2015.  
(Date)

RESOLVED: That this Corporation enter into a contract with the State of New Hampshire, acting through its Department of Education.

RESOLVED: That Alicia Reed Director of Research Administration,  
(Name of Contract Signatory) (Title of Contract Signatory)  
is hereby authorized on behalf of this Agency to enter into the said contract with the State and to execute any and all documents, agreements and other instruments, and any amendments, revisions, or modifications thereto, as he/she may deem necessary, desirable or appropriate.

- (3) The foregoing resolution(s) have not been amended or revoked, and remain in full force and effect as of the  
12th day of May, 2021.  
(Day) (Month) (Yr) (Must be same date as the contract date)

IN WITNESS WHEREOF, I have hereunto set my hand as the Business Representative of the Corporation this  
12th day of May, 2021.  
(Day) (Month) (Yr) (Must be same date as the contract date)

  
(Signature of Officer of Corporation)

STATE OF NEW HAMPSHIRE

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, the foregoing instrument was acknowledged before me.

In witness whereof I hereunto set my hand and official seal.

My commission expires on:

\_\_\_\_\_  
Notary Public/Justice of the Peace



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
5/24/2021

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. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).


<b>PRODUCER</b> Arthur J. Gallagher Risk Management Services, Inc. 235 Highlandia Drive, Suite 200 Baton Rouge LA 70810	<b>CONTACT NAME:</b> Cheryl Kelley <b>PHONE (A/C, No., Ext.):</b> 512-652-2461 <b>FAX (A/C, No.):</b> 512-652-2462 <b>E-MAIL ADDRESS:</b> cheryl_kelley@sjg.com													
	<table border="1"> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A: Trumbull Insurance Company</td> <td>27120</td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Trumbull Insurance Company	27120	INSURER B:		INSURER C:		INSURER D:		INSURER E:		INSURER F:
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INSURER B:														
INSURER C:														
INSURER D:														
INSURER E:														
INSURER F:														
<b>INSURED</b> University of Kansas Center for Research, Inc. 2385 Irving Hill Rd., RM 108 Lawrence KS 66045														

COVERAGES      CERTIFICATE NUMBER:      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. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WYD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			7/1/2020	7/1/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPIOP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A			PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

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

<b>CERTIFICATE HOLDER</b>  New Hampshire Department of Education 101 Pleasant Street Concord NH 03301	<b>CANCELLATION</b>  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 
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**KU OFFICE OF THE  
GENERAL COUNSEL**  
The University of Kansas

May 12, 2021

To Whom It May Concern:

In response to your request for a certificate of insurance for the University of Kansas, please be advised that under the Kansas Tort Claims Act, K.S.A. 76-6101 *et seq.* ("Act"), the State of Kansas has assumed liability for the negligent or wrongful acts and omissions of its employees and agents acting within the scope of their responsibilities on behalf of the State of Kansas, as contained in that Act. This includes the University of Kansas and its employees. The liability for claims within the scope of the Act may not exceed five hundred thousand dollars (\$500,000) per occurrence. The University of Kansas will remain covered by the Act for the duration of the Event. Additionally, the State is required to indemnify its employees for injury or damages proximately caused by the employee's acts or omissions that fall within the parameters of the Act.

Further, Kansas's workers compensation fund, which is wholly self-insured, provides workers compensation coverage to State employees, per K.S.A. 44-575.

It must be noted that the coverage provided by the Kansas Tort Claims Act will adequately fulfill any requested insurance requirements, but please feel free to contact me if you have any questions or need additional information.

Sincerely,



Kimberty Grunswald  
Deputy General Counsel