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ROBERT L. QUINN
COMMISSIONER

State of New Hampshire

DEPARTMENT OF SAFETY
JAMES H. HAYES BLDG. 33 HAZEN DR.
CONCORD, N.H. 03305
(603) 271-2791

RICHARD C. BAILEY, JR.
ASSISTANT COMMISSIONER

EDDIE EDWARDS
ASSISTANT COMMISSIONER

July 14, 2022

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

REQUESTED ACTION

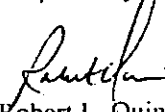
The Department of Safety, Division of Fire Standards & Training and Emergency Medical Services, requests authorization to enter into a no cost agreement with Jones & Bartlett Learning, LLC, PO Box 417289, Boston, MA 02241-7289 (VC#231124-R002) to utilize certification test bank questions, effective upon Governor & Council approval through June 30, 2024.

EXPLANATION

The Fire Standards and Training Commission (FSTC) approves training curriculums used within the State that count towards certification for first responders. Several of the training curriculums adopted are developed by Jones and Bartlett publishing. Along with these curriculums, Jones and Bartlett produces a bank of questions that are specific to certification examinations and are only distributed to authorized certification entities.

This agreement allows the Division to acquire the required certification test banks to develop examinations for each of the approved training curriculums. There is no cost to this agreement, which allows the Division to accept the certification test banks for use in New Hampshire's certification process. Without access to these certification test banks the Division will be unable to develop valid certification exams which would jeopardize the Division's national accreditation for certifications.

Respectfully submitted,


Robert L. Quinn
Commissioner of Safety

**JONES & BARTLETT LEARNING, LLC
FIRE SERVICE CERTIFICATION ITEM BANK
LICENSE AGREEMENT**

This Fire Service Certification Item Bank License Agreement ("Agreement") is entered into by and between Jones & Bartlett Learning, LLC, with its principal place of business at 5 Wall Street, Burlington, MA 01803 ("JBL") and New Hampshire Bureau of Fire Training and Administration a training/certification entity with its principal place of business at 98 Smokey Bear Blvd, Concord, NH 03305 ("Customer") (referred to collectively herein as "the Parties") and contains terms and conditions governing Customer's license of Products from JBL. This Agreement shall be binding when signed by the Parties (the "Effective Date").

1. PURPOSE; DEFINITIONS. This Agreement sets forth terms and conditions under which JBL shall license JBL Products to Customer. "Customer's System" shall mean Customer's secure intranet system used by Customer for launching, managing, tracking, and reporting usage of Products by its Authorized Users (as defined below). "Products" shall mean JBL's proprietary fire service item banks listed on Schedule A attached hereto, and made available to Customer, and all updates and revisions that may be provided by JBL thereto. "Titles" shall mean those portions of the JBL proprietary print books made available to Customer in PDF format as listed in Schedule A. "Territory" shall mean the United States, Canada and Puerto Rico. Any schedules ("Schedules") attached hereto, or signed by the Parties subsequent to the Effective Date of this Agreement, shall be incorporated into and made a part of this Agreement. In the event of any inconsistency between the terms of this Agreement and the terms of a Schedule, the terms of said Schedule shall prevail.

2. LICENSE GRANT AND RESTRICTIONS; SECURITY.

(a) Subject to the terms herein, JBL grants to Customer a non-exclusive, non-transferable, non-assignable, non-sublicensable right to access and use the Products in the Territory, delivered to Customer by JBL ("License"), during the period specified in Schedule A ("License Term"), which may be supplemented with additional Products, at JBL's sole discretion, by a separate Schedule. The License Term may be extended through a written amendment to this Agreement, signed by both parties. Products may be used only by Customer's employees ("Authorized Users") for the development of Customer's fire service test tool(s) to be administered at Customer's designated testing centers during the period of time specified in Schedule A ("License Term"). JBL shall deliver to Customer the Products noted on Schedule A in CD or DVD format. Customer may incorporate all or any portion of the Products in Customer's test tool, which will be administered by Customer in a secure testing facility, either in paper/pencil format or on Customer's System. The Products will not be utilized in any manner for remote testing. While Customer may disclose its test tools to Customer's designated testing centers, Customer shall not disclose JBL's item bank Products to any such designated testing center or to any third party.

(b) If Customer's test is administered via Customer's System, Customer will upload, host, and display the Products solely on Customer's System located at Customer's address noted above, for test administration to test takers located in the Territory in accordance with the license terms and restrictions herein. The responsibility for any and all costs and expenses associated with Customer's operation of Customer's System shall be borne exclusively by Customer. Customer shall at all times maintain sole and exclusive control of the Products hosted on Customer's System and for the proper permissioning of access solely to Authorized Users and Customer's authorized test takers. Use of the Products on (i) any other platform other than Customer's System, (ii) mobile devices, or (iii) any social networking is strictly prohibited under this Agreement. If Customer's test is administered in paper/pencil format, Customer shall ensure that all test materials are collected from all test-takers at the conclusion of each test session and that no test materials are permitted to leave the testing facility. Customer will secure its testing facility using no less than generally accepted industry measures, including but not limited to use of trained and qualified Customer proctors responsible for monitoring and identifying any testing misconduct and taking appropriate action to ensure test security.

(c) Titles will be provided to Customer in PDF format solely for Customer's use to validate Customer's test items. Any reproduction, distribution, display or publication of all or any portion of any title is strictly prohibited.

(d) Customer shall not use the Products for any promotional testing, as a sole criterion for evaluating its applicants or employees, or for any purpose other than as set forth herein. CUSTOMER ACKNOWLEDGES THAT THE PRODUCTS DELIVERED TO CUSTOMER ARE NOT CERTIFICATION TEST FORMS, BUT, RATHER, CONSIST OF ITEM BANKS THAT MAY BE USED BY CUSTOMER FOR CUSTOMER'S DEVELOPMENT OF ITS OWN TEST FORM(S). CUSTOMER REPRESENTS THAT CUSTOMER SHALL NOT USE THE ITEM BANKS PROVIDED WITH THE PRODUCTS AS A CERTIFICATION OR TESTING TOOL. ANY USE OF THE

PRODUCTS AS A TEST FORM WILL BE A MATERIAL BREACH OF THIS AGREEMENT AND THE LICENSE TERMS SET FORTH HEREIN AND CAUSE FOR IMMEDIATE TERMINATION OF THE LICENSE GRANTED HEREIN.

(e) Customer and its Authorized Users will not disclose the Products to any third party, including but not limited to, other agencies or testing entities, without the prior written consent of JBL. All of Customer's designated testing centers are under the ownership and control of Customer and Customer shall ensure that each such testing center complies with the terms contained herein. Customer shall remain responsible and liable for the acts and omissions of each Authorized User and Customer's designated testing centers in connection with this Agreement and shall require each such Authorized User and designated testing center to agree to confidentiality provisions, restrictions, and terms of use which are at least as protective of the Products as terms contained in this Agreement. Customer shall supervise use of the Products by Authorized Users and take reasonable measures to protect and safeguard the Products, including through electronic security measures, and will allow only Authorized Users to access the Products. Customer shall not (and will take reasonable steps to ensure Authorized Users do not) (i) copy, translate, disassemble, decompile, or create derivative works of the Products or any portion thereof; and (ii) transfer, loan, rent, lease, sell, distribute, or grant any rights in any form in or to Products or remove or obscure any copyright or other proprietary notice, labels or proprietary marks in any Products. Customer will promptly notify JBL if Customer becomes aware of any unauthorized access to or use of the Products.

(f) Customer assumes full obligation for, and JBL disclaims any and all liability in connection with (i) Customer's use of the Products hereunder; (ii) Customer's grouping and ordering of items provided by the Products; (iii) Customer's grouping and use of items provided by the Products with other items and materials not provided by JBL; and (iv) any modification made to the Products by any party other than JBL.

(g) All Products are subject to copyright owned by JBL and Customer agrees not to disclose any Product or portion thereof to any person who is not an Authorized User or authorized test taker. Customer shall implement reasonable measures to safeguard against improper sharing or unauthorized use of any passwords, keys, or user names that permit Product access. JBL may terminate the License by written notice (i) with immediate effect if Customer infringes or misappropriates any JBL intellectual property rights (as defined in Section 4), fails to secure the Products on Customer's System or in paper/pencil form, or otherwise breaches any material License provision contained in this Section 2, or (ii) if Customer fails to cure any other material breach of this Agreement within thirty (30) days after receipt of written notice from JBL.

(h) As a condition of the License granted to Customer herein, and for purposes of JBL's improvement and development of the items in its Products, Customer agrees to provide to JBL a copy of each Customer developed test form which incorporates any items from the Products, along with a corresponding database of all test responses, in anonymized, de-identified format. Such information will be forwarded electronically to JBL after Customer's has administered each such test for a one month period. JBL will utilize such information solely for the development and improvement of the items in its Products and will destroy such information no later than sixty (60) days after it was received by JBL. JBL shall secure and protect such information as Confidential Information of Customer, in accordance with Section 6, and shall not disclose such information, or any portion thereof, to any third party.

(i) Upon the termination or expiration of this Agreement, and upon the conclusion of each License Term, or in the event of an earlier License termination under this Section 2, Customer shall make no further use of the Products in any form and (i) immediately remove the Products from Customer's System and from all of Customer's testing and evaluation materials. JBL reserves the right to periodically conduct an audit of Customer's operations and records, at a mutually agreeable time and at JBL's cost, solely to ensure Customer's compliance with this Agreement.

3. PROPRIETARY RIGHTS. Customer acknowledges that JBL is the sole and exclusive owner of all intellectual property rights in and to the Products and Titles ("JBL IP") and, other than as expressly set forth in this Agreement, no license or other rights in or to the Products or Titles are granted to Customer or any Authorized User, and all such licenses and rights are hereby expressly reserved by JBL. Customer's limited right to use such JBL IP shall be governed by the licensing, confidentiality, and other use restriction provisions of this Agreement. Any modifications to Products made by Customer shall not in any way alter or revise JBL's sole and exclusive ownership of all JBL IP. If Customer modifies any Product, Customer will not assert any ownership or proprietary rights to any portion of the modification that is taken or derived from such Product and may not use any modification that includes any portion of a Product after termination of this Agreement. JBL reserves the right to seek all legal and equitable rights and remedies available to JBL for any Customer use of JBL IP in violation of this Agreement. Notwithstanding the License Term, JBL reserves the right to modify any portion of a Product if, in JBL's sole discretion, such modification is necessary, and, upon written notification from JBL, Customer shall promptly cease use of such portion of said Product and replace it with the new, modified version supplied by JBL. JBL reserves the right at any time to withdraw from the Products any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright, is defamatory, unlawful, or otherwise must be withdrawn for legal purposes.

4. WARRANTIES DISCLAIMERS. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE PRODUCTS AND TITLES ARE PROVIDED TO CUSTOMER AS-IS, WITHOUT WARRANTY OF ANY KIND AND JBL DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR THAT ANY PRODUCT, OR PORTION THEREOF, WILL BE ERROR FREE. CUSTOMER UNDERSTANDS AND AGREES THAT THE PRODUCTS ARE NOT TESTING OR CERTIFICATION TOOLS AND HAVE NOT BEEN PSYCHOMETRICALLY VALIDATED TO BE UTILIZED OR ADMINISTERED FOR SAID PURPOSES. CUSTOMER ASSUMES SOLE RESPONSIBILITY AND LIABILITY FOR CUSTOMER'S USE AND VALIDATION OF THE PRODUCTS IN CONNECTION WITH CUSTOMER'S DEVELOPMENT AND ADMINISTRATION OF CUSTOMER'S TESTING, CERTIFICATION AND EVALUATION TOOLS AND RELATED ACTIVITIES.

5. CONFIDENTIAL INFORMATION. The Parties agree that (i) this Agreement, any Schedules, and the Products provided hereunder incorporate confidential information of JBL, (ii) Customer's test forms and responses are the confidential information of Customer, and (iii) each party may receive or have access to confidential and proprietary information ("Receiving Party") of the other party ("Disclosing Party"), whether orally or in writing, that is marked as confidential or that should reasonably be understood to be confidential given the nature of the information (collectively, "Confidential Information"). Confidential Information shall not include any information that can be shown by the Receiving Party to be (i) generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) independently developed by the Receiving Party without any breach of any obligation owed to the Disclosing Party; or (iv) received from a third party without breach of any obligation owed to the Disclosing Party. The Receiving Party shall not disclose any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written consent. Each party shall protect the Confidential Information of the other party in the same manner that it protects its own confidential and proprietary information, but in no event less than reasonable care. If Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent permitted by law). Each party reserves the right to seek injunctive relief, in addition to any other remedies available at law, to protect its Confidential Information.

6. LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCE SHALL JBL OR ITS DIRECTORS, OFFICERS, EMPLOYEES, OR AFFILIATES BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, OR INCIDENTAL DAMAGES OR LOST PROFITS, WHETHER FORSEEABLE OR UNFORSEEABLE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF JBL OR ITS DIRECTORS, OFFICERS, EMPLOYEES, OR AFFILIATES EXCEED IN ANY ACTION OR PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT THE TOTAL AMOUNT THAT CUSTOMER ACTUALLY PAID FOR THE SPECIFIC

PRODUCT WHICH IS THE SUBJECT OF SUCH ACTION OR PROCEEDING.

7. MISCELLANEOUS

(a) **No Agency.** This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.

(b) **Force Majeure.** Neither party shall be considered in breach of its obligations under this Agreement due to any failure to perform such obligations arising out of causes beyond the reasonable control, and without the fault or negligence, of such party. Such causes shall not excuse Customer from paying accrued amounts due to JBL through any available lawful means acceptable to JBL. If any such causes continue to prevent or delay performance for more than 180 days, JBL may terminate this Agreement, effective immediately upon notice to Customer.

(c) **Notice.** All notices or approvals required or permitted under this Agreement shall be given in writing and signed by the authorized representatives of the Parties hereto. All such notices shall be hand delivered or sent to the Parties' respective addresses first set forth above or to such other address as either party may specify by written notice to the other. No failure or delay by either party to exercise any right or remedy specified herein shall be construed as a current or future waiver of such remedy or right, unless said waiver is in writing.

(d) **Amendments.** This Agreement may be superseded or modified solely by written agreement signed by the authorized representatives of both parties hereto, which specifically acknowledges the existence of this Agreement and that it is being superseded or modified by the terms of such subsequent written agreement.

(e) **Governing Law.** This Agreement shall be governed by the laws of the State of New Hampshire. The parties specifically agree to exclude the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act in the form adopted by any state from governing this Agreement and any transaction between the parties that may be implemented in connection herewith. All provisions of this Agreement that by their nature are intended to survive expiration or termination shall survive."

(f) **Assignment.** Customer may not assign any of its obligations, rights or remedies hereunder, in whole or in part, without the express written approval of JBL.

(g) **Restricted Government Rights.** The Products were developed solely at private expense, contain "restricted computer software" submitted with restricted rights in accordance with the US FAR 52.227-19 (a) through (c) of the Commercial Computer Software License (Dec 2007) Clause and its successors, and in all respects is proprietary data belonging to JBL and/or its suppliers. For US Department of Defense units, the Products are considered commercial computer software in accordance with US DFARS 227.7202-3 and its successors, and use, duplication, or disclosure by the US Government is subject to the restrictions set forth herein.

(h) **Severability.** If any court of competent jurisdiction determines that any provision of this Agreement is illegal, invalid, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

(i) **Compliance with Law.** Each party will comply with all applicable and laws, rules, regulations, and orders in its performance hereunder.

(j) **Entire Agreement.** The terms set forth herein constitute the entire agreement between the Parties with respect to Customer's License and use of Product(s) and Titles. This Agreement shall override and replace all terms contained in any Customer purchase order accepted by JBL. These terms supersede and exclude all prior or contemporaneous proposals, understandings, agreements, negotiations, and representations, whether oral or written, with respect to the subject matter of this Agreement.


8. SCHEDULES

The following attached Schedules are incorporated by reference into and made a part of this Agreement:

Schedule A

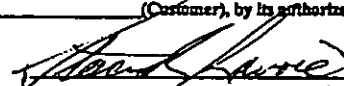
IN WITNESS WHEREOF, the Parties have executed this Agreement.

Jones & Bartlett Learning, LLC, by its authorized representative:

DocuSigned by:

68102B20F029483

Signature: _____
Name/Title: Cathy Esperti Director of Product Management
Date: 6/21/2022

(Customer), by its authorized representative:

Signature: 
Name/Title: Steven R. Lavoie, Director of Administration
Date: 7/14/22

SCHEDULE A

This Schedule A ("this Schedule") sets forth the Products, and License Term for Customer's use of the JBL Products licensed to Customer. This Schedule is subject to the terms of the JBL Fire Service Items License Agreement between JBL and Customer to which this Schedule is attached ("Agreement"). Terms used herein shall have the same meaning as set forth in the Agreement, unless separately defined herein. In the event of any inconsistency between the terms of the Agreement and this Schedule, this Schedule shall prevail.

1. Products

In accordance with the Agreement, the following JBL Products are licensed to Customer for use during the License Term set forth in Section 2, below:

JBL Product

Fire Service Item Banks for the following levels:

- FF I and II/HM: Awareness and Ops
- Fire Officer I and II
- Hazardous Materials: Awareness and Operations
- Fire Instructor/Live Fire Training Instructor and Live Fire Training Instructor-in-Charge
- Pumping Apparatus Driver/Operator
- Fire Department Incident Safety Officer
- Health and Safety Officer
- Fire Investigator
- TR: Rope (Chapter 5 and Rope)
- Fire Officer III and IV
- HM: Technician and Incident Command
- Fire and Life Safety Educator
- TR: Trench
- TR: Common Passenger Vehicle
- TR: Water
- Facility Fire Brigade
- Wildland FF

2. License Term

The Customer's License Term shall begin upon approved and shall terminate on June 30, 2024