

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION  
DISABILITY DETERMINATION SERVICE**

**REQUEST FOR PROPOSALS (RFP)**

**DDS Staff Telerecorder Transcription**

RFP-2025-DDS-Telerecorder

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## SECTION 1 – Overview and Schedule

### A. Goal of this procurement/Business needs:

The New Hampshire DDS is seeking a contractor that will provide a toll-free telerecording-transcription service for the telephone dictation and typing of medical and psychological reports. The contractor must precisely follow the specifications in this contract so that the DDS may fulfill its commitment of quality service to the citizens of New Hampshire. Failure to follow the contract requirements can be devastating to the NH DDS's operations. Failure will result in termination of the contract if requirements are not fulfilled and/or problems are not corrected to the sole satisfaction of the NH DDS.

The resulting contract will be Firm Fixed Price/Not to Exceed for the term of 2 years from the date of approval of the Governor and Executive Council. The contract term may be extended by an additional term of 2 years at the sole option of the Agency, subject to the parties' prior written agreement and required governmental approvals including Governor and Executive Council.

### B. Schedule

The following table provides a Schedule of Events for this RFP through contract finalization and approval. The Agency reserves the right to amend this Schedule at its sole discretion and at any time through a published Addendum.

EVENT	DATE	LOCAL TIME
RFP Released (Advertisement)	3/11/2025	8:00 AM
Vendor Inquiry Period Ends	3/17/2025	3:00 PM
Final Agency Responses to Inquiries	3/19/2025	3:00 PM
Proposal Due	3/27/2025	3:30 PM
Estimated Notification of Selection	3/28/2025	

### C. Description of Agency or Program issuing the Request for Proposals

The New Hampshire Disability Determination Service will be referred to as NH DDS or the DDS throughout this contract document. The NH DDS is a 100% Federally Funded program. The mission of the NH DDS is to adjudicate claims filed for Social Security Disability Insurance and/or Supplement Security Income Disability benefits in an accurate and timely manner for the citizens of New Hampshire. The contract for telerecorder transcription services plays an important role in the DDS's ability to obtain high quality medical evidence in an expeditious manner.

In this RFP, "Agency" means the Disability Determination Service. "Vendor" means a person or entity who offers products or services for sale. "Selected vendor" means the qualified Bidder which has been identified by the Agency as having received the best score for its proposal according to the criteria set forth in this RFP.

### D. Vendor Instructions

Interested vendors must read the entire RFP and submit the required documents in the manner specified in the RFP. Vendors are responsible for reviewing the most updated information related to this RFP before submitting proposals.

## SECTION 2- Requirements and Scope of Work

### A. Requirements:

The Contractor must perform all work in a secure facility (facilities) which ensures confidentiality of all reports. This requires all work pertaining to this contract to be performed in the Contractor's facility under the supervision of a designated contract manager. Social Security Administration's regulations prohibit the subcontracting of the functions in this contract due to confidentiality of materials, information, and data. At no point is the Contractor to contract out the NH DDS's work to be completed by another company. The Contractor must have a plan in place to safeguard confidentiality. The Contractor must also demonstrate an understanding and compliance with HIPAA regulations. All work connected with this contract will be performed within the United States of America. No information obtained in connection with this contract will be transmitted electronically or by any other means outside of the United States of America.

The Contractor must describe the type of digital recording equipment that is for the sole use of health care and mental health professionals who provide Medical Evidence of Record (MER) and Consultative Examination (CE) reports, and how it will be configured to meet the volume demands of this contract. Include how the digital equipment will provide access to the system using four-digit personal identification codes assigned to each CE provider and generic four-digit codes for treating sources. The equipment must allow the caller to enter up to a 9-digit claimant identification number. Please describe the process and how you will provide customer service to vendors to obtain a code. The digital recording system must provide immediate access to user information such as date, time, and length of dictation. The equipment must have edit features accessed by a touch tone telephone which enables, at a minimum, the dictator to start/stop, pause, review, rewind, and verify access to the system via playback.

The Contractor must have an answering device for each communication line that shall provide a recorded message informing dictators of the data required for the report. Language for the message will be provided by or must be approved by the DDS. The DDS may wish to revise the introductory message from time to time as a public relations tool. This option shall be available with the recording system.

The Contractor must provide toll-free service to the dictating medical providers. Medical providers in the contiguous 48 states are to be provided access to the dictation system without charge. These lines must be exclusively for the New Hampshire DDS use. Access to the dictation system must provide for twenty-four (24) hour access, seven (7) days a week.

The digital recording equipment must have sufficient ports dedicated to the New Hampshire DDS providers to meet the volume demands of this contract. If the collision factor (maximum incidence of busy signals for users) is greater than one in ten, the number of ports must be increased to ensure that the dictation service is readily accessible to the medical providers without long waits. Any necessary system expansion will be provided at no additional cost to the DDS. The Contractor must also maintain a toll-free customer service number to handle questions or provide new ID codes, as needed, from dictating sources. **At a minimum, this line must be staffed during regular State business hours of 8:00 AM and 4:00 PM, Monday through Friday and equipped with a messaging system at all other times.** Messages left on the messaging system must be addressed within the first hour of the next State business day.

The Contractor must describe the type of equipment that will be used to transcribe dictations, to include automated spell check capability, including spelling of medical terminology, and the type of printers used to print reports. The Contractor shall electronically transmit the transcribed reports to the DDS within 24 hours of dictation.

The Contractor electronically transmit draft reports to the DDS at a minimum schedule of a once-per-workday via a secure SSA-approved ERE account that will be established for the contractor.

The Contractor will upload draft reports via the ERE website which will allow the NH DDS to access the day's work electronically. The DDS must be able to search for files by dictator ID number, search for files by claimant SSN, search for files by date of dictation, or any combination of these search criteria. The ability to retrieve, edit and/or print reports at the DDS is vital. All transmitted reports will be maintained electronically at the NH DDS for the contract period. The ultimate responsibility for insuring no loss of records through the backup of the records rests with the contractor. They must maintain the dictated reports on their system at their location for a minimum of 90 days and they are responsible to backup and store all dictated reports for the length of the contract.

The Contractor, at no additional cost to the NH DDS, must be willing to utilize alternative delivery methods and interfaces that would permit the DDS to distribute the reports to claim files electronically, over the secure SSA ERE website or via fax or scan. This would include, but not limited to, methods such as use of SSAs secure website and/or encrypted FTP process. In the event that the SSA website is down, draft reports must be transmitted via fax daily. The contractor will securely transmit Draft reports to MER and CE providers via SSA's secure ERE website or via fax within 24 hours of dictation. **Email over the Internet is not to be used to transmit reports as it is NOT secure.** To utilize the ERE website, access to an Internet Browser that supports 128 bit encryption is required.

In the event of equipment malfunctions, **the DDS must be notified immediately** of the breakdown. Contractor must maintain service agreements on all equipment and software programs necessary to meet contractual specifications for the life of the contract. The Contractor must also detail provisions for telecommunication backup plans in the event the toll-free service fails for any reason. The Contractor is also to insure that ongoing technical support is available to consult with the DDS to diagnose and correct any problem situations for vendor supplied equipment located at the DDS. Contractor will ensure that any equipment or software problems are resolved no later than one working day from DDS notification.

Based on past data and current workload projections, the volume for the first year of the contract should be an average of transcribed lines of data per month with the potential for a 10% growth in subsequent contract years. There is no minimum volume guaranteed by the State of New Hampshire. In FY-24, approximately 350,200 lines were transcribed. CE reports comprise approximately 90% of the workload. Fluctuations in the volume of work may occur with disability claims. Additional personnel and communication lines must be added as the volume dictates. The Contractor must describe alternative plans to handle these fluctuations.

The Contractor must set up and maintain a database of NH CE provider names, addresses, email addresses and preferred contact method to ensure accurate dictator information. This database must also be regularly maintained to ensure accuracy.

It is agreed that if a caller dictates a partial report, then hangs up and does not call back the same day to complete it, the DDS will pay for the partially typed report. A copy must be submitted to the DDS. If the provider does call back the same day, the Contractor will make every attempt to combine segments of the same report into a complete report for final preparation, delivery and billing purposes. The Contractor is required to call dictators to clarify missing or incomplete information, to notify the dictator of a problem, or to resolve problems encountered by the dictators. The DDS must be kept informed of these problems as the DDS requires that CE providers submit a signed final report within 10 working days of CE.

In the event of equipment malfunction or other technical difficulties, dictators may be required to re-dictate reports that are lost or not recorded properly. The Contractor must assure that these occurrences are minimal through regular equipment checks and continued maintenance. The DDS and the Contractor should maintain a complete log of these re-dictations. These dictations will be given top priority for completion.

If a report is verified as lost by the Contractor either due to equipment malfunctions or human error on the part of the Contractor's staff, the Contractor will be responsible for paying the dictator a \$25.00 re-dictation fee or, if necessary, the cost of a rescheduled examination as outlined in the applicable current DDS consultative examination fee schedule. The Contractor will be notified in writing of such cost, which will be deducted from the next billing by the Contractor.

The system must have the capacity to retain at least five (5) days of data based on volume. Systems expansion may be required by the DDS to meet increased workload. The DDS reserves the right to determine the need for system expansion. Contractor is responsible for entire cost of installation and maintenance of additional equipment. The Contractor shall provide for necessary system expansion within thirty (30) days of receipt of DDS notice regarding system expansion needs.

Contractor must provide one business-day turnaround (24-hour) service. State business days represent Monday through Friday, 8:00AM to 4:00PM excluding official State holidays. Turnaround time is measured based upon when the work is dictated into the digital recording unit. All reports shall be transcribed and electronically transmitted to the DDS in Concord, New Hampshire and routed to the dictator by the close of the second business day. Additional transmissions can be made to the DDS throughout the day. The contractor must describe the backup plan for ensuring timely deliveries in the event of communication and/or equipment malfunctions.

The format of the reports should generally follow the below guidelines:

- a. The margins should be one inch on all sides. Font should be 12 point in Courier, New Times Roman, or similarly easy to read font.
- b. The heading consists of the dictator's full name and address, type of report, the name of the claimant, the Social Security number, disability claims examiner's name and numerical designation (if stated), the date the report is typed, and the date the report is dictated.
- c. If the dictator dictates paragraph headings, these must be capitalized and underlined.
- d. The claimant's name and Social Security number, the date of the report, and the page enumeration must be included on the top of each page of the report and will be considered one line.
- e. For billing purposes, the Contractor shall provide a line count per report to the NH DDS using a 65 character line. Pitch will be 12 characters per inch. A line will be defined as: Total Character Count per document, divided by 65. A Character is defined as any printed letter; number, symbol, and/or punctuation mark excluding any/all spaces and formatting (e.g., bold underline, italics, table structure, formatting codes). Each of the following is one character:

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z
a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q	r	s	t	u	v	w	x	y	z
`	1	2	3	4	5	6	7	8	9	0	-	=	[	]	\	;	'	,	.						
~	!	@	#	\$	%	^	&	*	(	)	_	+	{	}	:	<	>	?							

Format billing will not be permitted. Key strokes required for formatting will not be considered as “Characters” and should not be included in the character count for determining the number of lines per report. Similarly, counting macro language in each document as characters will not be permitted.

- f. As part of the technical proposal, an outline of a sample report is provided in Attachment A. Bidders are expected to provide, as part of the technical proposal, the total line count for the report outline in the attachment A.

All reports will be routed from the Contractor’s office to the dictator by the means specified by the DDS for that particular dictator.

Delivery options for reports being sent to the dictators must include, in order of DDS preference, SSA ERE website, fax or via US postal mail as a last resort, if necessary. The Contractor must describe their process for handling the multiple delivery options. The DDS will provide the Contractor a list of NH CE providers who dictate their reports and their preferred means of draft report transmission. Postal mail will be the default means of delivery only if no alternative delivery system is possible.

The Contractor must be willing to pilot, and implement at DDS’s direction, alternative methods of delivery to the DDS at no additional cost in concert with SSA’s move to an electronic claims folder and utilization of the ERE website.

Typed **log sheets** must be submitted daily with each delivery according to this format

- a. The daily log sheets shall contain an itemized list of each report transmitted including:
  - Claimant's name and Social Security number
  - Line count for each report
  - Report number
  - Dictator's name
  - Date of dictation
  - Date typed
  - Disability Examiner’s name
  - Total line count of that transmission
- b. The logs must be in alphabetical order by claimant’s last name. If reports are transmitted in a different order, an additional log sheet reflecting order of transmission is required.
- c. The total number of reports and the total number of lines must also be included on each log sheet.

The Contractor shall retain copies of typed reports in either hard copy or on disc for at least 90 days. There shall be no charge to the DDS for an additional copy of the report, should one be requested. The Contractor will verify receipt of a specific dictation as requested by the DDS.

The Contractor must provide electronic telerecording instruction, explaining the features of the system and to include the toll-free customer service number, without charge to the DDS for the distribution to potential users. A copy of the instruction must be submitted to the DDS prior to distribution.

## **B. Scope of Work:**

Neither the contractor nor any of the Contractor's employees involved in processing reports shall disclose any information that identifies the claimant, physician, or facility without documented permission of the DDS. Such disclosures will subject the Contractor to the penalties of the Federal Privacy Act. The Contractor must also certify compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996. Sensitive records ready for disposal must be destroyed by burning, pulping, shredding, macerating, or other suitable similar means that ensures the information in the record is definitively destroyed. Definitively destroying the records means the material cannot be reassembled and used in an inappropriate manner in violation of law and regulation. Sensitive records are records that are national security classified or exempted from disclosure by statute, including the Privacy Act, or regulation. Electronic records must be definitively destroyed in a similar manner that prevents reconstruction as well.

**Facility Security:** The contractor must perform all work in a secure facility (facilities) which ensures the confidentiality of all reports. This requires all work pertaining to this contract to be performed in the Contractor's facility under the direct supervision of the designated contractor at all times. Social Security Administration's regulations prohibit the subcontracting of the functions in this contract due to confidentiality of materials, information, and data without prior written consent of the State Agency (DDS). The Contractor must have a plan in place to safeguard confidentiality. All work connected with this contract will be performed in a secure facility, one which can be monitored and/or "audited" by the contractor and/or the DDS. No information obtained in connection with this contract will be transmitted electronically or by any other means, unless it is encrypted using the most secure systems "environment/software" available.

**Special Terms & Conditions:** No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the purchasing agency with the names, qualifications, and experience of their proposed subcontractors. The Contractor, shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of this contract. The subcontractor must adhere to the same facility requirements as the Contractor. Additionally, any subcontracts formed must also contain the information specified herein.

**Loss Reporting – PII:** The contractor is responsible for safeguarding PII and immediately reporting any loss to the appropriate State Agency (DDS) official. The contractor shall ensure that all employees report lost or possibly lost PII immediately. The contractor should gather the following information to report the loss of PII: Contact information, description of loss (including time and location), what safeguards were used, which components (divisions or areas) were involved, whether external organizations were contacted, and whether other reports have been filed (e.g., law enforcement).



**Confidential Information:** During the term of this contract and thereafter, the Contractor shall respect the confidentiality of confidential data, information, and other such matters disclosed and entrusted to him/her in the contract, or upon termination thereof, the Contractor shall return to the State agency (DDS), all such confidential matters in their possession belonging to the other party, and further, agrees not to use such information without the expressed written permission of the State agency (DDS).

**Enforcement & Recommendations:** The DDS maintains the right to conduct periodic onsite visits/reviews to ensure compliance with contract specifications and procedures. Furthermore, the DDS recommends that the contractor have appropriate forms of suitability and systems monitoring safeguards in place. Contractor positions should be designated at the proper risk/sensitivity levels commensurate with the public trust or national security responsibilities and attributes of the position as they relate to the efficiency of the service. They should be ranked in accordance with the degree of potential adverse impact on the efficiency of service that an unsuitable person could cause. Suitability refers to whether the conduct of an individual may reasonably be expected to interfere with or prevent effective performance in his/her position or prevents effective performance of the duties and responsibilities of the employing agency. Contractors must ensure that employment of individuals in a sensitive or public trust position is appropriate. Documentation of the rationale underlying risk designation decisions should be retained for potential audit purposes.

### **SECTION 3-Contract Terms and Conditions**

#### **A. Non-Exclusive Contract**

Any resulting Contract from this RFP will be a non-exclusive Contract. The Agency reserves the right, at its discretion, to retain other contractors to provide any of the services or deliverables identified in this RFP or make an award by item, part or portion of an item, group of items, or total Proposal.

#### **B. Award**

If the Agency decides to award a contract as a result of this RFP process, any award is contingent upon approval of the contract by the Governor and Executive Council of the State of New Hampshire and upon continued appropriation of funding for the contract.

#### **C. Standard Contract Terms**

The Agency will require the selected vendor to execute a contract using the Standard Terms and Conditions of the State of New Hampshire (Form P-37) which is attached as Appendix A. In no event is a vendor to submit its own standard contract terms and conditions as a replacement for the State's terms in response to this solicitation.

The terms of this RFP and the selected vendor's Proposal will be used to form the terms of any resulting contract. The resulting contract may incorporate some or all of the selected vendor's Proposal. References in the P-37 to Exhibits A, B and C are references to the required structure of any resulting contract (Exhibit A – Special Provisions/Amendments to the P-37, Exhibit B – Scope of Services, and Exhibit C – Payment Terms) and are not references to sections of this RFP.

To the extent that a vendor believes that exceptions to the contract terms in Appendix A will be necessary for the vendor to enter into the contract, the vendor must note those issues during the Vendor Inquiry Period, as further described Section 4B.

## **SECTION 4 –Request for Proposal Process**

### **A. Agency Point of Contact/Restriction of Contact with Agency Employees**

The sole point of contact for this RFP, from the RFP issue date until the approval of the resulting contract by the Governor and Executive Council is:

Cheryl Hobart: cheryl.hobart@ssa.gov

From the date of release of this RFP until an award is made and announced regarding the selection of a vendor, all communication with personnel employed by or under contract with the Agency regarding this RFP is prohibited unless first approved by the RFP Sole Point of Contact. Agency employees have been directed not to hold conferences and/or discussions concerning this RFP with any potential contractor during the selection process, unless otherwise authorized by the RFP Sole Point of Contact. Vendors may be disqualified for violating this restriction on communications.

### **B. Vendor Inquiries**

All inquiries concerning this RFP, including but not limited to, requests for clarifications, questions, any changes to the RFP, and any exceptions to the contract terms in Appendix A, including the Form P-37, shall be submitted via email to the Agency Point of Contact specified above. Inquiries must be received by the end of vendor inquiry period (see Schedule of Events herein).

The vendor must identify the RFP name and the number and include the vendor's name, telephone number, and e-mail address.

The Agency will issue responses to properly submitted inquiries on or before the date specified in the Schedule of Events; however, this date is subject to change at the Agency's discretion. The Agency may consolidate and/or paraphrase questions for sufficiency and clarity. The Agency may, at its discretion, amend this RFP on its own initiative or in response to issues raised by inquiries, as it deems appropriate. **In response to requested exceptions to P37, the Agency will review requested exceptions and accept, reject or note that it is open to negotiation of the proposed exception at its sole discretion. Questions about or requested exceptions to the RFP, Form P-37 and/or any relevant attachments not raised during the inquiry period are waived.** Oral statements, representations, clarifications, or modifications concerning the RFP shall not be binding upon the Agency. Official responses by the Agency will be made only in writing by the process described above. Vendors shall be responsible for reviewing the most updated information related to this RFP before submitting a proposal.

## **SECTION 5 – RFP Terms and Conditions**

### **A. Debarment**

Vendors who are ineligible to bid on proposals, bids or quotes issued by the Department of Administrative Services, Division of Procurement and Support Services pursuant to the provisions of RSA 21-I:11-c shall not be considered eligible for an award under this RFP.

### **B. Proposal Preparation Cost**

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

### **C. Validity of Proposal**

Proposals must be valid for one hundred and eighty (180) days following the deadline for submission of Proposals in Schedule of Events, or until the Effective Date of any resulting Contract, whichever is later.

### **D. RFP Addendum**

The Agency reserves the right to amend this RFP at its discretion, prior to the Proposal submission deadline. In the event of an addendum to this RFP, the Agency, at its sole discretion, may extend the Proposal submission deadline, as it deems appropriate.

### **E. Non-Collusion**

The vendor's signature on a Proposal submitted in response to this RFP guarantees that the prices, terms and conditions, and work quoted have been established without collusion with other Vendors and without effort to preclude the Agency from obtaining the best possible competitive Proposal.

### **F. Property of the Agency**

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

### **G. Proposal Confidentiality**

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

### **H. Public Disclosure**

The information submitted in response to this RFP (including all materials submitted in connection with it, such as attachments, exhibits, addenda, and presentations), any resulting contract, and information provided during the contractual relationship may be subject to public disclosure under Right-to-Know law, including RSA 91-A. In addition, in accordance with RSA 9-F:1, any contract entered into as a result of this RFP will be made accessible to the public online via the website Transparent NH (<http://www.nh.gov/transparentnh/>).

Confidential, commercial or financial information may be exempt from public disclosure under RSA 91-A:5, IV. If a vendor believes any information submitted in response to this RFP should be kept confidential, the vendor must specifically identify that information where it appears in the submission in a manner that draws attention to the designation and must mark/stamp each page of the materials that the vendor claims must be exempt from disclosure as "CONFIDENTIAL." Vendors must also provide a letter to the person listed as the point of contact for this RFP, identifying the specific page number and section of the information you consider to be confidential, commercial or financial and providing your rationale for each designation. Marking or designating an entire proposal, attachment or section as confidential shall neither be accepted nor honored by the State. Vendors must also provide a separate copy of the full and complete document, fully redacting those portions and shall note on the applicable page or pages that the redacted portion or portions are "confidential."

Submissions which do not conform to these instructions by failing to include a redacted copy (if necessary), by failing to include a letter specifying the rationale for each redaction, by failing to designate the redactions in the manner required by these instructions, or by including redactions which are contrary to these instructions or operative law may be rejected by the State as not conforming to the requirements of the proposal.

Pricing, which includes but is not limited to, the administrative costs and other performance guarantees in Proposals or any subsequently awarded contract shall be subject to public disclosure regardless of whether it is marked as confidential.

Notwithstanding a vendor's designations, the State is obligated under the Right-to-Know law to conduct an independent analysis of the confidentiality of the information submitted in a proposal. If a request is made to the State to view or receive copies of any portion of the proposal, the State shall first assess what information it is obligated to release. The State will then notify you that a request has been made, indicate what, if any, information the State has assessed is confidential and will not be released, and specify the planned release date of the remaining portions of the proposal. To halt the release of information by the State, a vendor must initiate and provide to the State, prior to the date specified in the notice, a court action in the Superior Court of the State of New Hampshire, at its sole expense, seeking to enjoin the release of the requested information.

By submitting a proposal, vendors acknowledge and agree that:

- The State may disclose any and all portions of the proposal or related materials which are not marked as confidential and/or which have not been specifically explained in the letter to the person identified as the point of contact for this RFP;
- The State is not obligated to comply with a vendor's designations regarding confidentiality and must conduct an independent analysis to assess the confidentiality of the information submitted in your proposal; and
- The State may, unless otherwise prohibited by court order, release the information on the date specified in the notice described above without any liability to a vendor.

#### **I. Electronic Posting of RFP Results and Resulting Contract**

At the time of receipt of proposals, the Agency will post the number of responses received with no further information. No later than five (5) business days prior to submission of a contract to the Department of Administrative Services, the Agency will post the ranks or scores of each responding vendor. In the event that the contract does not require Governor & Executive Council approval, the Agency will disclose the rank or score at least 5 business days before final approval of the contract.

Pursuant to RSA 91-A and RSA 9-F:1, the Secretary of State will post to the public any document submitted to G&C for approval, including contracts resulting from this RFP, and posts those documents on its website (<https://sos.nh.gov/administration/miscellaneous/governor-executive-council/>). By submitting a proposal, vendors acknowledge and agree that, in accordance with the above mentioned statutes and policies, (and regardless of whether any specific request is made to view any document relating to this RFP), any contract resulting from this RFP that is submitted to G&C for approval will be made accessible to the public online.

#### **J. Non-Commitment**

Notwithstanding any other provision of this RFP, this RFP does not commit the Agency to award a contract. The Agency reserves the right, at its sole discretion, to reject any and all proposals, or any portions thereof, at any time; to cancel this RFP; and to solicit new proposals under a new acquisition process.

## **K. Ethical Requirements**

From the time this RFP is published until a contract is awarded, no vendor shall offer or give, directly or indirectly, any gift, expense reimbursement, or honorarium, as defined by RSA 15-B, to any elected official, public official, public employee, constitutional official, or family member of any such official or employee who will or has selected, evaluated, or awarded an RFP, or similar submission. Any vendor that violates RSA 21-G:38 shall be subject to prosecution for an offense under RSA 640:2. Any vendor who has been convicted of an offense based on conduct in violation of this section, which has not been annulled, or who is subject to a pending criminal charge for such an offense, shall be disqualified from bidding on the RFP, or similar request for submission and every such vendor shall be disqualified from bidding on any RFP or similar request for submission issued by any state agency. A vendor that was disqualified under this section because of a pending criminal charge which is subsequently dismissed, results in an acquittal, or is annulled, may notify the department of administrative services, which shall note that information on the list maintained on the state's internal intranet system, except in the case of annulment, the information, shall be deleted from the list.

## **L. Challenges to Identification of Selected Vendor**

Within 5 business days of the Agency's posting of the rank or score on its website, vendors may, in accordance with RSA 21-G:37, request that the agency review its selection process. The request must be in writing and must specify all points on which the vendor believes the agency erred in its process and shall contain such argument in support of its position as the vendor seeks to present. In its request for review, a vendor shall not submit, and an agency will not accept nor consider, any substantive information that was not included in the original proposal. The agency will respond to the request within 5 business days of its receipt.

## **SECTION 6 – Evaluation of Proposals**

### **A. Criteria for Evaluation and Scoring**

The Agency will evaluate each responsive Proposal using a scoring scale of 100 points, which will be distributed as set forth in the table below.

<b>CATEGORIES</b>	<b>POINTS</b>
<b>TECHNICAL PROPOSAL</b> with the following potential maximum scores for each Technical Proposal category;	
Statement outlining the overall approach to be employed by the bidder to conduct the evaluation	20
Detailed plan of action including proposed strategies and activities to be carried out to provide the services outlined in SECTION 2 – Requirements and Scope of Work.	30
Description of the bidder's organizational capabilities to deliver the services, including a brief description of their company, a history of their firm's and/or personal experience in the field of education, and comprehensive resume for all staff who will work in this project.	20
Detailed budget, including budget notes which clearly explain the relationship between the proposed activities and expenditures.	20
<b>PRICE PROPOSAL MAXIMUM POINTS</b>	<b>10</b>
<b>TOTAL MAXIMUM POINTS</b>	<b>100</b>

The Agency will select a vendor based upon the criteria and standards contained in this RFP and from applying the weighting in this section. Oral interviews and reference checks, to the extent they are utilized by the Agency, will be used to refine and finalize scores.

If the Agency, decides to make an award based on these evaluations, the Agency will notify the selected vendor(s). Should the Agency be unable to reach agreement with the selected vendor(s) during Contract discussions, the Agency may then undertake Contract discussions with the next preferred vendor and so on, or the Agency may reject all proposals, cancel this RFP, or solicit new Proposals under a new acquisition process.

## **B. Planned Evaluations Steps**

The Agency plans to use the following process:

- Step 1. Initial screening to ensure that the Proposals are in compliance with submission requirements;
- Step 2. Preliminary evaluation of the Technical Proposals;
- Step 3. Final Scoring of Technical Proposals;
- Step 4. Price Proposals review;
- Step 5. Best and Final Offer (BAFO) if appropriate; and
- Final Selection: Select the highest scoring vendor(s) and begin contract execution.

## **C. Step 1: Initial Screening**

The Agency will conduct an initial screening to verify vendor compliance with the proposal submission requirements set forth in Sections 4 and 7. The Agency may waive or offer a limited opportunity to cure immaterial deviations from the RFP requirements if it is determined to be in the best interest of the State.

## **D. Step 2: Preliminary Technical Scoring of Proposals**

The Agency will establish an evaluation team to review for compliance of the minimum requirements as set forth in Section 2. This evaluation team will then review the technical proposals and give a preliminary score to the technical proposals under the guidelines set forth in Section 6. Should a vendor fail to achieve 80 Points in the preliminary technical scoring, it will receive no further consideration from the evaluation team and the vendor's price proposal will be returned unopened. Price proposals will not be reviewed by the evaluation team during the preliminary technical review.

## **E. Step 3: Final Technical Scoring of Proposals**

Following oral interviews, product demonstrations, reference checks (if appropriate) and/or review of written clarifications of proposals requested by the Agency, the evaluation team will determine a final score for each technical proposal.

## **F. Step 4: Price Proposal Review**

Price proposals will be reviewed upon completion of the final technical scoring of proposals. The vendor's price proposal will be allocated a maximum potential score of 10 points. Vendors are advised that this **is not a low bid award** and that the scoring of the price proposal will be combined with the scoring of the technical proposal to determine the overall highest scoring vendor.

The following formula will be used to assign points for costs:

**Vendor's Price Score = (Lowest Proposed Price / Vendor's Proposed Price) x Number of Points for Score**

For the purpose of use of this formula, the lowest proposed price is defined as the lowest price proposed by a vendor who has scored above the minimum necessary for consideration on the Technical Score

**G. No Best and Final Offer**

The Proposal should be submitted initially on the most favorable terms which the vendor can offer. There will be no best and final offer procedure.

**-OR-**

**Step 5: Best and Final Offer (BAFO)**

Upon completion of the scoring process outlined in Section 6 above, the Agency may, at its sole option, invite the highest scoring vendors to submit a "Best and Final Offer" for the Agency's consideration. The Agency reserves the right to select the vendor based solely on the initial proposals and is under no obligation to solicit or accept a BAFO from any vendors. As the Agency may not request a Best and Final Offer, vendors are encouraged to provide their most competitive prices in their initial proposals.

The Best and Final Offer (BAFO) is a one-time invitation only process for a vendor to submit its lowest priced offer for the Agency's consideration. The Agency will provide a deadline submission date for the BAFO and may uniformly communicate in writing any price/cost targets that the Agency is seeking in the BAFO. All restrictions on contact with State employees outlined in this RFP shall remain in effect.

Each invited vendor may only make one BAFO. The BAFO may not alter the substance of the vendor's technical proposal. The BAFO may only amend the vendor's initial price proposal.

To the extent the Agency solicits and receives a BAFO pursuant to this section, the Agency will re-score the BAFO participants' price proposals after review of the BAFO in accordance with Section 6G (Calculation of the Price Proposal Score). The Agency will not select a vendor based on the lowest priced BAFO proposal. A final selection, if any, shall be based on the combined score of the technical proposal and BAFO pricing. Only those vendors who were invited to submit a BAFO will be considered for the award.

**H. Final Selection**

The Agency will conduct a final selection based on the final evaluation of the proposals or, if requested, as a result of the Best and Final Offer, and begin contract discussions with the selected vendor(s).

**I. Rights of the Agency in Accepting and Evaluating Proposals**

The Agency reserves the right, at its sole discretion, to:

- Make independent investigations in evaluating proposals;
- Request additional information to clarify elements of a proposal;
- Waive minor or immaterial deviations from the RFP and contract requirements, if determined to be in the best interest of the State;
- Omit any planned evaluation step if, in the Agency's view, the step is not needed;
- Reject any and all proposals at any time; and

- Open contract discussions with the second highest scoring vendor and so on, if the Agency is unable to reach an agreement on contract terms with the higher scoring vendor(s).

## **SECTION 7 – Process for Submitting a Proposal**

### **A. Proposal Submission, Deadline, and Location Instructions**

Proposals submitted in response to this RFP must be received no later than the Proposal Due Date specified in the Schedule of Events, herein.

The Price proposal must be labeled clearly and submitted separately from the technical proposal.

Unless waived as a non-material deviation in accordance with Section 6, late submissions will not be accepted and will be returned to the vendors unopened. Delivery of the Proposals shall be at the vendor's expense. The time of receipt shall be considered when a Proposal has been officially documented by the Agency, in accordance with its established policies, as having been received at the location designated below. The Agency accepts no responsibility for damaged, mislabeled, or undeliverable mailed or emailed proposals. Any damage that may occur due to shipping shall be the vendor's responsibility.

Proposals must include one electronic copy of the Proposal with all Confidential Information fully redacted, as provided for in Section 5H of this RFP.

**Proposals must be clearly marked as follows:  
STATE OF NEW HAMPSHIRE  
RESPONSE TO RFP: DDS-2025 Telerecorder**

#### **Electronic Proposals**

Electronic Proposals must be addressed to:

TO: cheryl.hobart@ssa.gov

CC: lisa.beck@ssa.gov

Subject line must include:

RESPONSE TO RFP: DDS-2025 Telerecorder

Electronic Submissions must be submitted using the following criteria:

- a. Searchable PDF Format
- b. Files must be less than 10MB in size.

Exception: If files are greater than 10MB in size, the vendor will be required to submit their proposal in parts. It is the vendors responsibility to ensure a complete proposal is submitted.

## **SECTION 8 – Proposal Content and Requirements**

Proposals shall follow the below format and provide the required information set forth below:

- Cover page
- Transmittal letter



- Technical Proposal:
  - Executive summary providing a brief background of the vendor
  - Answers to the questions (if applicable, reference a specific section or appendix to questionnaire)
  - References (identify how many references are needed and whether there are any preference where the references are from)
- Price Proposal: must be submitted separately (if applicable, reference a specific section or appendix relative to price proposal)
- Other attachments as applicable (for example, financial audit report)

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

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

The

**AGREEMENT**  
State of New

Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

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

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

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

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

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

**4. CONDITIONAL NATURE OF AGREEMENT.**

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

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

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

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

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

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

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

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

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

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

**7. PERSONNEL.**

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

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

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

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

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

8.1.1 failure to perform the Services satisfactorily or on schedule;

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

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

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

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

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

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

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

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

## **9. TERMINATION.**

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

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

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

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

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

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

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

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

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

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

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

**14. INSURANCE.**

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

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

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

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

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

**15. WORKERS' COMPENSATION.**

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

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible

for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

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

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

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

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

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

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

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

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

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