

# AGREEMENT

SUBJECT: \_\_\_\_\_

## 1. **IDENTIFICATION**

1.1 Entity of CCSNH		1.2 Entity of CCSNH Address	
1.3 Contractor Name		1.4 Contractor Address	
1.5 Contractor Phone	1.6 Contractor Email	1.7 Completion Date	1.8 Price Limitation

This contract is entered into between the Community College System of NH ("CCSNH"), through its entity identified in 1.1 above, and the Contractor identified in 1.3. CCSNH and the Contractor hereby agree as follows:

## 2. **SCOPE OF WORK**

- 2.1. CCSNH, acting through the entity identified above, engages Contractor to perform the work or sale of goods, or both, (the "Services"), as described in the attached EXHIBIT A which is incorporated herein by reference.

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

- 3.1. This Agreement shall become effective on the date the Agreement is signed by the CCSNH and the Contractor ("Effective Date"). The Agreement may be executed in counterparts.
- 3.2. If the Contractor commences the Services prior to the Effective Date, all Services performed shall be at the sole risk of the Contractor, and in the event that this Agreement does not become effective, CCSNH shall have no liability to the Contractor. Contractor expressly waives any claim or cause of action for recovery in connection with any costs incurred or Services performed if the Agreement does not become effective, including claims for unjust enrichment, quantum meruit, and restitution.
- 3.3. If specified, Contractor must complete all Services by the Completion Date. Contractor acknowledges that time is of the essence, and that completion of the Services by the Completion Date is a material term of the Agreement.

## 4. **CONTRACT PRICE/PRICE LIMITATION/PAYMENT.**

- 4.1. The contract price, method of payment, and terms of payment are identified and more particularly described in **EXHIBIT B** which is incorporated herein by reference. If specified, the contract price shall not exceed the price limitation set forth in 1.8.
- 4.2. CCSNH shall have no liability to the Contractor other than the contract price.
- 4.3. CCSNH shall have the right to offset from any portion of the contract price otherwise payable to the Contractor under this Agreement, any damages incurred by CCSNH as a result of Contractor's breach of any term of this Agreement.

4.4. Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall CCSNH's liability arising from this Agreement exceed the Price Limitation set forth in block 1.8. Contractor bears the sole risk of any cost overruns, unanticipated expenditures, mistakes in estimation, or any occurrence, which increases Contractor's costs or expenses.

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

5.1. The Contractor shall comply with all 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 opportunity laws, while, or in connection with, performing the Services. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including visions, hearing and speech, can communicate with, receive information from, and convey information to the Contractor.

5.2. During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, national or ethnic origin, age, sex, sexual orientation, marital status, disability, gender identity or expression, genetic information, and veteran status and will take affirmative action to prevent such discrimination.

5.3. 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 as the State of New Hampshire or the United States 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.

**6. PERSONNEL.**

6.1. 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.

6.2. 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 CCSNH 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. EVENT OF DEFAULT/REMEDIES.**

- 7.1. Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):
  - 7.1.1. failure to perform the Services satisfactorily or on schedule;
  - 7.1.2. failure to submit any report required hereunder; and/or
  - 7.1.3. failure to perform or comply with any material covenant, term, or condition of this Agreement.
- 7.2. Upon the occurrence of any Event of Default, CCSNH may take any one, or more, or all, of the following actions:
  - 7.2.1. 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 remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;
  - 7.2.2. 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 CCSNH determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;
  - 7.2.3. set off against any other obligations CCSNH may owe to the Contractor any damages CCSNH suffers by reason of any Event of Default; and/or
  - 7.2.4. treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

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

- 8.1. 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.
- 8.2. All data and any property which has been received by Contractor from CCSNH, or purchased with funds provided for that purpose under this Agreement, shall be the property of CCSNH, and shall be returned to CCSNH upon demand or upon termination of this Agreement for any reason.
- 8.3. Disclosure of data requires prior written approval of CCSNH.

## **9. TERMINATION.**

9.1. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to CCSNH, 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.

**10. CONTRACTOR'S RELATION TO CCSNH.**

10.1. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of CCSNH. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind CCSNH or receive any benefits, workers' compensation or other emoluments provided by CCSNH to its employees.

**11. ASSIGNMENT/DELEGATION/SUBCONTRACTS.**

11.1. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of CCSNH. None of the Services shall be subcontracted by the Contractor without the prior written consent of CCSNH.

**12. INDEMNIFICATION.**

12.1. The Contractor shall defend, indemnify and hold harmless CCSNH, its officers and employees, from and against any and all losses suffered by CCSNH, its officers and employees, and any and all claims, liabilities or penalties asserted against CCSNH, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. This covenant in paragraph 12 shall survive the termination of this Agreement.

**13. INSURANCE.**

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

13.1.1. comprehensive 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; and

13.1.2. special cause of loss coverage form covering all property subject to subparagraph 8.2 herein, in an amount not less than 80% of the whole replacement value of the property.

13.2. The policies described in subparagraph 13.1 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.

13.3. The Contractor shall furnish to CCSNH a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to CCSNH certificate(s) of

insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies.

- 13.4. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide CCSNH no less than thirty (30) days prior written notice of cancellation or modification of the policy.

**14. WORKERS' COMPENSATION.**

- 14.1. 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*").
- 14.2. 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. Contractor shall furnish CCSNH 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.
- 14.3. CCSNH 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.

**15. WAIVER OF BREACH.**

- 15.1. No failure by CCSNH to enforce any provisions hereof after any breach, including an Event of Default, shall be deemed a waiver of its rights with regard to that breach or Event of Default, or any subsequent breach or Event of Default.

**16. NOTICE.**

- 16.1. 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.**

- 17.1. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto.

**18. CONSTRUCTION OF AGREEMENT AND TERMS**

18.1. This Agreement shall be construed in accordance with the laws of the State of New Hampshire.. 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.

**19. FORUM SELECTION**

19.1. The parties agree that any dispute arising out of or related to this Agreement may only be brought in the State or Federal Courts located in Merrimack County, New Hampshire.

**20. THIRD PARTIES**

20.1. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

**21. SPECIAL PROVISIONS**

21.1. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

**22. SEVERABILITY**

22.1. 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.

**23. AUTHORITY TO SIGN**

23.1. Each of the persons signing this Agreement hereby represents and warrants that they have actual authority to bind the party on whose behalf they are signing to each and every term of this Agreement.

**24. ENTIRE AGREEMENT**

24.1. This Agreement, together with its exhibits, 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 relating hereto.

# **Exhibit A**

## **Scope of Services**

# **Exhibit B**

## **Contract Price**

**Exhibit C**  
**Special Provisions**

---

**SIGNATURE PAGE FOLLOWS**

---

**ACKNOWLEDGED AND AGREED**

**Community College System of NH**

\_\_\_\_\_ **(Contractor)**

**X** \_\_\_\_\_

**X** \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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