

STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES
GENERAL SERVICES DIVISION
OFFICE OF PROCUREMENT SERVICES
4200 SURFACE ROAD, COLUMBUS, OH 43228-1395

AMENDMENT FOR CHANGE
AMENDMENT NO. 2

TO: THE OHIO DEPARTMENT OF EDUCATION

FROM: HUGH QUILL, DIRECTOR, DEPARTMENT OF ADMINISTRATIVE SERVICES

SUBJECT: TERM CONTRACT - THE DEVELOPMENT, SCORING, AND REPORTING OF AN ALGEBRA II END-OF-COURSE EXAM

Attached are pages 1 through 35 to this contract. Remove these pages from the existing contract and replace with the attached pages on the effective and/or revision date.

This amendment is issued to notify of the addition of the states of Hawaii, Minnesota, North Carolina and Washington as Participating States; to update contact information; redefine the CDT Coordinator Role; modify the Special Provision(s) Clause; add paragraphs 46 and 47; and to provide a republished Contract due to the resulting repagination.

All other prices, terms and conditions remain unchanged.

Questions regarding this Amendment and/or the Requirements Contract may be directed to:

Dana King, CPPB
dana.king@das.state.oh.us

This amendment, the main Requirements Contract and any additional amendments thereto are available from the DAS website at the following address:



<http://www.ohio.gov/procure>

Affected Contractor(s):

99498
NCS Pearson, Inc.
DBA: Pearson Educational
Measurement (PEM)
2510 North Dodge St.
Iowa City, IA 52245

STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES
GENERAL SERVICES DIVISION
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4200 SURFACE ROAD, COLUMBUS, OH 43228-1395

REQUIREMENTS CONTRACT: THE DEVELOPMENT, SCORING, AND REPORTING OF AN ALGEBRA II END-OF-COURSE EXAM

CONTRACT No.: CSP902107

EFFECTIVE DATES: 03/23/07 to 06/30/11

The Department of Administrative Services has accepted Proposals submitted in response to Request for Proposal (RFP) No. CSP902107 that opened on November 22, 2006. The evaluation of the Proposal responses has been completed. The Offeror listed herein has been determined to be the highest ranking Offeror and has been awarded a Contract for the services listed. The respective Proposal response including, Contract Terms & Conditions, any Proposal amendment, special Contract Terms & Conditions, specifications, pricing schedules and any attachments incorporated by reference and accepted by DAS become a part of this Services Contract.

This Contract is effective beginning and ending on the dates noted above unless, prior to the expiration date, the Contract is renewed, terminated, or cancelled in accordance with the Contract Terms and Conditions.

- * This Contract is available to the Ohio Department of Education as a multi-state cooperative Contract with 14 consortium states (Participating States) which currently include: Arkansas, Arizona, Hawaii, Indiana, Kentucky, Maryland, Massachusetts, Minnesota, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island and Washington. Additional Participating States may be added to this multi-state cooperative Contract by means of an Amendment to this Contract.

Consortium states are eligible to make purchases of the contracted services in any amount and at any time as determined by the individual State(s). The State(s) makes no representation or guarantee that departments will purchase the volume of services as advertised in the Request for Proposal.

Questions regarding this and/or the Contract may be directed to:

Dana L. King, CPPB
dana.king@das.state.oh.us

This Contract and any Amendments thereto are available from the DAS Web site at the following address:



www.ohio.gov/procure

- * Indicates the addition of the states of Hawaii, Minnesota, North Carolina, and Washington effective February 14, 2008.

Mutually agreed upon Clarifications and Modifications – The Development, Scoring, and Reporting of an Algebra II End-Of-Course Exam. This section gives only a summary of the Project Requirements. All Participating States will issue a purchase order to purchase the Exam and related services covered by this Contract.

1. The general Terms and Conditions for the Contract are contained in Attachment Three of the RFP for Project. The Contract consists of:
 - a. The original RFP and any addendums.
 - b. The documents and materials incorporated by reference in the RFP.
 - c. The Contactor's Proposals, as amended, clarified, and accepted by the State.
 - d. The documents and materials incorporated by reference in the Offeror's Proposal and subsequent accepted clarifications.
 - e. Any related amendments issued subsequent to Contract award.
2. The Participating States and the Contractor shall notify the DAS, Office of Procurement Services within ten (10) business days in the event of a change in personnel, financial, or contact information.
3. The American Diploma Project (ADP) Algebra II End-of-Course Exam represents a unique venture in large-scale performance assessment. The Participating States and the Contractor seek, through this approach, to address multiple challenges simultaneously:
 - a. A common, rigorous test administered to a large number of students who are situated in multiple jurisdictions that have unique operational requirements.
 - b. The need for rapid scoring turn-around when tests are used for grade or graduation determination.
 - c. Result reporting suitable for higher education purposes (i.e., placement in credit-bearing courses, as well as secondary school program improvement and comparison).
4. Ohio Ethics Laws and Political Contributions. The Contractor is currently in compliance and will continue to adhere to the requirements of the Ohio ethics laws, Ohio Revised Code Section §102.04. Further, the Contractor affirms that, as applicable to the Contractor, all personal and business associates are in compliance with Chapter 3517 of the Revised Code regarding limitations on political contributions and shall remain in compliance for the duration of the Contract and with all applicable provisions that extend beyond the expiration of the Contract. Additional Terms and Conditions, according to each of the Participating States, are set forth in the RFP.
5. The Contractor shall take all reasonable actions necessary to work with the Participating States to recruit participants for the Fall 2007 and February 2008 Field Tests. As an incentive to participate in the field test, teachers will receive an electronic report summarizing the performance of their students on the field test. They will also receive a one-year subscription to the Family Education Network. The Contractor (PEM) shall also work with the CDT and Participating States to develop a contingency plan for moving forward if the field testing volumes are not obtainable. These plans may include decreasing the number of field test forms administered or delaying the implementation of the Exam. A decision will be made by July 1, 2007 regarding the need to proceed with a contingency plan for the October 2007 field test, and by November 1, 2007 for the February 2008 field test.
6. Field Test Plan. The following tests will be administered during the field test window of October 1-5, 2007:
 - a. Core, paper (multiple-choice and open-ended)
 - b. Modules, paper (multiple-choice and open-ended)
 - c. Core, on-line (multiple-choice only)
 - d. Modules, on-line (multiple-choice only)

7. The Core and Module on-line, open-ended items will be field tested in February of 2008. This plan provides the following benefits:
- Paper-based operational tests shall be available on-time for the May 2008 administration.
 - On-line testing shall be available for the December 2008 administration.
 - Adequate time is provided for the development of the needed on-line open-ended items that will enhance the Exam.
 - Adding a field test in February will allow greater participation by the schools than a May field test would allow, given States existing assessment commitments at the end of the school year.
8. Meetings. The table below reflects the field test design. The Contractor shall cover travel, labor, honorarium, and/or substitute teacher pay expenses.

Meeting Description	Original Timeframe	Original Duration	Participants	Revised Timeframe	Revised Duration
Storyboard Review					
	February 2007	2 Committees of 3 days	PEM, CDT	N/A	N/A
	May 2007	2 Committees of 3 days	PEM, CDT	05/04/07 ¹	1 Committee of 1 day
	September 2007	2 Committees of 3 days	PEM, CDT	September 2007	1 Committee of 1 day
	September 2008	2 Committees of 2 days	PEM, CDT	September 2008	1 Committee of 1 day
	September 2009	2 Committees of 2 days	PEM, CDT	September 2009	1 Committee of 1 day
Item Review					
	April 2007	4 Committees of 5 days	PEM, BETA, CDT 27 teachers 18 professors	04/30/07 – 05/03/07	2 Committees of 5 days; 2 Committees of 4 days
	August 2007	2 Committees of 5 days; 2 Committees of 3 days	PEM, BETA, CDT 27 teachers 18 professors	08/13/07 – 08/17/07	4 Committees of 5 days
	April 2008	2 Committees of 4 days	PEM, BETA, CDT 13 teachers 9 professors	April 2008	2 Committees of 4 days
	April 2009	2 Committees of 4 days	PEM, BETA, CDT 13 teachers 9 professors	April 2009	2 Committees of 4 days
	April 2010	2 Committees of 3 days	PEM, BETA, CDT 13 teachers 9 professors	April 2010	2 Committees of 3 days

¹ February and May Storyboard Review combined due to delay in field testing on-line open-ended items.

Item Reconciliation					
	April 2007	2 Committees of 5 days	PEM, BETA, CDT	05/07/07 – 05/11/07	2 Committees of 4 days
	August 2007	2 Committees of 4 days	PEM, BETA, CDT	08/20/07 – 08/24/07	2 Committees of 5 days
	April 2008	2 Committees of 2 days	PEM, BETA, CDT	April 2008	2 Committees of 2 days
	April 2009	2 Committees of 2 days	PEM, BETA, CDT	April 2009	2 Committees of 2 days
	April 2010	2 Committees of 2 days	PEM, BETA, CDT	April 2010	2 Committees of 2 days
On-line User Acceptance					
	July 2007	2 Committees of 2 days	PEM, CDT	N/A ²	N/A
	November 2007	2 Committees of 2 days	PEM, CDT	October or November 2007	2 Committees of 4 days
	July 2008	2 Committees of 2 days	PEM, CDT	July 2008	2 Committees of 2 days
	July 2009	2 Committees of 2 days	PEM, CDT	July 2009	2 Committees of 2 days
	July 2010	2 Committees of 2 days	PEM, CDT	July 2010	2 Committees of 2 days

² As a result of revised field test plan, the July 2007 On-line User Acceptance meeting is no longer required.

Data Review					
	December 2007	2 Committees of 5 days	PEM, CDT 13 teachers 9 professors	January 2008	2 Committees of 4 days
	July 2008	2 Committees of 4 days	PEM, CDT 13 teachers 9 professors	July 2008	2 Committees of 5 days
	July 2009	2 Committees of 3 days	PEM, CDT 13 teachers 9 professors	July 2009	2 Committees of 3 days
	July 2010	2 Committees of 2 days	PEM, CDT 13 teachers 9 professors	July 2010	2 Committees of 2 days
Planning Meetings					
	February 2007	2 days	PEM, CDT	04/04/07 – 04/05/07 ³	2 days
	April 2007	2 days	PEM, CDT	06/14/07 – 06/15/07	2 days
	July 2007	2 days	PEM, CDT	09/12/07 – 09/13/07	2 days
	October 2007	2 days	PEM, CDT	11/12/07 – 11/13/07	2 days
	January 2008	2 days	PEM, CDT	January 2008	2 days
	April 2008	2 days	PEM, CDT	April 2008	2 days
	October 2008	2 days	PEM, CDT	October 2008	2 days
	January 2009	2 days	PEM, CDT	January 2009	2 days
	October 2009	2 days	PEM, CDT	October 2009	2 days
	January 2010	2 days	PEM, CDT	January 2010	2 days
	October 2010	2 days	PEM, CDT	October 2010	2 days
	January 2011	2 days	PEM, CDT	January 2011	2 days
Research Alliance					
	Q2 2007	1 day	TBD	Q2 2007	1 day
	Q3 2007	1 day	TBD	Q3 2007	1 day
	Q4 2007	1 day	TBD	Q4 2007	1 day
	Q2 2008	1 day	TBD	Q2 2008	1 day
	Q4 2008	1 day	TBD	Q4 2008	1 day
	Q2 2009	1 day	TBD	Q2 2009	1 day
	Q4 2009	1 day	TBD	Q4 2009	1 day
	Q2 2010	1 day	TBD	Q2 2010	1 day
	Q4 2010	1 day	TBD	Q4 2010	1 day
	Q2 2011	1 day	TBD	Q2 2011	1 day

³ Recommended PEM/CDT Planning Meeting dates for 2007. Final dates to be selected with approval of CDT.

Standard Setting					
	July/Aug 2008	5 days	PEM, CDT 9 teachers 9 professors	July/Aug 2008	5 days
	N/A	N/A	PEM, CDT ⁴ 9 teachers 9 professors	Mar 2009	5 days
Range finding					
	November 2007	1 Committee of 3 days, 1 committee of 4 days	PEM, CDT 18 teachers	November 2007	1 Committee of 3 days, 1 committee of 4 days
	N/A	N/A	PEM, CDT 18 teachers	March 2007 ⁵	1 Committee of 2 days, 1 committee of 3 days
	July 2008	1 Committee of 3 days, 1 committee of 4 days	PEM, CDT 18 teachers	July 2008	1 Committee of 3 days, 1 committee of 4 days
	July 2009	1 Committee of 3 days, 1 committee of 4 days	PEM, CDT 15 teachers	July 2009	1 Committee of 3 days, 1 committee of 4 days
	July 2010	1 Committee of 3 days, 1 committee of 4 days	PEM, CDT 15 teachers	July 2010	1 Committee of 3 days, 1 committee of 4 days

9. Other Key Dates.

Milestone	Projected Date(s)
Fall 2007 Field Test	10/1/07-10/5/07
Winter 2008 Field Test	2/11/08-2/15/08
End-of-spring 2008 Operational Test (paper only)	Mid May to Mid June
End-of-fall 2008 Operational Test (paper and on-line)	Mid Dec to Mid Jan

10. Liquidated Damages. The Participating States have the option of collecting liquidated damages from the Contractor for default. The deliverables/activities subject to liquidated damages are defined herein and shall supersede liquidated damages language provided in the RFP, the Proposal, and/or provisions contained in Task/Purchase Orders for the Participating State's.

11. Information to be provided. Delivery dates for materials, the test administration dates and forecast by the Participating State, or by the Participating District within a state, for how many students will test by administration for the upcoming school year is to be provided to the Contractor on July 1 of each contracted year. Any delay in providing this information may impact the schedule and delivery dates. The Contractor and the Participating State shall in good faith agree to reach mutually acceptable delivery dates. Any liquidated damages would be subject to the revised delivery dates.

⁴ An additional Standard Setting meeting has been added to accommodate the revised field test design. Hard copy student results and all summary data for the end-of-fall 2008/2009 administration will be provided to schools within 21 days after the March 2009 Standard Setting meeting is complete.

⁵ An additional Range finding meeting has been added to support the addition of the February 2008 field test of on-line open-ended items.

12. Default. The Contractor shall make those deliveries, meet those milestones, and complete the Project within the mutually agreed upon times. If the Contractor does not meet those dates, the Contractor shall be in default, and the State may terminate this Contract under the termination provision contained within the Request for Proposal (RFP). The Participating State(s) may also have certain obligations to meet. If the Participating State(s) agrees that the Contractor's failure to meet the delivery, milestone, or completion dates is due in whole or in part to the Participating State's failure to meet its own obligations in a timely fashion, then the Contractor shall not be in default, and the delivery, milestone, and completion dates affected by the Participating State's failure to perform shall be extended as required by the Contractor to compensate for the Participating State's delay but no less than the same amount of time as the Participating State's delay. The Contractor may not rely on this provision unless the Contractor has in good faith exerted all professional management skill to avoid an extension and has given the Participating State(s) meaningful written notice of the Participating State's failure to meet its obligations within five (5) business days of the Contractor's realization that the Participating State's delay shall affect the Project. The notice to the Participating State(s) shall be directed at making the Participating State(s) aware of its delay and the impact of its delay. It shall be sent to the Agency Project Representative and the Ohio DAS Procurement Representative. In the event that a default event occurs for a given Participating State, assertion of Liquidated Damages shall be at that State's discretion.
13. Milestones. The following events are considered default events which would be subject to liquidated damages:
 - a. Distribution of test administration materials to enable the test administration on the date provided by the Participating State(s).
 - b. Provide test results with complete and accurate information to the districts and schools by the date agreed upon with the Participating State(s).
 - c. The actual events relating to the development of the test are developed at Contractor's cost and in which they will own, therefore should be excluded from liquidated damages. These events are based on Contractor's development schedules and its ability to adjust the timelines as seen fit. The Contractor shall be responsible for developing the test according to the State's standards, conducting validity studies, and including CDT and educators.
14. Liquidated Damages will be assessed to the extent that a Participating State(s) is impacted by any Deliverable that is not delivered on or before the date established in the schedule and corresponding delivery dates. The total liquidated damages paid to any impacted Participating State shall not exceed the amount the impacted Participating State would have paid Contractor under the Task Order for that Test Administration. Subject to the foregoing, Liquidated Damages shall not exceed \$2,000 per day per impacted Participating State. Cumulative Liquidated Damages shall not exceed \$50,000 per day for all of the impacted Participating States.
15. On-line testing capacity for multiple states during the designated testing window.

Scalability and system capacity have been primary considerations in developing the Assessment Network from its inception. Consideration of these critical issues was made during the design and selection of hardware/software infrastructure, during system architectural design, and while designing individual modules. The Contractor shall constantly evaluate our system architecture and toolsets to plan for the forecasted requirements of our customers.

The Contractor demonstrates the capacity to support on-line testing for multiple states during the peak testing window. Because the Assessment Network is a modular and scalable system, there is no maximum capacity. Additional servers shall be added to function as Web servers, report servers, and application servers by dropping them in to respond to increased demand for on-line testing, whether within existing Participating States or supporting additional states. In addition, the hardware shall be scaled horizontally by adding new machines at each tier (Web, application, and database) as required. At any time the system shall be scaled-up to meet additional on-line testing demands. By conducting regular performance tests that simulate true system usage patterns, the Contractor understands the scalability of the overall host application and shall proactively plan infrastructure accordingly.

- * 16. The Contractor shall have overall responsibility for managing and planning execution of the tasks, including involvement of the American Diploma Project (ADP) Participating States and the Coordination and Direction Team (CDT). The CDT will be coordinated by the CDT Coordinator, an Achieve, Inc. staff member, who will also be the Contractor's primary point of contact.
17. The Contractor shall develop items and test forms consistent with the specifications and processes provided.
18. The Contractor shall produce test materials, including both test and answer booklets, as well as special version formats (i.e., large-print, Braille, audio, and Spanish versions). One (1) operational form per year of the special version formats is required.
19. The Contractor shall coordinate administration of the Algebra II End-of-Course Exam with each ordering Participating State (or district if applicable), within the timeframes provided in the Contract.
20. The Contractor shall score and report exam results. The Contractor shall manage and facilitate the range finding meetings. Nine (9) teachers and one (1) representative from Achieve, Inc. shall participate in each range finding committee meeting. The Contractor shall provide honorarium or substitute pay and travel costs for the teachers.
21. The Contractor shall provide technical support services, including developing performance levels and cut scores, and conduct validity studies, including studies that determine the predictive validity of the test for placing students into credit-bearing vs. remedial courses; developing policies, practices, and procedures for ensuring confidentiality, integrity, and security of education records, consistent with the Family Educational Rights and Privacy Act (FERPA) (20 USC § 1232(g) 34 CFR Part 99); the Individuals with Disabilities Act (IDEA) (20 USC § 1400 et seq.), State laws and regulations governing education records, access to state records, privacy and data breaches, and applicable policies of the school, district, or state education agency.
22. The Contractor shall encrypt all education records shared across any public network (i.e., the internet) using as a standard an internationally-recognized standard-setting organization, such as ANSI or IEEE. The baseline requirement for encryption is 128-bit using the public key/private key infrastructure. The data encryption requirements are intended to protect the privacy of the education records that the Contractor will share, during the course of performing the Contract. The purpose is to assure compliance with the Family Educational Rights and Privacy Act (FERPA) and state data breach laws. See 34 C.F.R. § 99.35(b). FERPA requires methods that are "reasonable and appropriate to the circumstances in which the information or records are maintained."
- To further protect the data generated, processed, and stored by the Contractor:
- The storage of personal student data on any local machine is prohibited.
 - Contractor staff must access data through the same application front-end that the customer uses, or use an approved and licensed client product to access the database.
 - All layers of the environment must reside on separate systems, including the Web servers, application servers, and database servers.
 - Stringent network-layer controls must be used to segregate this environment from all other Contractor environments. These include physically separate networks, as well as logical access controls that limit those that have access to the network segment and host.
- The Contractor shall maintain specific security solutions for education records at each level of the information maintenance process: acquisition, storage, transport. Adequate technological protections contemplate server-side security, including but not limited to, administrator access control, firewalls, intrusion detection software, antivirus, regular software patch updates, and retaining adequate IT security personnel.
23. The Contractor shall provide ancillary materials to support the Exam, such as administration manuals and interpretation and information guides. Training materials such as a Training Video, Regional Test Administrator Workshops, and On-line, Self-Paced Training are available as state options, for an additional cost, as described in the Cost Summary information.

* Indicates change in CDT Coordinator role responsibility.

24. The Contractor shall provide comprehensive student performance data to Achieve, Inc. about the performance of students on the assessment across the Participating States in the form of a file that does not contain personally identifiable information, such as:
 - a. The student's names.
 - b. The name of the student's parent or other family member(s).
 - c. The address of the student or student's family.
 - d. A personal identifier, such as the student's Social Security Number or student number.
 - e. A list of personal characteristics that would make the student's identity easily traceable.
 - f. Other information that would make the student's identity easily traceable.
25. The Contractor shall provide the Exam and related services (in an on-line format for Participating States to purchase as an option. Special versions of the on-line test are not required (e.g., Large print, Braille, Spanish, audio). Requirements for special on-line forms will be negotiated with the Contractor as an amendment to the Contract.
26. The Contractor shall engage in activities to establish and enhance credibility with postsecondary institutions and to promote use of the ADP Algebra Exam results for placement purposes.
27. Within two (2) weeks of Contract award, each Participating State shall provide the Contractor with a list of potential committee members that can participate in 2007 meetings that require educator participation (e.g., April Item Review). Each state shall provide the names of 4-5 teachers and 3-4 professors. The Contractor shall work with that combined list to ensure a broad cross section of representation within high school and postsecondary education and experience in Algebra II and the seven (7) modules. As needed, the Contractor shall follow up with the States if additional representation is required. Participating States shall update the list each year. Achieve, Inc. may also provide names of potential participants. The CDT may choose to have final approval of the individuals appointed to any committee.
28. CDT members are not required to attend every committee meeting. However, at least one (1) member from the CDT or Achieve Inc. shall be present at each committee meeting to ensure that decisions that are made reflect the goals of the Program. For example, at the first Item Review Meeting, scheduled for April 2007, at least one (1) CDT/Achieve representative should be available to meet with the Contractor for each of the four (4) concurrent committee meetings.
29. Travel and labor expenses include those incurred by PEM and BETA (the subcontractor) representatives. For example, five (5) representatives from PEM and four (4) representatives from BETA will attend committee meetings for the Item Review scheduled for April 2007. The Contract costs include labor and travel costs (airfare, hotel, food, car rental) for these employees for that meeting.
30. In preparation for the CDT meetings, the Contractor shall coordinate with the CDT to ensure that the proposed location, agenda, and participants are acceptable. PEM and BETA will facilitate all meetings and document meeting discussion, such as revisions that are suggested during Item Review meetings. At least one (1) member of the Contractor's program management team will be present for the duration of all meetings to answer any general questions participants, the CDT or Achieve, Inc. may have, and to manage the logistics of the meeting.
31. The Contractor shall manage the travel arrangements for each CDT meeting participant, including transportation and lodging accommodations held after March 2007. Achieve, Inc. shall manage the arrangements for the March 2007 meeting. The Contractor shall cover travel expenses and honorarium and/or substitute teacher pay. All other travel and labor expenses, such as those incurred by Achieve, Inc. and the CDT will be the participant's expense.
32. The Contractor shall provide a summary document of the discussions in the CDT meetings, including any action items, to all Participating States. These shall be documented by the Contractor as part of the weekly report that is provided to the CDT membership.

33. There will be a single calculator policy adhered to by all Participating States. The core test will be administered in two (2) sessions. For the first session students will not use a calculator. For the second session students will be allowed to use a calculator. Calculators will be allowed for each of the seven (7) optional modules. The draft calculator policy published as part of this document shall be the source of calculator usage policy. Additional details of this policy may be refined as part of the work of the CDT, and published as an amendment to this Contract.
34. The Contractor shall negotiate a License Agreement with Achieve, Inc. under which the Contractor shall make copies of the Exam available to Achieve, Inc. for such purposes as research and validity or alignment studies.
35. The Research Alliance will include up to 25 members per year. Membership will include up to two (2) individuals from PEM, nine (9) state or CDT members, one (1) Achieve Inc. representative, and 13 others, such as state or national measurement experts, contractors, professors, or college admissions/placement officers. Reimbursement for time and travel, and 40 hours of consulting time per year for the two (2) PEM and 13 other members is included. The CDT/state and Achieve, Inc. representatives will cover their own costs, including travel and lodging, for participating in any meetings.
36. The Contractor shall own the test and all items. If the State decides not to extend or renew the Contract with the Contractor, a Contract amendment will be issued so that the Contractor can assist the subsequent Contractor during the Contract transition. No items, tests, or systems will be transferred from PEM to the subsequent Contractor.
37. The Contractor shall provide each individual State with an itemized invoice, within 30 days after an order for assessment materials or optional services has been placed with the Contractor.
- * 38. The Participating States shall pay monthly invoices within 30 days of receipt unless otherwise specified.
39. The Contractor shall provide the DAS Office of Procurement updated insurance forms on an annual basis, or as appropriate when changes go into effect.
40. The Contractor shall provide the Ohio DAS, Office of Procurement Services and Achieve, Inc. with an annual utilization report each September, beginning in 2008. The report will summarize the number and type of tests and optional services purchased during the previous year by state and test administration.

* Indicates change in payment language effective December 20, 2007.

41. Information for the Participating States is provided below:

<p>a. Arkansas Department of Education ATTN: Associate Director, Curriculum, Assessment, and Research #4 State Capitol Mall, Room 106A Little Rock, AR 72201 Telephone: 501-682-4558 e-mail: kjames@arkedu.k12.ar.us</p>	<p>b. Arizona Department of Education ATTN: Deputy Associate Superintendent Standards Development and Assessment 1535 W Jefferson St. Phoenix, AZ 85007 Phone: 602-364-1164 e-mail: Roberta.Alley@azed.gov</p>
<p>* c. Hawaii Department of Education ATTN: Administrator, Student Assessment Section 3430 Leahi Ave., Bldg. D Honolulu, HI 96815 Telephone: 808-586-3230 e-mail: kent_hinton@notes.k12.hi.us</p>	<p>d. Indiana Department of Education ATTN: Assistant Superintendent 151 West Ohio St. Room 229 State House Indianapolis, IN 46204-2798 Telephone: 317-232-9050 e-mail: wbruce@doe.state.in.us</p>
<p>e. Kentucky Department of Education Office of Assessment & Accountability ATTN: Director of Assessment 500 Mero Street, 18th Floor Frankfort, KY 40601 Telephone: 502-564-4394, ext. 4124 e-mail: linda.france@education.ky.gov</p>	<p>f. Maryland Department of Education ATTN: Assistant State Superintendent 200 West Baltimore St. Baltimore, MD 21201 Telephone: 410-767-3308 e-mail: kpfeiffer@msde.state.md.us</p>
<p>g. Massachusetts Department of Education ATTN: Director of Student Assessment 350 Main St. Malden, MA 02148 Telephone: 781-338-3650 e-mail: kviatore@doe.mass.edu; jnellhaus@doe.mass.edu</p>	<p>* h. Minnesota Department of Education ATTN: Director Division of Research & Assessment 1500 Hwy 36 West Roseville, MN 55113 Telephone: 651-582-1611 e-mail: dirk.mattson@state.mn.us</p>
<p>i. New Jersey Department of Education ATTN: Manager of Evaluation and Assessment P.O. Box 500 Trenton, NJ 08625-0500 Telephone: 609-984-7761 e-mail: timothy.peters@doe.state.nj.us</p>	<p>* j. North Carolina State Board of Education ATTN: Director of Accountability Services 6314 Mail Service Center Raleigh, NC 27699-6314 Telephone: 919-807-3770 e-mail: LFabrizio@dpi.state.nc.us</p>
<p>** k. Ohio Department of Education Center for Curriculum Assessment ATTN: Associate Superintendent of Curriculum and Assessment 25 South Front Street, Mail Stop 601 Columbus, OH 433215-4183 Telephone: 614-728-4510 e-mail: mitchell.chester@ode.state.oh.us(thru 5/08) e-mail: stan.heffner@ode.state.oh.us</p>	<p>* l. Pennsylvania Department of Education Bureau of Management Services ATTN: Procurement Manager 333 Market St. Harrisburg, PA 17126 Telephone: 717-783-9792 e-mail: snedley@state.pa.us</p>
<p>m. Rhode Island Department of Education ATTN: Director, Office of Assessment and Accountability 255 Westminster St. Providence, RI 02903 Telephone: 401-222-8492 e-mail: maryann.snider@ride.ri.gov</p>	<p>* n. Washington Department of Education ATTN: Michael Middleton 600 Washington St. SE Olympia, WA 98504-7200 Telephone: 360-725-6434 e-mail: michael.middleton@k12.wa.us</p>

* Indicates the addition of the states of Hawaii, Minnesota, North Carolina, and Washington effective February 14, 2008.

** Indicates the addition of and/or updated point of contact information effective February 14, 2008.

42. Below is a chart that contains non-binding estimates provided by states regarding the anticipated number of students who will take the Algebra II.

State	Estimated Participation		
	Spring '08	SY '08-'09	SY '09-10
Arkansas	25,000	25,000	25,000
Arizona	20,000	20,000	20,000
** Hawaii	7,400	7,400	7,400
Indiana	15,000	15,000	15,000
Kentucky	20,000	35,000	40,000
Maryland	45,000	45,000	45,000
** Minnesota	1,000	1,000	1,000
Massachusetts	40,000	44,000	44,000
New Jersey	5,000	10,000	15,000
** North Carolina	1,050	1,050	1,050
Ohio	25,000	25,000	25,000
Pennsylvania	16,000	16,500	17,300
Rhode Island	TBD	TBD	TBD
** Washington	TBD	TBD	TBD
** Total	220,450	244,950	255,750

Note: Tests in Rhode Island will be ordered through the State by individual districts.

* Indicates repagination effective February 14, 2008.

** Indicates changes required by the addition of the states of Hawaii, Minnesota, North Carolina, and Washington effective February 14, 2008.

43. Approximations of the number of students taking the test in a computer based format are represented in the chart below.

State	Estimated Participation		
	'08	SY '08-'09	SY '09-10
Arkansas	N/A	N/A	N/A
Arizona	20,000	20,000	20,000
** Hawaii	TBD	TBD	TBD
Indiana	15,000	15,000	15,000
Kentucky	5,000	17,500	30,000
Maryland	10,000	10,000	10,000
Massachusetts	N/A	N/A	N/A
** Minnesota	500	500	500
New Jersey	N/A	N/A	N/A
** North Carolina	TBD	TBD	TBD
Ohio	N/A	N/A	N/A
Pennsylvania	N/A	N/A	N/A
Rhode Island	N/A	N/A	N/A
** Washington	TBD	TBD	TBD

* Indicates repagination effective February 14, 2008.

** Indicates changes required by the addition of the states of Hawaii, Minnesota, North Carolina, and Washington effective February 14, 2008.

44. DRAFT ADP Algebra II Exam Calculator Policy. The ADP Algebra II Exam is designed to take 90-120 minutes for most students to complete. The Exam will be administered in two (2) sessions. The first session will last an estimated 45-60 minutes and will be completed by students without the use of a calculator. The second session will also last an estimated 45-60 minutes and will be completed by students using a calculator. The following policy provides guidance on the use of calculators during the administration of the second session of the Algebra II Exam. The Exam will be designed so that some but not all questions on the calculator portion of the test require the use of a calculator.

The following types of calculators are permitted for use:

- a. Graphing calculators
- b. Scientific calculators
- c. Four-function calculators (Not encouraged for use.)

The Contractor shall work with the CDT to develop a list of specifically approved calculators as examples.

The following types of calculators are not permitted for use on the ADP Algebra II test:

- a. Calculators requiring access to an electrical outlet
- b. Calculators that make noises of any kind that cannot be noise disabled (except for students needing special accommodations)
- c. Calculators that are electronic writing pads, pen input/stylus-driven devices, pocket organizers, cell phones, powerbooks, or handheld or laptop computers
- d. Calculators that use a QWERTY keyboard
- e. Calculators that use paper tape
- f. Other calculators that are not permitted for use on state tests.

Proctors are required to disallow the use of any of the above types of calculators. Substitute calculators may be provided in the event that a student's calculator is disallowed and the proctor has approved calculators available. Students using a calculator with a raised display or a display one (1) inch or larger will be seated at the discretion of the proctor.

Proctors are required to check calculators before the Exam. Students should be thoroughly familiar with the operation of the calculator they plan to use on the Exam. Calculators may not be shared, and communication between individual student calculators is prohibited during the exam. Students should use their calculator on a regular basis so that they become adept at using the calculator that they plan to use during the Exam.

- ** 45. Attachment One, Part One of the original RFP/Contract Document shall be removed from this portion of the Contract and placed at the end of the contract, immediately following Cost Summary and Contractor Index information.
- ** 46. The CDT Coordinator role shall be an Achieve, Inc. staff member.
- ** 47. Contract amendment issues shall be administered by Ohio DAS as indicated on page 1 of the Contract. ODAS and Achieve, Inc. shall strive to maintain open communications to facilitate and ensure Program success. Individual Participating States shall direct questions and communications through Achieve, Inc. to ensure all history with regard to Program components is captured and handled in a standardized manner.

* Indicates repagination effective February 14, 2008.

** Indicates the change to paragraph 45; the change in location of Contract Special Provisions which are provided as supplemental information in this Contract, directly following the Contractor Index section and just before the Summary of Amendments page; and the addition of paragraphs 46 and 47 effective February 14, 2008.

Oaks Item ID: 3823

The Development, Scoring, and Reporting of an Algebra II End-of-Course Exam

Contractor: Pearson Educational Measurement (PEM)

Contractor's "Not-to-Exceed Fixed Price"

COST/PRICING SUMMARY TABLE 1 - PRICE PER EXAM AND PROPOSED VOLUME DISCOUNT

NUMBER OF TESTS ORDERED	2008 - 2011	***2012 - 2013***
	PRICE (\$)	PRICE (\$)
*Less than 100,000	\$25.56	\$23.56
100,000 – 149,999	\$20.56	\$17.96
150,000 – 199,999	\$19.08	\$15.94
200,000 – 249,999	\$17.56	\$14.17
250,000 – 299,999	\$16.56	\$13.05
300,000 and greater	\$15.56	\$11.97

Years marked with an "****" (2012 - 2013) are renewal the options.

NOTE: All prices and quoted costs shall be reflected in U. S. Dollars.

* Indicates repagination effective February 14, 2008.

COST/PRICING SUMMARY TABLE 2 - ADDITIONAL COST FOR OPTIONAL AND ENHANCED FEATURES/SERVICES

DESCRIPTION	ADDITIONAL COST PER TEST
Scoring and reporting of the entire test on an expedited basis (within one [1] week).	\$3.99
Scoring and reporting of the entire test on an expedited basis (within two [2] weeks).	\$0.49
Scoring and reporting of only the multiple choice responses on an expedited basis (remaining test items scored in a more extended time period).	-----
On-line test administration.	\$4.49
Data and Statistics Module.	\$7.49
Iterative Processes Module.	\$7.49
Probability Module.	\$7.49
Trigonometry Module.	\$7.49
Matrices Module.	\$7.49
Conics Module.	\$7.49
Logarithms Module.	\$7.49
Administration, scoring, and reporting of non-English language versions of the Exam (Spanish).	\$9.99
Administration, scoring, and reporting of Braille versions of the Exam.	\$9.99
Administration, scoring, and reporting of audio versions of the Exam.	\$9.99

TRAINING OPTIONS	ADDITIONAL COST
Test Administrator Training Video	\$15.00 per DVD, plus shipping
Regional Test Administrator Training Workshop	\$48, 610 per workshop (up to 100 participants)
On-line Self-paced Training	\$92.66 per use for a one-year subscription

* Indicates repagination effective February 14, 2008.

CONTRACTOR INDEX

CONTRACTOR AND TERMS:

99498
NCS Pearson, Inc.
DBA: Pearson Educational Measurement (PEM)
2510 North Dodge St.
Iowa City, IA 52245

CONTRACT NO.: CSP902107-1 (06/30/11)

TERMS: Net 30 Days

CONTRACTOR'S CONTACT:

Kevin Baker
Program Manager
Pearson Educational Measurement
2510 North Dodge St.
Iowa City, IA 52245

Telephone: (319) 341-6330

FAX: (888) 577-5923

e-mail: Kevin.L.Baker@pearson.com

Cathy White
Account Manager
Pearson Educational Measurement
2510 North Dodge St.
Iowa City, IA 52245

Telephone: (319) 339-6943

FAX: (888) 577-5923

e-mail: cathy.white@pearson.com

Jack Stange
Senior Vice President & General Manager, National Accounts
Pearson Educational Measurement
2510 North Dodge St.
Iowa City, IA 52245

Telephone: (319) 339-6654

Cell: (319) 331-1081

FAX: (319) 339-6599

e-mail: Jack.stange@pearson.com

PAYMENT ADDRESS:

NCS Pearson, Inc.
13036 Collections Center Dr.
Chicago, IL 60693

* Indicates repagination effective February 14, 2008.

ATTACHMENT ONE: PROJECT REQUIREMENTS AND SPECIAL PROVISIONS
PART TWO: SPECIAL PROVISIONS

The Offeror's Fee Structure. Contractors are to follow state of Ohio observed holidays and work schedules unless otherwise agreed to between the Contractor and the Agency. The State will not make payment for time charged to vacation, sick leave or other paid leave of absence, holidays, training or staff development of Offeror's personnel or other non-work related activity. The Contract award will be on a fixed price schedule. The Invoice billing period will be monthly.

Reimbursable Expenses. None.

Bill to Address. Information for the state of Ohio is as follows:

Ohio Department of Education
Center for Curriculum and Assessment
ATTN: Associate Superintendent of Curriculum and Assessment
25 South Front Street, Mail Stop 601
Columbus, OH 433215-4183

All invoices must contain the information represented in Paragraph O (Cost Control, Payment, and Record Keeping) of Attachment One, Part One.

Default. Any default by the Contractor or one (1) of its subcontractors shall be treated as a default by the Contractor and all of its subcontractors. The Contractor shall be solely responsible for satisfying any claims of its subcontractors for any suspension or termination and shall indemnify the State for any liability to them. Subcontractors shall hold the State harmless for any damage caused to them from a suspension or termination. They shall look solely to the Contractor for any compensation to which they may be entitled.

The State has the option of collecting actual direct or liquidated damages from the Contractor for any default. For each instance of default, the State shall provide the Contractor with estimates of the actual direct damages sustained due to the default. The State may deduct all or any part of the actual or liquidated damages resulting from the Contractor's default from any part of the price still due on the Contract, with prior written notice to the Contractor.

Events of default include, but are not limited to, the following:

- a. Failure by Contractor to complete any development work including, but not limited to, finalize development and validation of items, and related analyses.
- b. Failure by the Contractor to develop and produce required test forms prior to scheduled administration dates by the date agreed to by the Contractor and the Project Management Team.
- c. Failure by Contractor to deliver and collect test administration materials and any ancillary materials (student, staff, and parent descriptive documents) by dates agreed to by Contractor and the Project Management Team.
- d. Failure by Contractor to score student exams correctly and on time.
- e. Failure by Contractor to produce and ship all required reports with complete and accurate information by the date agreed to by the Contractor and the Project Management Team to districts and schools.
- f. Failure by Contractor to provide required validity studies.

* Indicates repagination effective February 14, 2008.

Fines. Fines of \$50,000 per day shall be imposed for any Deliverable and Task that is not delivered on or before the date established in the ORC or the Contract awarded pursuant to this RFP in addition to the default penalties. These include but are not limited to the test administration dates and the reporting dates.

State-Specific Terms and Conditions. The Participating States may each place orders for Exams with the Contractor pursuant to the Contract awarded under this RFP. The purchase and financial obligation of each Participating State are limited to the orders placed by that state.

In addition to the terms and conditions of the Contract entered into between the Contractor and the State of Ohio as a result of this RFP, orders placed by other Participating States will be subject to the special terms and conditions set forth in the following parts of this Attachment. In the event of any conflict between the general terms and conditions in other parts of the RFP and resulting Contract, and the special terms and conditions relating to individual Participating States, the special terms and conditions that follow shall govern.

The construction and effect of any order placed against the Contract will be governed by and construed in accordance with the laws of the Participating State. Venue for any claim, dispute, or action concerning an order placed against the Contract shall be in the Participating State placing that order.

Prices proposed by the Contractor are understood to be exclusive of state sales and federal excise taxes. Where a state is not exempt from sales taxes on sales within its state, the Contractor shall add the sales taxes on its billing invoice as a separate entry.

** Special Project Requirements for the other Participating States are addressed in Attachment One, Part Two, Parts A – M.

**ATTACHMENT ONE: PROJECT REQUIREMENTS AND SPECIAL PROVISIONS
PART TWO - A: SPECIAL PROVISIONS - STATE OF ARKANSAS**

The test coordinator/point of contact and payment information for Exams ordered by and administered in the State of Arkansas will be specified in its purchase order for Exams and related items under the Contract.

At present, Arkansas intends to use the test as an end of course exam that all students must pass to graduate.

* Indicates repagination effective February 14, 2008.

** Indicates changes required by the addition of the states of Hawaii, Minnesota, North Carolina, and Washington effective February 14, 2008.

ATTACHMENT ONE: PROJECT REQUIREMENTS AND SPECIAL PROVISIONS
PART TWO - B: SPECIAL PROVISIONS - STATE OF INDIANA

Test Coordinator/Point of contact. With regard to issuance and administration of orders placed under the Contract by the state of Indiana, the Contractor should communicate with and take direction from the following:

Wes Bruce, Assistant Superintendent
Indiana Department of Education
Room 229 State House
Indianapolis, IN 46204-2798
Telephone: 317-232-9050
Fax: 317-233-2196
E-Mail: wbruce@doe.state.in.us

Funding Cancellation. When the Director of the Office of Management and Budget makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

Disputes.

- A. Should any disputes arise with respect to this Contract, the Contractor and the state of Indiana agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the state of Indiana or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim within ten (10) working days following notification in writing by either party of the existence of a dispute, then the following procedure shall apply:
 1. The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the state of Indiana within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration or mediation for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.
 2. The state of Indiana may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the state of Indiana to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

Telephone Solicitation. As required by IC 5-22-3-7, the Contractor and any principals of the Contractor certify that (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

* Indicates repagination effective February 14, 2008.

ATTACHMENT ONE: PROJECT REQUIREMENTS AND SPECIAL PROVISIONS
PART TWO- C: SPECIAL PROVISIONS - COMMONWEALTH OF KENTUCKY

Test Coordinator/Point of Contact. With regard to issuance and administration of orders placed under the Contract by Kentucky, the Contractor should communicate with and take direction from the following:

Pam Rogers, Associate Commissioner
Office of Assessment & Accountability
Kentucky Department of Education
500 Mero Street, 18th Floor
Frankfort, KY 40601

Anticipated Exam Use. The Commonwealth of Kentucky has 234 high schools across 167 districts. The estimated number of students expected to take Algebra II and the Exam are: 2008—20,000; 2009—35,000; 2010—40,000. The estimated number of students expected to need accommodations in connection with those exams are: 2008—2400; 2009—4200; 2010—4800.

Payment. The Commonwealth of Kentucky will make payment within 30 working days of receipt of Contractor's invoice or of acceptance of goods and/or services in accordance with KRS 45.453 and KRS 45.454.

Payments are predicated upon successful completion and acceptance of the described work, services, supplies, or commodities, and delivery of the required documentation. Invoices for payment shall be submitted to the Agency Contact Person:

Johnette Cotton, Staff Assistant
Office of Assessment & Accountability
Kentucky Department of Education
500 Mero Street, 18th Floor
Frankfort, KY 40601

Dispute Resolution. Any Order placed pursuant to this Contract by the Commonwealth of Kentucky is subject to the laws of the Commonwealth of Kentucky and where applicable Federal law. Any litigation with respect to orders placed pursuant to this Contract by the Commonwealth of Kentucky shall be brought in state or federal court in Franklin County, Kentucky.

State Student Identification Number File. All Kentucky public school students have a state-assigned student identification number (SSID). The database of SSID's and other key student demographic and biographic information is maintained by the Kentucky Department of Education (KDE). KDE shall provide the Contractor with an electronic file with student level records including SSID, student identification information (name, date of birth, gender, grade, etc.) and limited district and school data for all registered Kentucky public school students. KDE and the Contractor will develop the data format jointly with the expectation that the file shall have only 10 to 20 variables.

Test Coordination. Each Kentucky district has a District Assessment Coordinator (DAC), usually a central office staff person, that is responsible for coordinating state required testing at the local level and for meeting the testing deadlines set by KDE. DAC's are responsible for ordering, receiving and identifying building personnel to administer the test, as well as identifying personnel to return testing materials. End-of-Course testing materials should be boxed by school location and sent to each DAC prior to testing for distribution to the participating schools; the DAC will collect the materials at the conclusion of testing and return for scoring.

Reporting. In addition to the base reporting referenced in the RFP for school, district, and state reports, Kentucky requires individual student reports that can be shared with the test taker and parent/guardian.

* Indicates repagination effective February 14, 2008.

**ATTACHMENT ONE: PROJECT REQUIREMENTS AND SPECIAL PROVISIONS
PART TWO -D: SPECIAL PROVISIONS - STATE OF MARYLAND**

The test coordinator/point of contact and payment information for Exams ordered by and administered in the state of Maryland will be specified in its purchase order for Exams and related items under the Contract.

**ATTACHMENT ONE: PROJECT REQUIREMENTS AND SPECIAL PROVISIONS
PART TWO-E: SPECIAL PROVISIONS - COMMONWEALTH OF MASSACHUSETTS**

The test coordinator/point of contact and payment information for Exams ordered by and administered in the Commonwealth of Massachusetts will be specified in its purchase order for Exams and related items under the Contract.

Massachusetts will contact the winning Offeror to complete forms specific to the Commonwealth prior to ordering Exams and other materials.

The Algebra II opportunity will be numbered as: 07SSSKV1 on the Comm-PASS system. To locate this opportunity, (once posted to Comm-PASS) Offerors/Contractors will need to follow these instructions:

<http://www.comm-pass.com>

Click on Search

Click on Search for a Solicitation

Type in 07SSSKV1 in the Document Number box and click on search. A link will appear on the top of the screen: There are 1 Solicitation(s) found that match your search criteria (Click on the link) When at the next screen (Solicitation Search Results) click on the glasses under view.

Once this solicitation has been awarded, a Contract will be posted. To locate this on Comm-PASS interested parties will need to follow these instructions:

<http://www.comm-pass.com>

Click on Search

Click on Search for a Contract

Type in 07SSSKV1 in the Document Number box and click on search Click on link that appears at the top of the screen: There are 1 Contract(s) found that match your search criteria. When at the next screen (Contract Search Results) click on the glasses under view Click on the vendor tab and all the vendors on the contract are listed. To get their contact information click on the glasses under view.

* Indicates repagination effective February 14, 2008.

**ATTACHMENT ONE: PROJECT REQUIREMENTS AND SPECIAL PROVISIONS
PART TWO - F: SPECIAL PROVISIONS - STATE OF NEW JERSEY**

Test Coordinator/Point of Contact. With regard to issuance and administration of orders placed under the Contract by New Jersey, the Contractor should communicate with and take direction from the following:

Tim Peters, Manager
Office of Evaluation and Assessment
New Jersey Department of Education
P.O. Box 500
Trenton, NJ 08625-0500
(609) 984-7761
E-mail: Timothy.peters@doe.state.nj.us

Payment information for Exams ordered by and administered in the state of New Jersey will be specified in its purchase order for Exams and related items under the Contract.

**ATTACHMENT ONE: PROJECT REQUIREMENTS AND SPECIAL PROVISIONS
PART TWO- G: SPECIAL PROVISIONS - STATE OF OHIO**

Test Coordinator/Point of Contact. With regard to issuance and administration of orders placed under the Contract by Ohio, the Contractor should communicate with and take direction from the following:

Ohio Department of Education
Center for Curriculum Assessment
ATTN: Associate Superintendent of Curriculum and Assessment
25 South Front Street, Mail Stop 601
Columbus, OH 433215-4183
mitchell.chester@ode.state.oh.us through April 30, 2008
stan.heffner@ode.state.oh.us beginning May 1, 2008

**

Ohio will abide by the Contract's General Terms and Conditions as provided in Attachment Three of this RFP.

* Indicates repagination effective February 14, 2008.

** Indicates the addition of and/or updated point of contact information effective February 14, 2008.

**ATTACHMENT ONE: PROJECT REQUIREMENTS AND SPECIAL PROVISIONS
PART TWO - H: SPECIAL PROVISIONS - COMMONWEALTH OF PENNSYLVANIA**

Test Coordinator/Point of Contact. With regard to issuance and administration of orders placed under the Contract by Pennsylvania, the Contractor should communicate with and take direction from the following:

Cathy N. Anderson, Procurement Manager
Bureau of Management Services
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126-00333
(717) 783-9792
E-mail: cathanders@state.pa.us

Pennsylvania currently plans to use the test in selected low performing school districts.

Payment. The Contractor will be required to secure an SAP vendor identification number in order to facilitate payments for orders placed by Pennsylvania under the awarded Contract.

The Commonwealth's obligations under this Contract are dependent upon the appropriation and availability of funds for the Contract purpose.

Disputes. In the event of a controversy or claim arising from this Agreement, said controversy or claim shall be resolved consistent with the procedures set forth in Chapter 17 of the Commonwealth Procurement Code, 62 Pa.C.S.A. §§ 1701-1726 (P.L. 358 of 1998).

Nondiscrimination/Sexual Harassment. In connection with any orders placed under the Contract by the Commonwealth of Pennsylvania, the Contractor agrees as follows:

1. In the hiring of any employees for the manufacture of supplies, the performance of any work or service, or any other activity required under this Agreement or any subcontract, the Contractor or any person or entity acting on behalf of the Contractor or subcontractor, shall not by reason of gender, race, creed, or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither the Contractor, nor any person or entity on its behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under this Agreement on account of gender, race, creed, or color.
3. The Contractor and any person or entity on its behalf, shall establish and maintain a written sexual harassment policy and shall inform its employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
4. The Contractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the Agreement relates.
5. The Contractor and any person or entity on its behalf shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the Department of General Services' Bureau of Agreement Administration and Business Development for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the Department of General Services' Bureau of Agreement Administration and Business Development.
6. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.

* Indicates repagination effective February 14, 2008.

7. The Commonwealth may cancel or terminate this Agreement, and all money due or to become due under this Agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause.

Contractor responsibility. The Contractor certifies, for itself and all its subcontractors, that as of the date of its execution of this Proposal/Contract, that neither the Contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Proposal, a written explanation of why such certification cannot be made.

1. The Contractor also certifies, that as of the date of its execution of this Proposal/Contract, it has no tax liabilities or other Commonwealth obligations.
2. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
3. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
4. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth, which results in the suspension or debarment of the Contractor. Such costs shall include but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
5. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the internet at <http://www.dgs.state.pa.us> or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone: (717) 783-6472
Fax No: (717) 787-9138

Americans with Disabilities Act.

1. Pursuant to federal regulations promulgated under the authority of *The Americans With Disabilities Act*, 28 C.F.R. § 35.101, *et seq.*, the Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Agreement or from activities provided for under this Agreement on the basis of the disability. As a condition of accepting this Agreement, the Contractor agrees to comply with the *General Prohibitions Against Discrimination*, 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of *The Americans With Disabilities Act* which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
2. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of Paragraph 1 of this Appendix.

* Indicates repagination effective February 14, 2008.

Offset. The Commonwealth may set off the amount of any state tax liability or other debt of the Contractor or its subsidiaries that is owed to the Commonwealth and not being contested on appeal against any payments due the Contractor under this or any other agreement with the Commonwealth.

Integrity. In compliance with the Integrity Provisions, Contractor agrees to the following:

1. Definitions

- a. Confidential information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical or illegal advantage to another desiring to contract with the Commonwealth.
 - b. Consent means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, Bid, Proposal, or Contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this agreement.
 - c. Contractor means the individual or entity that has entered into this agreement with the Commonwealth, including directors, officers, partners, managers, key employees, and owners of more than a 5 percent interest.
 - d. Financial interest means:
 - (1) Ownership of more than a five (5) percent interest in any business.
 - (2) Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
 - e. Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
2. The Contractor shall maintain the highest standards of integrity in the performance of this agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.
 3. The Contractor shall not disclose to others any confidential information gained by virtue of this agreement.
 4. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.
 5. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give or agree to promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.
 6. Except with the consent of the Commonwealth, neither the Contractor nor anyone in privity with him shall accept or agree to accept from, or give or agree to give to any person, any gratuity from any person in connection with the performance of work under this agreement except as provided therein.
 7. Except with the consent of the Commonwealth, the Contractor shall not have a financial interest in any other Contractor, subcontractor, or supplier providing services, labor, or material on this Project.
 8. The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.

* Indicates repagination effective February 14, 2008.

9. The Contractor, by execution of this agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he has not violated any of these provisions.
10. The Contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, promptly make available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents or files of any type or form, which refer to or concern this agreement. Such information shall be retained by the Contractor for a period of three (3) years beyond the termination of the agreement unless otherwise provided by law.
11. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another Contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

**ATTACHMENT ONE: PROJECT REQUIREMENTS AND SPECIAL PROVISIONS
PART TWO - I: SPECIAL PROVISIONS – STATE OF RHODE ISLAND**

Test Coordinator/Point of Contact. With regard to issuance and administration of orders placed under the Contract by Rhode Island, the Contractor should communicate with and take direction from the following:

Mary Ann Snider
Director, Office of Assessment and Accountability
Rhode Island Department of Education
255 Westminster St.
Providence, RI 02903
(401) 222-8492

Unlike other states, exams such as those being procured under this RFP are purchased by individual school districts in Rhode Island. The Contractor shall fulfill orders for Exams from school districts within Rhode Island to the same extent and on the same basis as if they had been ordered by Rhode Island as a Participating States.

The state of Rhode Island plans to encourage individual school districts in Rhode Island to order the Exam.

**** ATTACHMENT ONE: PROJECT REQUIREMENTS AND SPECIAL PROVISIONS
PART TWO - J: SPECIAL PROVISIONS - STATE OF ARIZONA**

Technical and Programmatic Contact:
Roberta Alley
Deputy Associate Superintendent
Standards Development and Assessment
1535 W Jefferson St
Phoenix, AZ 85007
Phone: 602-364-1164
E-mail: Roberta.Alley@azed.gov

Contract Administration Contact:
Brian D. Ball
Sr. Procurement Specialist
Contracts Management Unit, Bin 37
1535 W Jefferson St
Phoenix, AZ 85007
Phone: 602-542-4254
E-mail: brian.ball@azed.gov

* Indicates repagination effective February 15, 2008.

** Indicates the addition of the state of Arizona effective December 20, 2007.

Payment. The state of Arizona will make payment within 30 working days upon receipt of invoices approved by the Deputy Associate Superintendent, Standards Development and Assessment.

Invoices shall be sent to:

Arizona Department of Education
Accounting, Bin #1
1535 W Jefferson St.
Phoenix, AZ 85007

Disputes. In event of controversy or claim arising from this agreement, said controversy or claim shall be resolved consistent with the procedures set forth in Chapter Nine of the Arizona Procurement code, A.R.S. § 41-2635.

Insurance Requirements. The insurance secured pursuant to Attachment Three, Part Two, shall include or be indorsed to include as covered parties: The state of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

Availability of funds for the next fiscal year. Funds may not presently be available for performance under this Agreement beyond the current fiscal year. No legal liability on the part of the state of Arizona for any payment may arise under this Agreement beyond the current fiscal year until funds are made available for performance of this Agreement. The state of Arizona shall make reasonable efforts to secure such funds.

Cancellation for conflict of interest. Pursuant to Arizona Revised Statute section 38-511, the state of Arizona may cancel this Agreement within three (3) years after Agreement execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the State of Arizona is or becomes at any time while the Agreement or an extension of the Agreement is in effect an employee of or a consultant to any other party to this Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Agreement as provided in A.R.S. section 38-511.

Non-discrimination. The Contractor shall comply with Arizona State Executive Order No. 99-4 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

Records. Under Arizona Revised Statute sections 35-214 and 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other records ("records") relating to the acquisition and performance of the Agreement for a period of five years after the completion of the Agreement. All records shall be subject to inspection and audit by the state of Arizona at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

Third party antitrust violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

* Indicates repagination effective February 14, 2008.

ATTACHMENT ONE: PROJECT REQUIREMENTS AND SPECIAL PROVISIONS
PART TWO - K: SPECIAL PROVISIONS - STATE OF HAWAII

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Test Coordinator/Point of Contact. With regard to matters related to coordination and direction of test development and administration for the state of Hawaii, the Contractor should communicate with and take direction from the following:

Kent Hinton, Administrator, Student Assessment Section
Hawaii Department of Education
3430 Leahi Ave., Bldg. D
Honolulu, HI 96815
Telephone: 808-586-3230
E-mail: kent_hinton@notes.k12.hi.us

ATTACHMENT ONE: PROJECT REQUIREMENTS AND SPECIAL PROVISIONS
PART TWO - L: SPECIAL PROVISIONS - STATE OF MINNESOTA

Test Coordinator/Point of Contact. With regard to matters related to coordination and direction of test development and administration, the Contractor should communicate with and take direction from the following:

Dirk Mattson, Director
Division of Research & Assessment
Minnesota Department of Education
1500 Hwy 36 West
Roseville, MN 55113
(651) 582-1611
E-mail: dirk.mattson@state.mn.us

Exams procured under this RFP will be purchased by individual school districts in Minnesota, rather than by the State of Minnesota. The Contractor shall fulfill orders for Exams from school districts within Minnesota to the same extent and on the same basis as if they had been ordered by Minnesota as a Participating State.

Terms and conditions of purchase, to the extent inconsistent with those elsewhere in the Contract, as well as provisions relating to payment and dispute resolution, will be included with the purchase orders for Exams issued by individual Minnesota school districts.

Disputes. Any order placed pursuant to this Contract by the State of Minnesota or its school districts is subject to the laws of the State of Minnesota and, where applicable, federal law. Any litigation with respect to orders placed pursuant to this Contract by the State of Minnesota shall be brought in state or federal court in Ramsey County, Minnesota.

Funding cancellation. Pursuant to Minn. Stat. § 16C.08, subd. 5, if the commissioner determines that further performance under the contract would not serve agency purposes, the commissioner may unilaterally terminate the contract prior to completion, upon payment of just compensation.

Anticipated exam use. The State of Minnesota has 233 high schools across 336 districts.

* Indicates repagination effective February 14, 2008.

** Indicates changes required by the addition of the state of Hawaii effective February 14, 2008.

*** Indicates changes required by the addition of the state Minnesota effective February 14, 2008.

ATTACHMENT ONE: PROJECT REQUIREMENTS AND SPECIAL PROVISIONS
PART TWO- M: SPECIAL PROVISIONS - STATE OF NORTH CAROLINA

**

Test Coordinator and Point of Contact. The test coordinator for North Carolina State Board of Education (NCSBE) shall be:

Louis M. (Lou) Fabrizio, Ph.D.
Director, Division of Accountability Services
NC Department of Public Instruction
6314 Mail Service Center
Raleigh, NC 27699-6314
Telephone: 919-807-3770
Fax: 919-807-3772
E-mail: Lfabrizio@dpi.state.nc.us

The Contract Administrator contracts or purchase orders for Exams ordered by NCSBE and administered in the State of North Carolina will be:

Chuck Clements, Section Chief
Purchasing and Contracts
NC Department of Public Instruction
6314 Mail Service Center
Raleigh, NC 27699-6308
Telephone: 919-807-3661
Fax: 919-807-3660
E-mail: CClements@dpi.state.nc.us

Purpose of Exam and Estimated Size of Order. NCSBE intends to offer the Exam on a voluntary basis as an assessment of student knowledge of Algebra II. NCSBE will specify the exact number of Exams and ancillary materials and related services in its purchase order. At present, NCSBE expects to order 1050 Exams and related test administration, scoring, reporting and ancillary materials.

Governing Law, Forum Selection. All orders for Exams issued hereunder shall be governed by the laws of North Carolina. In instances of disputes that do not arise from or are not related to an NCSBE order, then this Contract shall be governed by the laws of the state of Ohio. For disputes that arise from or are related to an NCSBE order, jurisdiction and venue for any disputes shall lie exclusively with in the North Carolina General Court of Justice, Superior Court Division for Wake County, North Carolina. In accordance with N.C. Gen. Stat. § 22B-3, in instances of disputes to which the State of North Carolina or NCSBE is a party but do not arise from or are not related to an NCSBE order, then jurisdiction and venue for such a dispute may be brought in either the appropriate court in Franklin County, Ohio, or in the North Carolina General Court of Justice, Superior Court Division for Wake County, North Carolina.

Method of Payment. The Contractor shall submit an invoice or invoices according to the payment schedule set forth in this agreement. Invoices shall be billed to the Payables Section, North Carolina Department of Public Instruction, but directed to the Contract Administrator, as identified herein, for approval of payment. Payment shall be made within 30 days upon receipt by the Payables Section of a requisition for payment from the Contract Administrator confirming that the Contractor has satisfactorily completed the work required under this Contract and evidenced by said invoices.

No Penalties or Interest. NCSBE shall not be liable for any interest or penalties on any late payments.

* Indicates repagination effective February 14, 2008.

** Indicates changes required by the addition of the state of North Carolina effective February 14, 2008.

Electronic Procurement.

1. Purchasing of Exams and ancillary materials shall be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. Contractor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a Contractor is a corporation, partnership or other legal entity, then the Contractor may authorize its employees to use its password. Contractor shall be responsible for all activity and all charges for such employees. Contractor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Contractor's account, Contractor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Contractor shall cooperate with the state and the Supplier Manager to mitigate and correct any security breach.
2. The Contractor shall provide supplier information, contract pricing and other product related information requested by the State or the Supplier Manager. This information shall include such information as Contractor name, SKU, brand/manufacturer, product name and a brief description, unit of measure, price, and other similar information properly requested by the State of the Supplier Manager to facilitate purchasing from the Contract. This information shall be posted by the Contractor in the format provided by the Supplier Manager, or as otherwise provided in a template or format required by the State. No costs or expenses associated with providing this information shall be charged to the State, its agents (including Supplier Manager) or State approved users of the contract. For the purposes of this Contract, the Contractor warrants that it is authorized and empowered to and hereby grants the State and the Supplier Manager the right and license to reproduce and display Contractor's trademarks, service marks, logos, trade dress or other branding designation that identifies the goods available under the Contract. The Supplier Manager shall create and maintain, with Contractor's timely assistance, Web-based placement of Contract information, where appropriate, that includes the Contract items distributed by the Contractor within the appropriate contract categories. The State shall provide any price adjustment/product modification information that it has approved during the course of the Contract, to the Supplier Manager immediately upon such change. If the Contractor is not the manufacturer, then it shall be the Contractor's responsibility to obtain authorization from the manufacturer to comply with the provisions of this Contract, including any appropriate intellectual property rights of the manufacturer. If the Contractor is the manufacturer, then the manufacturer shall only authorize dealers, outlets, distributors, value added resellers, etc. (together, "Authorized Resellers") within their network that can comply with the provisions of this contract.

Subcontractor Approval. The Contractor shall not transfer any interest in this agreement or subcontract any of the work to be performed by Contractor without the prior written approval of NCSBE Contract Administrator, unless such arrangement was specified in Ohio Contract No. CSP902107.

Outsourcing. Any Contractor or subcontractor providing call or contact center services to NCSBE or the intended beneficiaries of this Contract shall disclose to inbound callers the location from which the call or contact center services are being provided. If, after award of a contract, the Contractor wishes to outsource any portion of the work to a location outside the United States, prior written approval must be obtained from the NCSBE for the Contract. The Contractor must give notice to the NCSBE of any relocation of the Contractor, employees of the Contractor, subcontractors of the Contractor, or other persons performing services under this Contract outside of the United States.

Time is of the Essence, Late Delivery, Back Order. Time is of the essence in the performance of this Contract. The Contractor shall advise the Contract Administrator immediately upon determining that any Deliverable will not, or may not, be delivered at the time or place specified. Together with such notice, the Contractor shall state the projected delivery time and date. In the event the delay projected by Contractor is unsatisfactory, the Contractor agrees to pay the Agency the liquidated damages specified in the Contract.

* Indicates repagination effective February 14, 2008.

Availability of Funds. Any and all payments to Contractor are expressly contingent upon and subject to the appropriation, allocation, and availability of funds to the Agency for the purposes set forth in this Contract. If this Contract or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Agency's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Contract or Purchase Order. If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract, is expressly contingent upon the appropriation, allocation and availability of funds by the N.C. Legislature for the purposes set forth in the Contract. If funds to effect payment are not available, the Agency will provide written notification to Contractor. If the Contract is terminated under this paragraph, the Contractor agrees to take back any affected Deliverables and software not yet delivered under this Contract, terminate any services supplied to the Agency under this Contract, and relieve the Agency of any further obligation thereof. The State shall remit payment for Deliverables and services accepted prior to the date of the aforesaid notice in conformance with the payment terms.

Insurance Coverage. During the term of the Contract, the Contractor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract as represented in the original RFP.

Access to Persons and Records. Pursuant to N.C. General Statute 147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Contractor insofar as they relate to transactions with any department, board, officer, commission, institution, or other Agency of the State of North Carolina pursuant to the performance of this Contract or to costs charged to this Contract. The Contractor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Contract. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation.

Dispute Resolution. The Parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Contractor shall be submitted in writing to the Contract Administrator for decision. A claim by the State shall be submitted in writing to the Contractor's Contract Administrator for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties within 30 days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

Public Records and Confidentiality. Pursuant to N.C.G.S. 132-1, all documents regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions are deemed public records and it is the policy of North Carolina that the people may obtain copies of public records and public information free or at minimal cost unless otherwise specifically provided by law.

1. The State may maintain the confidentiality of certain types of information described in N.C. Gen. Stat. §132-1 et. seq. Such information may include trade secrets defined by N.C. Gen. Stat. §66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. §132-1.2. Contractor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "CONFIDENTIAL". By so marking any page, the Contractor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors, that the portions marked confidential meet the requirements of the Rules and Statutes set forth above.

* Indicates repagination effective February 14, 2008.

However, under no circumstances shall price information be designated as confidential. The State may serve as custodian of Contractor's confidential information and not as an arbiter of claims against Contractor's assertion of confidentiality. If an action is brought pursuant to N.C. Gen. Stat. §132-9 to compel the State to disclose information marked confidential, the Contractor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Contractor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State agrees to promptly notify the Contractor in writing of any action seeking to compel the disclosure of Contractor's confidential information. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Contractor with respect to the disclosure of Contractor's confidential information ordered by a court of competent jurisdiction pursuant to N.C. Gen. Stat. §132-9 or other applicable law.

2. Care of Information: Contractor agrees to use commercial best efforts to safeguard and protect any data, documents, files, and other materials received from the State or the Agency during performance of any contractual obligation from loss, destruction or erasure.
3. Contractor warrants that all its employees and any approved third party Contractors or subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina. Contractor will, upon request of the State, verify and produce true copies of any such agreements. Production of such agreements by Contractor may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that Contractor produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in NCGS §132-1 et. seq. The State may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the State for Contractor's execution. The State may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Office of Information Technology Services or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.
4. Nondisclosure: Contractor agrees and specifically warrants that it, its officers, directors, principals and employees, and any subcontractors, shall hold all information received during performance of this Contract in the strictest confidence and shall not disclose the same to any third party without the express written approval of the State .

Family Educational Rights & Privacy Act. Student educational records are subject to 20 U.S.C. 1232g, Family Rights and Privacy Act (FERPA) and are not disclosable except in very limited circumstances. The contractor will ensure that every employee responsible for carrying out the terms of this contract is aware of the confidentiality requirements of federal law. In addition, every such employee must sign a confidentiality acknowledgement that indicates that he or she understands the legal requirements for confidentiality. The contractor is responsible for the actions of its employee and must take all precautions necessary to ensure that no violations occur. Finally, access to personally identifiable student education information will be limited to those employees who must have access to it in order to perform their responsibilities pursuant to this contract.

Certifications of Noncollusion and Eligibility to Contract. Contractor certifies that its offer was submitted competitively and without collusion (G.S. 143-54), that none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that it is not an ineligible Contractor as set forth in G.S. 143-59.1. False certification is a Class I felony and contracts entered into in violation of those proscriptions are void. The Contractor further certifies that it is qualified to contract with the State of North Carolina and has not been debarred from contracting with the State of North Carolina.

Severability. No condition in this Contract shall be construed to limit the enforceability of any other condition herein. In the event any term or condition contained in, or made a part of this document by reference, is negated or vacated for any reason whatsoever all other provisions shall remain fully valid and enforceable.

* Indicates repagination effective February 14, 2008.

**ATTACHMENT ONE: PROJECT REQUIREMENTS AND SPECIAL PROVISIONS
PART TWO- N: SPECIAL PROVISIONS - STATE OF WASHINGTON**

**

Point of Contact Information.

Office of Superintendent of Public Instruction
ATTN.: Assistant Superintendent, Division of Assessment and Student Information
600 Washington Street SE
PO Box 47200
Olympia, WA 98504-7200
(360) 725-6336

Committee Participant List:

Dr. Yoonsun Lee (Director of Assessment and Psychometrics) will serve as the point of contact for Washington to begin communications; she will work with staff regarding content matter specialists attending select meetings

* Indicates repagination effective February 14, 2008.

** Indicates changes required by the addition of the state of Washington effective February 14, 2008.

SUMMARY OF AMENDMENTS

Amendment Number	Revision Date	Description
2	2/14/08	This Amendment is issued to add the states of Hawaii, Minnesota, North Carolina, and Washington; update contact information; redefine the CDT Coordinator Role; modify the Special Provisions clause(s); and indicate repagination as a result of the Contract modifications.
1	12/20/07	This Amendment is issued to add the state of Arizona as a Participating State; to modify and clarify Contract requirements reached by mutual agreement between parties; and indicate repagination as a result of the Contract modifications.

* Indicates repagination effective February 14, 2008.