

CONTRACT

School Transportation Drug and Alcohol Testing, RFP #DOE 2012-07

This Agreement ("Agreement") is entered into as of January 1, 2012 ("Effective Date") and will end on December 31, 2016, by and between the State of Delaware, Department of Education, hereafter referred to as DDOE, and i3screen, llc., hereafter referred to as i3screen.

WHEREAS, DDOE desires to obtain third party administrative services for a program of drug and alcohol testing to enable public school districts, charter schools and any person or entity that contracts with a school district or charter school to provide transportation for state public school students to comply with such drug and alcohol testing requirements applicable to Delaware public school bus drivers and aides as are now, or may be imposed by state and federal laws and regulations; and

WHEREAS, i3screen desires to provide such services to DDOE on the terms set forth below;

WHEREAS, DDOE and i3screen represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, DDOE and i3screen agree as follows:

1. Services.

1.1 i3screen shall perform for DDOE the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.

1.2 Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) DDOE's request for proposals, attached hereto as Appendix B; and (c) i3screen's response to the request for proposals, attached hereto as Exhibit 1. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

1.3 DDOE may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by i3screen shall be furnished without the written authorization of DDOE. When DDOE desires any addition or deletion to the deliverables or a change in the Services to be provided under this

Agreement, it shall notify i3screen, who shall then submit to DDOE a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by i3screen for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.4 i3screen will not be required to make changes to its scope of work that result in i3screen's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

2. Payment for Services and Expenses.

2.1 The term of the initial contract shall be from January 1, 2012 through December 31, 2016.

2.2 DDOE will pay i3screen for the performance of services described in Appendix A, Statement of Work. The fees will be paid in accordance with those specified in Exhibit 1.

2.3 DDOE's obligation to pay i3screen for the performance of services described in Appendix A, Statement of Work will not exceed the fixed fees specified in Exhibit 1. It is expressly understood that the work defined in the appendices to this Agreement must be completed by i3screen and it shall be i3screen's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fees. DDOE's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in DDOE's purchase order(s) to i3screen.

2.4 i3screen shall submit monthly invoices to DDOE in sufficient detail to support the services provided during the previous month. DDOE agrees to pay those invoices within thirty (30) days of receipt. In the event DDOE disputes a portion of an invoice, DDOE agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide i3screen a detailed statement of DDOE's position on the disputed portion of the invoice within thirty (30) days of receipt. DDOE's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle i3screen to charge interest on the overdue portion at no more than 1.0% per month or 12% per annum. All payments should be sent to i3screen, 9501 Northfield Boulevard, Denver, Colorado 80238.

2.5 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by i3screen. If an Appendix specifically provides for expense reimbursement, i3screen shall be reimbursed only for reasonable expenses incurred by i3screen in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.

2.6 DDOE is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

2.7 DDOE shall subtract from any payment made to i3screen all damages, costs and expenses caused by i3screen's negligence, resulting from or arising out of errors or omissions in i3screen's work products, which have not been previously paid to i3screen.

2.8 Invoices shall be submitted to: Ron Love, Delaware Department of Education, School Transportation, 401 Federal Street, Suite 2, Dover, Delaware 19901

3. Responsibilities of i3screen.

3.1 i3screen shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by i3screen, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, i3screen shall follow practices consistent with generally accepted professional and technical standards. I3screen shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform with DTI standards, i3screen shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. I3screen shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DDOE caused by i3screen's failure to ensure compliance with DTI standards.

3.2 It shall be the duty of the i3screen to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. I3screen will not produce a work product that violates or infringes on any copyright or patent rights. I3screen shall, without additional compensation, correct or revise any errors or omissions in its work products.

3.3 Permitted or required approval by DDOE of any products or services furnished by i3screen shall not in any way relieve i3screen of responsibility for the professional and technical accuracy and adequacy of its work. DDOE's review, approval, acceptance, or payment for any of i3screen's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and i3screen shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DDOE caused by i3screen's performance or failure to perform under this Agreement.

3.4 i3screen shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by i3screen's associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

<u>Name</u>	<u>Team</u>	<u>Title</u>	<u>% of Project Involvement</u>
Linda Hillard	Cust. Admin./Proj. Mgmt.	VP of Cust. Admin.	50%
Travis Mervar	MRO & Comp./Proj. Mgmt.	VP of Operations	50%

3.5 Designation of persons for each position is subject to review and approval by DDOE. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, i3screen will notify DDOE immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by DDOE. If i3screen fails to make a required replacement within 30 days, DDOE may terminate this Agreement for default. Upon receipt of written notice from DDOE that an employee of i3screen is unsuitable to DDOE for good cause, i3screen shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

3.6 i3screen shall furnish to DDOE's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.7 i3screen agrees that its officers and employees will cooperate with DDOE in the performance of services under this Agreement and will be available for consultation with DDOE at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.8 i3screen has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by the State of Delaware or any other political subdivision of the State.

3.9 i3screen will not use DDOE's name, either express or implied, in any of its advertising or sales materials without DDOE's express written consent.

3.10 The rights and remedies of DDOE provided for in this Agreement are in addition to any other rights and remedies provided by law.

4. Time Schedule.

4.1 A project schedule is not applicable.

4.2 Any delay of services or change in sequence of tasks must be approved in writing by DDOE.

4.3 In the event that i3screen fails to complete the project or any phase thereof within the time specified in the Contract, or with such additional time as may be granted in writing by DDOE, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Agreement or any extensions thereof, DDOE shall suspend payments for services not rendered.

5. State Responsibilities.

5.1 In connection with i3screen's provision of the Services, DDOE shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.

5.2 DDOE agrees that its officers and employees will cooperate with i3screen in

the performance of services under this Agreement and will be available for consultation with i3screen at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The services performed by i3screen under this Agreement shall be subject to review for compliance with the terms of this Agreement by DDOE's designated representatives. DDOE representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform i3screen by written notice before the effective date of each such delegation.

5.4 The review comments of DDOE's designated representatives may be reported in writing as needed to i3screen. It is understood that DDOE's representatives' review comments do not relieve i3screen from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5 DDOE shall, without charge, furnish to or make available for examination or use by i3screen as it may request, any data which DDOE has available, including as examples only and not as a limitation:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services specified by this Agreement.

i3screen shall return any original data provided by DDOE.

5.6 DDOE shall assist i3screen in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.

5.7 i3screen will not be responsible for accuracy of information or data supplied by DDOE or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

5.8 DDOE agrees not to use i3screen's name, either express or implied, in any of its advertising or sales materials. i3screen reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its

continuing analysis of the industries covered.

6. Work Product.

6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by i3screen for DDOE relating to the services to be performed hereunder shall become the property of DDOE and shall be delivered to DDOE's designated representative upon completion or termination of this Agreement, whichever comes first. I3screen shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by DDOE. DDOE shall have the right to reproduce all documentation supplied pursuant to this Agreement.

6.2 i3screen retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with DDOE's rights to the materials, information and documents developed in performing the project. Upon final payment, DDOE shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which i3screen retains title, whether individually by i3screen or jointly with DDOE. Any and all source code developed in connection with the services provided will be provided to DDOE, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.

6.3 In no event shall i3screen be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, i3screen shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

6.4 Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by i3screen prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of i3screen even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. DDOE's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

7. Confidential Information.

To the extent permissible under 29 Del. C. § 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

8. Warranty.

8.1 i3screen warrants that its services will be performed in a good and workmanlike manner. I3screen agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

8.2 Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by i3screen for DDOE in connection with the provision of the Services, i3screen shall pass through or assign to DDOE the rights i3screen obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

9. Indemnification; Limitation of Liability.

9.1 i3screen shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of the i3screen, its agents or employees, or (B) i3screen's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) i3screen shall have been notified promptly in writing by DDOE of any notice of such claim; and (ii) i3screen shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

9.2 If DDOE promptly notifies i3screen in writing of a third party claim against DDOE that any Deliverable infringes a copyright or a trade secret of any third party, i3screen will defend such claim at its expense and will pay any costs or damages that may be finally awarded against DDOE. I3screen will not indemnify DDOE, however, if the claim of infringement is caused by (1) DDOE's misuse or

modification of the Deliverable; (2) DDOE's failure to use corrections or enhancements made available by i3screen; (3) DDOE's use of the Deliverable in combination with any product or information not owned or developed by i3screen; (4) DDOE's distribution, marketing or use for the benefit of third parties of the Deliverable or (5) information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in i3screen's opinion is likely to be, held to be infringing, i3screen shall at its expense and option either (a) procure the right for DDOE to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing. The foregoing remedies constitute DDOE's sole and exclusive remedies and i3screen's entire liability with respect to infringement.

9.3 DDOE agrees that i3screen's total liability to DDOE for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause, including but not limited to contract liability or i3screen negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed fees paid to i3screen.

In no event shall i3screen be liable for special, indirect, incidental, economic, consequential or punitive damages, including but not limited to lost revenue, lost profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of software or any portion thereof regardless of the legal theory under which such damages are sought, and even if i3screen has been advised of the likelihood of such damages.

10. Employees.

10.1 i3screen has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by i3screen in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor DDOE's request for specific individuals.

10.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 10.2, "Personnel" includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

10.3 Possession of a Security Clearance, as issued by the Delaware Department of Public Safety, may be required of any employee of i3screen who will be assigned to this project.

11. Independent Contractor.

11.1 It is understood that in the performance of the services herein provided for, i3screen shall be, and is, an independent contractor, and is not an agent or employee of DDOE and shall furnish such services in its own manner and method except as required by this Agreement. I3screen shall be solely responsible for, and shall indemnify, defend and save DDOE harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 i3screen acknowledges that i3screen and any subcontractors, agents or employees employed by i3screen shall not, under any circumstances, be considered employees of DDOE, and that they shall not be entitled to any of the benefits or rights afforded employees of DDOE, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. DDOE will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of DDOE or any of its officers, employees or other agents.

11.3 i3screen shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, i3screen has no authority to bind or commit DDOE. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

12. Suspension.

12.1 DDOE may suspend performance by i3screen under this Agreement for such period of time as DDOE, at its sole discretion, may prescribe by providing written notice to i3screen at least 30 working days prior to the date on which DDOE wishes to suspend. Upon such suspension, DDOE shall pay i3screen its compensation, based on the percentage of the project completed and earned

until the effective date of suspension, less all previous payments. I3screen shall not perform further work under this Agreement after the effective date of suspension. I3screen shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from DDOE to resume performance.

12.2 In the event DDOE suspends performance by i3screen for any cause other than the error or omission of the i3screen, for an aggregate period in excess of 30 days, i3screen shall be entitled to an equitable adjustment of the compensation payable to i3screen under this Agreement to reimburse i3screen for additional costs occasioned as a result of such suspension of performance by DDOE based on appropriated funds and approval by DDOE.

13. Termination.

13.1 This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

13.2 This Agreement may be terminated in whole or in part by DDOE for its convenience, but only after i3screen is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with DDOE prior to termination.

13.3 If termination for default is effected by DDOE, DDOE will pay i3screen that portion of the compensation which has been earned as of the effective date of termination but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Any payment due to i3screen at the time of termination may be adjusted to the extent of any additional costs occasioned to DDOE by reason of i3screen's default.

- c. Upon termination for default, DDOE may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event i3screen shall cease conducting business, DDOE shall have the right to make an unsolicited offer of employment to any employees of i3screen assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

13.4 If after termination for failure of i3screen to fulfill contractual obligations it is determined that i3screen has not so failed, the termination shall be deemed to have been effected for the convenience of DDOE.

13.5 The rights and remedies of DDOE and i3screen provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

13.6 Gratuities.

13.6.1 DDOE may, by written notice to i3screen, terminate this Agreement if it is found after notice and hearing by DDOE that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by i3screen or any agent or representative of i3screen to any officer or employee of DDOE with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

13.6.2 In the event this Agreement is terminated as provided in 13.6.1 hereof, DDOE shall be entitled to pursue the same remedies against i3screen it could pursue in the event of a breach of this Agreement by i3screen.

13.6.3 The rights and remedies of DDOE provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

14. Severability.

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but

such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

15. Assignment; Subcontracts.

15.1 Any attempt by i3screen to assign or otherwise transfer any interest in this Agreement without the prior written consent of DDOE shall be void. Such consent shall not be unreasonably withheld.

15.2 Services specified by this Agreement shall not be subcontracted by i3screen, without prior written approval of DDOE.

15.3 Approval by DDOE of i3screen's request to subcontract or acceptance of or payment for subcontracted work by DDOE shall not in any way relieve i3screen of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

15.4 i3screen shall be and remain liable for all damages to DDOE caused by negligent performance or non-performance of work under this Agreement by i3screen, its subcontractor or its sub-subcontractor.

15.5 The compensation due shall not be affected by DDOE's approval of the i3screen's request to subcontract.

16. Force Majeure.

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

17. Non-Appropriation of Funds.

17.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated DDOE may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year

for which no appropriation is available or upon the exhaustion of funds.

17.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and DDOE's obligations under it shall be extinguished at the end of the fiscal year in which the State of Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

18. State of Delaware Business License.

i3screen and all subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301.

19. Complete Agreement.

19.1 This agreement and its Appendices shall constitute the entire agreement between DDOE and i3screen with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

19.2 If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

19.3 i3screen may not order any product requiring a purchase order prior to DDOE's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

20. Miscellaneous Provisions.

20.1 In performance of this Agreement, i3screen shall comply with all applicable federal, state and local laws, ordinances, codes and regulations.

i3screen shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

20.2 Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

20.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

20.4 i3screen covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. i3screen further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

20.5 i3screen acknowledges that DDOE has an obligation to ensure that public funds are not used to subsidize private discrimination. i3screen recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, DDOE may declare i3screen in breach of the Agreement, terminate the Agreement, and designate i3screen as non-responsible.

20.6 i3screen warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, DDOE shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

20.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

20.8 i3screen shall maintain all public records, as defined by 29 Del. C. §

502(7), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of DDOE may inspect or audit i3screen's performance and records pertaining to this Agreement at the i3screen business office during normal business hours.

21. Insurance.

21.1 i3screen shall maintain the following insurance during the term of this Agreement:

- A. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, **and**
- B. Comprehensive General Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, **and**
- C. Medical/Professional Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence; or
- D. Miscellaneous Errors and Omissions - \$1,000,000.00 per person/\$3,000,000 per occurrence, or
- E. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.

21.2. i3screen shall provide forty-five (45) days written notice of cancellation or material change of any policies.

21.3. Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:

21.4. In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.

22. Assignment of Antitrust Claims.

As consideration for the award and execution of this contract by the State, i3screen hereby grants, conveys, sells, assigns, and transfers to DDOE all of its right, title and

interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by the State pursuant to this contract.

23. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. i3screen consents to jurisdiction venue in the State of Delaware.

24. Notices.

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

CONTRACTOR: Steve Gatt
President & COO
i3screen, llc
9501 Northfield Blvd.
Denver, CO 80238
Phone No. (303) 570-8082 (cell) / (303) 757-4546 (office)
Fax No. (866) 790-5689
E-mail: sgatt@i3screen.com

DDOE: Karen Field Rogers
Associate Secretary, Financial Reform & Resource Mgmt.
Delaware Department of Education
John G. Townsend Building
401 Federal Street, Suite 2
Dover, DE 19901
Phone No. (302) 735-4040
Fax No. (302) 739-7768

DDOE Certificated Staff coordinating activity:

Ron Love
School Transportation

Next Page for Signatures.

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

i3screen, llc.



Steve Gatt
President & COO

12/8/11

Date

Delaware Department of Education



Karen Field Rogers
Associate Secretary, Financial Reform &
Resource Management

12/7/11

Date



Initial Finance Director

I. Statement of Work- Appendix A

A. General

1. The selected vendor will be required to provide third party administrative services for a program of drug and alcohol testing to enable public school districts, charter schools and any person or entity that contracts with a school district or charter school to provide transportation for state public school students to comply with such drug and alcohol testing requirements applicable to Delaware public school bus drivers and aides as are now, or may be imposed by state and federal laws and regulations.
2. There are approximately 215 employers who employ approximately 2,000 school bus drivers and 225 aides who will participate in the drug and alcohol testing program.
3. All drivers will be subject to pre-employment, post-accident, reasonable suspicion, and quarterly random testing (DOT) and aides will be subject to pre-employment, reasonable suspicion and quarterly random testing (non-DOT).
4. The vendor shall use a Drug and Alcohol tracking software package (i.e. Hidie, DrugPak, JJ Keller, etc.).

B. Specific Requirements for the Selected Vendor

1. Maintain random selection consortium pools for drug and breath alcohol testing of drivers and aides in compliance with USDOT 49 CFR Parts 40 and 382. These pools will only include those employers for which these services will be contracted.
2. Provide a minimum number of drug and alcohol collection/testing sites (preferably co-located) for coverage in the following counties:
 - a. New Castle- 3
 - b. Kent- 2
 - c. Sussex- 3
3. Notify employers of test results in a timely manner. Notify DDOE of positive test results in a timely manner.
4. Follow Delaware Title 14 Admin. Code 1105 requirements:

24.0 Drugs and Alcohol Testing

24.1 Content:

24.1.1 Pursuant to 14 Del.C. §2910, this regulation shall apply to the contracting for a program of drug and alcohol testing services necessary to enable local school districts, charter schools, and any person or entity that contracts with a local school district or charter school to provide

transportation for State public school pupils, to comply with such drug and alcohol testing requirements applicable to Delaware public school bus drivers as are now, or may hereafter be, imposed by federal law.

24.1.2 School bus aides shall be subject to the same federal and state drug and alcohol testing requirements as school bus drivers. They shall use non DOT forms, and the employer shall follow the same procedures set forth herein.

24.2 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Alcohol” means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol.

“Department” means the Delaware Department of Education.

“DOT” means the United States Department of Transportation.

“Drug” means the controlled substances for which tests are required under the provisions of 49 U.S.C. §31306, 49 CFR Part 382 and 49 CFR Part 40, and include marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

“Employer” means school bus contractors or school districts and charter schools when they directly employ school bus drivers.

“Negative Result” means a verified negative drug test result or an alcohol test result lower than the Federal standard as defined by the provisions of 49 U.S.C. §31306, 49 CFR Part 382 and 49 CFR Part 40.

“Positive Result” means a verified positive, adulterated, or substituted drug test result, an alcohol test result equal to or greater than the Federal standard or a refusal to take a drug or alcohol test as defined by the provisions of 49 U.S.C. §31306, 49 CFR Part 382 and 49 CFR Part 40.

24.3 Federal Regulations

Employers shall comply with the drug and alcohol testing regulations issued by the Secretary of Transportation of the United States pursuant to 49 U.S.C. §31306 and located at 49 CFR Part 382 and 49 CFR Part 40.

24.4 Drug and Alcohol testing program requirements:

24.4.1 The employer shall:

24.4.1.1 Be responsible for compliance with all federal and state regulations;

24.4.1.2 Maintain drug and alcohol testing records for their school bus drivers and aides.

24.4.1.2.1 Documentation of drug and alcohol testing results shall flow directly from the Consortium or Third Party Administrator Medical Review Officer (C/ TPA/MRO), as defined by the provisions of 49 CFR Part 382 and 49 CFR Part 40, to the employer. Copies of positive results shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

24.4.1.2.2 Documentation of results shall be addressed to the individual, or employer, and the transportation supervisors for the school district, charter school or Department so as to ensure confidentiality.

24.4.2 The Department shall:

24.4.2.1 Bid the contract for the drug and alcohol testing program;

24.4.2.2 Monitor the drug and alcohol testing program;

24.4.3 Any school bus driver or aide who is not in compliance with federal and state drug and alcohol testing requirements shall not perform driver or aide duties until they have satisfied the federal and state requirements.

24.4.3.1 Any school bus driver or aide who has a positive drug or alcohol test result shall comply with DOT regulations regarding a Substance Abuse Professional (SAP) evaluation, treatment and return to duty testing before another pre-employment test is allowed.

24.4.3.2 An employer who hires a school bus driver or aide who has previously failed a drug or alcohol test shall ensure that all follow up drug and alcohol testing recommended by the SAP evaluation is implemented.

24.5 Pre-employment Testing

24.5.1 School bus drivers with no CDL and aides with no prior experience shall have a negative pre-employment drug test, and the

employer shall receive a negative result before the prospective employee can operate a school bus or serve as an aide.

24.5.2 Bus drivers with a CDL and school bus aides with past experience shall follow DOT rules and regulations to determine the necessity for pre-employment drug testing.

24.5.3 Employers shall provide Federal Drug Testing Custody and Control (CCF) forms to new school bus drivers and non DOT forms to school bus aides who shall take the forms to the appropriate collection facility where the driver or aide shall be administered a drug test. Forms shall note the employer and district or charter school.

24.5.4 Negative results shall be forwarded from the C/TPA/MRO to the employer.

24.5.5 Positive results shall be forwarded from the C/TPA/MRO to the employer. Copies of positive results shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

24.5.6 Employers shall notify prospective school bus drivers and aides in writing of a positive result. Copies of this letter shall be sent to the transportation supervisor for the school district or charter school and the Department.

24.6 Random Testing

24.6.1 Employers shall provide the C/TPA/MRO a quarterly list of eligible drivers and aides to be drug and alcohol tested no later than one week before the testing quarter. The list shall note the primary district of the drivers and aides. Copies of the lists shall be provided to the school district or charter school transportation supervisors.

24.6.2 The C/TPA/MRO shall send the employer lists of drivers and aides to be tested by the end of the first week of the quarter.

24.6.3 Employers shall provide CCF and alcohol testing forms to the drivers and aides who shall take the forms and go immediately to the appropriate collection facility where the driver or aide shall be administered a drug test or a drug and alcohol test. Forms shall note the employer and the district.

24.6.4 Employers shall complete the required random tests before the end of the calendar quarter.

24.6.5 Negative results shall be forwarded from the C/TPA/MRO to the employer.

24.6.6 Positive results shall be forwarded from the C/TPA/MRO to the employer. Copies of the positive results forms shall be sent to the transportation supervisor for the district and the Department for accounting and audit purposes.

24.6.7 Employers shall notify school bus drivers and aides in writing of a positive result. Copies of this letter shall be sent to the transportation supervisor for the district and Department.

24.7 Post Accident and Reasonable Suspicion Testing

24.7.1 Employers shall provide CCF and alcohol testing forms to the school bus drivers and aides who shall take the forms and go immediately to the appropriate collection facility where the driver or aide shall be administered a drug and alcohol test. Forms shall note the employer and district.

24.7.2 Negative results shall be forwarded from the C/TPA/MRO to the employer.

24.7.3 Positive results shall be forwarded from the C/TPA/MRO to the employer. Copies of the positive result form shall be sent to the transportation supervisor for the local school district or charter school and the Department for accounting and audit purposes.

24.7.4 Employers shall notify school bus drivers and aides in writing of a positive result. Copies of this letter shall be sent to the transportation supervisor for the district and the Department.

5. Maintain a data base of employers (names, point of contact, address and telephone number and e-mail address/fax number, if available). Provide a copy of the employers' information to DOE within 30 days after contract signature, by August 31 each year or upon request from DDOE.
6. Maintain a data base of drivers and aides names (first and last) and SSN by employer. Provide a copy of the drivers and aides names in the data base to each employer twice a year (by September 15 and March 15) or upon request of the employer.
7. Provide DDOE an updated list of collection/testing locations including address, hours, phones number and emergency contacts with their phone numbers within 10 days of contract signature and an updated overall listing by December 15 each year. Locations shall be open for walk-in service between 7:00 a.m. to 3:00 p.m. Additionally, immediately notify DDOE when locations or times change.
8. Provide two locations in each county for after-hours collection/testing until 11:00 p.m.
9. Provide DDOE a listing by employer of drug and alcohol tests scheduled, accomplished and any shortfalls within 30 days of the end of a quarter. Alternates used must be

included in this data. DDOE will notify the employers of any shortfalls. Notification may be electronic.

10. Notify each employer and DDOE annually of the previous year's statistics the vendor has for the consortium of driver and aides by January 15.
11. Coordinate with DDOE to develop a clinic passport to be given to collection/testing facility personnel by the drivers or aides stating what tests will be accomplished.
12. Send employers an initial supply of chain of custody forms for drug collections and resupply them as needed.
13. Invoice DDOE during the first week of the month for the previous month and include the employer, test type, test date, employee name and cost.
14. Employers will be able to access drug and alcohol test results by secure fax, secure e-mail, a telephone voice mail system or by contacting the vendor's service manager.
15. Monitor all collection sites to ensure compliance with Federal Motor Carrier Safety Administration (FMCSA) regulations. As DDOE's Third Party Administrator (TPA) maintain the selection numbers ensuring compliance with FMCSA testing rates.
16. Be available to assist with FMCSA audits and/or litigation hearings.
17. Forward all Chain of Custody (COC) employer copy and the MRO result form together via U.S. mail to the employers.

Annual Cost of Services

Vendor name i3screen, llc
Signature of company official [Signature]
Address 2501 Northfield Blvd., Denver, CO 80238
Telephone and fax numbers T: (877) 585-7366 / F: (866) 790-5689

Costs:

	<u>Price/ test</u>	<u>Estimated Annual Cost</u>
At PSC*: \$23.50		
At TPS*: \$36.00		\$42,290.00.**
Price/test X estimated tests (1,765)		
\$33.50		\$8,877.50
Price/test X estimated tests (265)		
		\$51,167.50
		Total annual cost

Drug Test

- a. Pre-employment- 700
- b. Random- 1,000
- c. Post-accident- 50
- d. Reasonable suspicion- 5
- e. After-hours- 10

Alcohol Test

- a. Random-200
- b. Post-accident- 50
- c. Reasonable suspicion- 5
- d. After-hours- 10

*PSC = Patient Service Center / TPS = Third Party Site

**Price estimate based on Pre-Employment & Random Drug Test Collections at Patient Service Centers and Post-Accident, Reasonable Suspicion, and After Hours Drug Test Collections at Third Party Sites

Additional info (please attach)

- a. List of collection/test facilities in Delaware
- b. Statement that labs are on the S.A.H.S.A list of certified labs
- c. Description of organization and existing accessibility of facilities/services
- d. How lab communicates with the Medical Review Officer
- e. Time frames for getting results to the employer
- f. List of three references where services are/were provided
- g. Description of how emergency services can be provided when labs are closed.

Exhibit 1- Payment Schedule (continued)

i3screen shall submit monthly invoices to DDOE in sufficient detail to support the services provided during the previous month. DDOE agrees to pay those invoices within thirty (30) days of receipt.