

CONTRACT

CCSS Formative Assessment and Professional Development Initiative and RFP#2014-02

This Agreement ("Agreement") is effective only upon the execution of a State of Delaware Purchase Order and will end on **August 31**, 2014, by and between the State of Delaware, Department of Education, hereafter referred to as DDOE, and LearnZillion, hereafter referred to as LEARNZILLION.

WHEREAS, DDOE desires to obtain certain services to provide professional development resulting in the establishment of a robust cadre of teachers engaged in the development of quality formative assessments; and

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

WHEREAS, DDOE and LEARNZILLION 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 LEARNZILLION agree as follows:

1. Services.

1.1 LEARNZILLION 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) LEARNZILLION's response to the request for proposals, attached hereto as Appendix C. 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 LEARNZILLION 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 LEARNZILLION, 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 LEARNZILLION for any aspect of its performance under this

Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.4 LEARNZILLION will not be required to make changes to its scope of work that result in LEARNZILLION'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 the execution of this agreement and a State of Delaware Purchase Order through August 31, 2014.

2.2 DDOE will pay LEARNZILLION for the performance of services described in Appendix A, Statement of Work. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix A.

2.3 DDOE's obligation to pay LEARNZILLION for the performance of services described in Appendix A, Statement of Work will not exceed the fixed fee amount of \$ 151,400. It is expressly understood that the work defined in the appendices to this Agreement must be completed by LEARNZILLION and it shall be LEARNZILLION's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. 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 LEARNZILLION.

2.4 LEARNZILLION 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 LEARNZILLION 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 LEARNZILLION 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 LEARNZILLION, 5038 MacArthur Blvd. NW, Washington, D.C. 20016.

2.5 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by LEARNZILLION. If an Appendix

specifically provides for expense reimbursement, LEARNZILLION shall be reimbursed only for reasonable expenses incurred by LEARNZILLION 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 LEARNZILLION all damages, costs and expenses caused by LEARNZILLION's negligence, resulting from or arising out of errors or omissions in LEARNZILLION's work products, which have not been previously paid to LEARNZILLION.

2.8 Invoices shall be submitted to: Michael Watson, Chief Academic Officer, Delaware Department of Education, 401 Federal Street, Suite 2, Dover, DE 19901-3639.

3. Responsibilities of LEARNZILLION.

3.1 LEARNZILLION shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by LEARNZILLION, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, LEARNZILLION shall follow practices consistent with generally accepted professional and technical standards. LEARNZILLION 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, LEARNZILLION shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. LEARNZILLION shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DDOE caused by LEARNZILLION's failure to ensure compliance with DTI standards.

3.2 It shall be the duty of the LEARNZILLION 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. LEARNZILLION will not produce a work product that violates or infringes on any

copyright or patent rights. LEARNZILLION 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 LEARNZILLION shall not in any way relieve LEARNZILLION of responsibility for the professional and technical accuracy and adequacy of its work. DDOE's review, approval, acceptance, or payment for any of LEARNZILLION'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 LEARNZILLION shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DDOE caused by LEARNZILLION's performance or failure to perform under this Agreement.

3.4 LEARNZILLION 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 LEARNZILLION's associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

LEARNZILLION Staff

Eric Westendorf, CEO

Posie Wilkinson, Academic Coordinator, Project Manager

Boaz Munro, Academic Coordinator, PLC support

Alix Guerrier, President, Product Manager

Ian Lottinsky, VP of Engineering, Tech Team oversight

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, LEARNZILLION 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 LEARNZILLION 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 LEARNZILLION is unsuitable to DDOE for good cause, LEARNZILLION shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

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

correspondence.

3.7 LEARNZILLION 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 LEARNZILLION 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 LEARNZILLION 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 included in Appendix A.

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 LEARNZILLION 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 the payments scheduled as set forth in Appendix A.

5. State Responsibilities.

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

5.3 The services performed by LEARNZILLION 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 LEARNZILLION 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 LEARNZILLION. It is understood that DDOE's representatives' review comments do not relieve LEARNZILLION 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 LEARNZILLION 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.

LEARNZILLION shall return any original data provided by DDOE.

5.6 DDOE shall assist LEARNZILLION 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 LEARNZILLION 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 LEARNZILLION's name, either express or implied, in any of its advertising or sales materials. LEARNZILLION 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

LEARNZILLION 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. LEARNZILLION 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 LEARNZILLION 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 LEARNZILLION retains title, whether individually by LEARNZILLION 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 LEARNZILLION 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, LEARNZILLION 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 LEARNZILLION prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of LEARNZILLION 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 LEARNZILLION warrants that its services will be performed in a good and workmanlike manner. LEARNZILLION 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 LEARNZILLION for DDOE in connection with the provision of the Services, LEARNZILLION shall pass through or assign to DDOE the rights LEARNZILLION 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 LEARNZILLION 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 LEARNZILLION, its agents or employees, or (B) LEARNZILLION'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) LEARNZILLION shall have been notified promptly in writing by DDOE of any notice of such claim; and (ii) LEARNZILLION 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 LEARNZILLION in writing of a third party claim against DDOE that any Deliverable infringes a copyright or a trade secret of any third party, LEARNZILLION will defend such claim at its expense and will pay any costs or damages that may be finally awarded against DDOE. LEARNZILLION 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 LEARNZILLION; (3) DDOE's use of the Deliverable in combination with any product or information not owned or developed by LEARNZILLION; (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 LEARNZILLION's opinion is likely to be, held to be infringing, LEARNZILLION 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 LEARNZILLION's entire liability with respect to infringement.

9.3 DDOE agrees that LEARNZILLION' 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 LEARNZILLION negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed fees paid to LEARNZILLION.

In no event shall LEARNZILLION 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 LEARNZILLION has been advised of the likelihood of such damages.

10. Employees.

10.1 LEARNZILLION has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by LEARNZILLION 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 LEARNZILLION 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, LEARNZILLION 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. LEARNZILLION 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 LEARNZILLION acknowledges that LEARNZILLION and any subcontractors, agents or employees employed by LEARNZILLION 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 LEARNZILLION shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, LEARNZILLION 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 LEARNZILLION under this Agreement for such period of time as DDOE, at its sole discretion, may prescribe by providing written notice to LEARNZILLION at least 30 working days prior to the date on which DDOE wishes to suspend. Upon such suspension, DDOE shall pay LEARNZILLION its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. LEARNZILLION shall not perform further work under this Agreement after the effective date of suspension. LEARNZILLION 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 LEARNZILLION for any cause other than the error or omission of the LEARNZILLION, for an aggregate period in excess of 30 days, LEARNZILLION shall be entitled to an equitable adjustment of the compensation payable to LEARNZILLION under this Agreement to reimburse LEARNZILLION 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 LEARNZILLION 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 LEARNZILLION 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 LEARNZILLION at the time of termination may be adjusted to the extent of any additional costs occasioned to DDOE by reason of LEARNZILLION'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 LEARNZILLION shall cease conducting business, DDOE shall have the right to make an unsolicited offer of employment to any employees of LEARNZILLION assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

13.4 If after termination for failure of LEARNZILLION to fulfill contractual obligations it is determined that LEARNZILLION 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 LEARNZILLION 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 LEARNZILLION, 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 LEARNZILLION or any agent or representative of LEARNZILLION 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 LEARNZILLION it could pursue in the event of a breach of this Agreement by LEARNZILLION.

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 LEARNZILLION 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 LEARNZILLION, without prior written approval of DDOE.

15.3 Approval by DDOE of LEARNZILLION's request to subcontract or acceptance of or payment for subcontracted work by DDOE shall not in any way relieve LEARNZILLION 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 LEARNZILLION shall be and remain liable for all damages to DDOE caused by negligent performance or non-performance of work under this Agreement by LEARNZILLION, its subcontractor or its sub-subcontractor.

15.5 The compensation due shall not be affected by DDOE's approval of the LEARNZILLION'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.

LEARNZILLION 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 LEARNZILLION 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 LEARNZILLION 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, LEARNZILLION shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. LEARNZILLION 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 LEARNZILLION 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. LEARNZILLION 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 LEARNZILLION acknowledges that DDOE has an obligation to ensure that public funds are not used to subsidize private discrimination. LEARNZILLION 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 LEARNZILLION in breach of the Agreement, terminate the Agreement, and designate LEARNZILLION as non-responsible.

20.6 LEARNZILLION 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 LEARNZILLION 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 LEARNZILLION's performance and records pertaining to this Agreement at the LEARNZILLION business office during normal business hours.

21. Insurance.

21.1 LEARNZILLION 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. LEARNZILLION 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:

Delaware Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

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, LEARNZILLION 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. LEARNZILLION 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: Eric Westendorf
LearnZillion
5038 MacArthur Blvd, NW
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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.

LearnZillion
Original on File

Eric Westendorf, CEO
Project Manager

9/12/13
Date

Original on File

Alix Guerrero, President
Product Manager

9/12/13
Date

Delaware Department of Education
Original on File

Karen Field Rogers
Associate Secretary, Financial Reform &
Resource Management

9/18/13
Date

Original on File

Initial Finance Director

Original on File

Branch Associate Secretary

Date

Initial Work Group
Director

Appendix A: Statement of Work

GOALS AND STRATEGY

Goals

LearnZillion will design and implement a system of training on standards-based professional learning that can accommodate forty teachers. These forty will become the foundation of a statewide community of teachers dedicated to high-quality Common Core instruction. Their impact will be felt on two levels:

1. They will have become Common Core ambassadors capable of leading on-going professional learning communities (PLCs) on the LEA level. Through a customized state site powered by LearnZillion, LearnZillion will support the teachers in becoming effective Common Core ambassadors throughout the state.
2. They will develop high quality Common Core formative assessments that will be published alongside the national LearnZillion resources on the customized state site. These products will serve as exemplars for teachers throughout the state.

Strategy

To achieve these goals, LearnZillion will implement the following strategy:

1. With the support of DDOE, LearnZillion recruits and select a Delaware Dream Team of forty teachers.
2. LearnZillion provides the Delaware Dream Team with an extensive professional development experience including:
 - TeachFest Delaware. TeachFest is a two-and-a-half day event that kicks off the work of the Dream Team. At TeachFest, Dream Team teachers meet each other, meet their coaches, study their assigned standard(s) or texts, and learn about the process for creating content. They have time to get to know each other and participate in activities that lay the foundation for the growing strength of the community. They also become connected with the national Dream Team community.
 - Lesson and resource creation. Over a semester, Dream Team teachers work with their coaches to develop Common Core content. Using a tailored online platform (see appendix for visual), the Dream Team teachers engage in a drafting process that results in a high-quality final product and incorporates intensive standards-focused professional development. Throughout the process, LearnZillion will support the work by hosting webinars and conference calls with coaches and teachers, sending newsletters that keep everyone informed on the pilot's progress, answering questions, and providing updated tutorials and resources as needed.

- Resource publication. LearnZillion will publish all the products that meet our quality bar (described in our rubric) on LearnZillion.com. These resources will be available to all teachers in Delaware.
- Celebration and extension. LearnZillion will host a culminating celebration event where Dream Team teachers share their final products and prepare to extend the experience in their own districts and schools through professional development presentations.

Grade Levels and Content Areas

LearnZillion recommends that teachers from all grade levels and content areas have a chance to participate. The forty Dream Team teachers selected will be organized into eight teams of five members each. Each team will be led by a coach. Teams will most likely include three math teams (2-5, 6-8, and 9-12), three ELA teams (2-5, 6-8, 9-12), and two “to be determined” teams, depending on the applicant pool. For example, there might be a science team or an early elementary team. All teachers, including inclusion, ELL, art, music, and physical education, will be eligible and encouraged to apply.

Geographic Distribution

LearnZillion recommends establishing regional targets for Dream Team recruitment and selection. While these targets will be flexible, they will help ensure that Dream Team teachers come from across the state and therefore have the broadest impact possible.

Timeline

September - November: Recruit top teachers, working the state and districts to publicize the opportunity and generate broad awareness and excitement

November: Select the Delaware Dream Team

November-December: Communicate with those selected, provide them with the necessary resources and logistical information in preparation for TeachFest. Begin building community and excitement in anticipation of TeachFest. Prepare logistics of TeachFest.

January: Host TeachFest

January-May: Support Dream Team teams as they research standards, outline, draft, and ultimately publish their final products

January-May: Support Dream Team teachers in sharing their professional development experiences with colleagues throughout their district

May or June: Host final convening where Dream Team teachers share their final products, celebrate their work, and outline ways to leverage and grow the work of the Dream Team

July-August: Final reporting/evaluation

Quality is the key to the success of the Dream Team. This timeline supports the highest quality experience at each step of the process. More specifically, this timeline will give us an opportunity to:

- thoroughly recruit top teachers throughout the state
- provide ample opportunity for teachers to complete rigorous applications
- carefully select the Dream Team
- create anticipation and excitement before TeachFest
- connect the Delaware Dream Team with the national Dream Team
- prepare and deliver an exceptional TeachFest experience
- support one complete cycle of published products
- prepare a final convening that supports the broader impact of the Dream Team’s work

Key Success Factors

The success of the above program will depend on the following “key success factors”:

Careful selection of the Dream Team. The Dream Team teachers will be the foundation of the state community. They must be effective, enthusiastic, and humble. They must see this as a special opportunity to have an impact throughout their state and to be part of building an important community. LearnZillion will partner with the DDOE to recruit and select these individuals.

Delivery of an exceptional TeachFest experience. TeachFest provides an ideal opportunity to energize the community of teachers, building buy-in to the community and to LearnZillion’s approach to professional learning. TeachFest has succeeded on the national level because we have taken advantage of every opportunity to communicate our core values, namely:

1. We have a purpose. We are driven to increase the education opportunities for every student.
2. We champion teachers. We celebrate great teaching and create tools that support teachers.
3. We don’t let our users down. Every one of our users is pursuing a critically important goal—the education of a student.
4. We make products that are easy to use. Features that are too difficult to find or understand don’t make anyone’s life better.
5. We help each other get better. We’re each committed to our own learning and have a duty to contribute to the professional development of others.
6. We laugh at ourselves. Regularly.
7. We value families. We take care of the ones we love; we draw strength and inspiration from our lives outside of LearnZillion.

8. We persevere. We work our hardest when the chips are down.

PLC support. This contract is built on the efficacy of professional learning communities. Research regularly demonstrates that PLCs are the most effective way of organizing job-embedded professional learning. To be effective, however, PLCs must be scaffolded to provide participants with the resources, templates, and advice they need at each step of the cycle. The effectiveness of the PLCs also relies on the existence of a PLC platform that enables collaboration, feedback, and drafting.

Final Products

The Delaware Dream team will create high quality formative assessments. Formative assessment items are critical resources in implementing the Common Core. They challenge students to share their thinking and, in so doing, give teachers critical information on what their students understand and do not understand. The creation of high quality formative assessment items requires significant time, feedback, and expertise around the standards. Their development requires a clear and scaffolded process. They are also products that focus teachers' energy on the content without the risk of getting distracted by technology requirements.

Impact

The pilot will directly touch the lives of the forty Delaware teachers on the Dream Team and indirectly influence the practices of many more through the local communities these teachers build (for example, the PLCs they lead following the LearnZillion process). We expect that the experience will positively impact evaluation scores and student achievement scores for Dream Team teachers. The pilot will also result in hundreds of Common Core resources being made freely available to any teacher in Delaware. We anticipate those resources being accessed and used thousands of times throughout the state.

Five-year partnership

If successful, we hope the proposed activities represent year one of a five-year plan. In subsequent years, the Dream Team would expand, perhaps by forty teachers per year so that in year five, two hundred teachers would participate on the Dream Team. The outcomes of the five-year effort would scale accordingly. We would also anticipate formalizing the process by which Dream Team teachers form and lead PLCs. For example, we envision a kick-off event where all PLCs meet and learn about the process, providing structure for weekly one-hour PLC meetings and hosting a culminating celebration event where all PLC teachers share their final products. Most importantly, we anticipate that a five-year effort would significantly affect the culture of teaching across the state. The growing community of teachers dedicated to high quality instruction of the Common Core will spread through the state, positively motivating

peers to embrace the Common Core and engage in powerful learning experiences.

Payment Schedule:

November 2013 (6 weeks from start date of contract) – Recruitment/Selection of Dream Team - \$25,000

January 2014 – TeachFest preparation/planning - \$10,000

February 2014 : TeachFest - \$40,000

April 2014 – Coach/Dream Team stipends - \$60,000

June 2014 – Final Convening of Dream Team - \$10,000

August 2014 – Final Reporting/evaluation - \$6,400